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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A17-0852

A17-0853

State of Minnesota,
Respondent,

vs.

Daniel Howard Stanke,
Appellant.

Filed April 9, 2018
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-16-3233

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and
Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Daniel Stanke argues that his conviction of third-degree criminal damage to property must be reversed because the district court failed to give the jury a specific-

unanimity instruction. He also argues his sentence must be modified because the district court incorrectly calculated restitution. Because a specific-unanimity instruction was not required, and because the district court did not abuse its discretion in determining restitution, we affirm.

FACTS

In 2015, Stanke lived with M.S. in a house owned by absentee-landlord C.S. On December 20, Stanke became upset when he suspected that M.S. was stealing his food from the refrigerator. As a result, Stanke began throwing food around the house. M.S. called C.S. and then, based on C.S.'s instructions, called the police. When the police arrived, they spoke with M.S. and Stanke, but then left after Stanke told them they would "get no more problems out of him."

Stanke went to his downstairs room. M.S. then began hearing banging sounds coming from downstairs. M.S. again called the police, and, when they arrived, they observed condiments all over the couch on the main floor, as well as damage to the drywall and door molding in the basement.

As a result of the damage to the couch and basement, Stanke was charged with first-degree criminal damage to property. At trial, the state presented evidence that it cost \$628 to repair the damaged drywall, \$500 to replace the couch, and \$120 to clean condiments off the walls and floor. In his defense, Stanke denied damaging both the couch and basement and claimed that he was the owner of the couch. Based on these defenses, the state requested lesser-included-offense instructions for third-degree criminal damage to property (damage between \$500 and \$999). The court included instructions for both third-

degree criminal damage to property and fourth-degree criminal damage to property (damage of less than \$500). The court instructed the jury, “In order for you to return a verdict, whether guilty or not guilty, each juror must agree with the verdict. Your verdict must be unanimous.” The jury found Stanke guilty of third-degree criminal damage to property.

C.S. requested \$2,091.57 in restitution. At a contested restitution hearing, Stanke argued that, because the jury had found him not guilty of first-degree criminal damage to property, the court was limited to awarding \$999.99 in restitution. Stanke further argued that any restitution should be offset by a security deposit of \$700. However, C.S. testified that he had never received any security deposit. The district court ordered Stanke to pay \$999 in restitution.

Stanke separately appealed his conviction and the restitution order. This court consolidated the appeals.

D E C I S I O N

I. The district court did not err when it did not give the jury a specific-unanimity instruction.

Stanke argues the district court erred by not giving the jury a specific-unanimity instruction. Because Stanke did not request such an instruction at trial, we review the matter for plain error. *See State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017). To obtain relief, Stanke must show “(1) an error, (2) that was plain, and (3) that affected the defendant’s substantial rights. If we conclude that any of the requirements of the plain-error doctrine are not satisfied, we need not consider the others.” *Id.* (citation omitted).

“Jury verdicts in all criminal cases must be unanimous.” *State v. Pendleton*, 725 N.W.2d 717, 730 (Minn. 2007). “To achieve that end, a jury must unanimously find that the government has proved each element of the offense.” *Id.* at 730-31 (quotation omitted). However, the jury need not unanimously agree on each element’s underlying facts so long as the differing factual circumstances show “equivalent blameworthiness or culpability.” *Id.* at 731 (quotation omitted).

Stanke argues that it was error for the district court not to instruct the jury that it had to unanimously agree on which property was damaged (a specific-unanimity instruction). This is so, according to Stanke, because “the State presented evidence of two distinct acts and two separate pieces of property that were damaged—the upstairs couch and the basement walls.” Stanke analogizes this case to *State v. Stempf*, in which this court concluded that the district court erred by failing to give a specific-unanimity instruction when the state charged a single count of fifth-degree controlled-substance crime but then argued to the jury that “it could convict if some jurors found appellant possessed the methamphetamine found in the truck while others found he possessed the methamphetamine found on the premises [of his employment].” 627 N.W.2d 352, 354 (Minn. App. 2001).

We reject Stanke’s comparison to *Stempf*. In our view, Stanke’s behavior is more akin to that of the defendant in *State v. Infante*, 796 N.W.2d 349 (Minn. App. 2011). In *Infante*, the defendant was charged with one count of second-degree assault after he put a gun to the victim’s head, left, sent the victim four threatening voicemails over the next two hours, returned, and then sat in front of the victim while “methodically loading” a revolver.

Id. at 352. During its closing argument, the state argued that the defendant had assaulted the victim twice, “with two separate weapons, both of them loaded.” *Id.* at 353. The defendant did not object to this argument, nor did he request a specific-unanimity instruction, and such an instruction was not given. *Id.* In reviewing the jury instructions, this court found no error. *Id.* at 355. Rather, we concluded that, because the defendant’s “two actions occurred at the same place and involved the same victim,” “occurred over a short period of time,” and “shared a single criminal goal,” they constituted a single behavioral incident, for which a specific-unanimity instruction was not required. *Id.* at 357.

Here, as in *Infante*, Stanke’s actions occurred at the same place and involved the same victim. They occurred over a short period of time and shared the same criminal goal of damaging C.S.’s property. On these facts, we conclude that no specific-unanimity instruction was required. Because the district court did not err in not giving a specific-unanimity instruction, we do not address the remaining factors of the plain-error test.

II. The district court did not abuse its discretion when it awarded \$999 in restitution.

In his pro se brief, Stanke argues the district court erred by failing to factor in his security deposit when determining restitution. “A district court has broad discretion to award restitution, and the district court’s order will not be reversed absent an abuse of that discretion. The district court’s factual findings will not be disturbed unless they are clearly erroneous.” *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015) (citation omitted). The state must prove the amount of restitution due by a preponderance of the evidence, and the

district court is “not bound by the jury’s verdict” in doing so. *State v. Terpstra*, 546 N.W.2d 280, 283 (Minn. 1996).

At the restitution hearing, the state presented evidence that C.S. had never received a security deposit. Although Stanke argued that he had a check proving there was a security deposit, the check was never offered into evidence. Given C.S.’s testimony that he never received a security deposit, contravened only by Stanke’s assertion that he did give C.S. a deposit, the district court was entitled to make a credibility determination and find that there was no security deposit. We defer to that determination and conclude that the district court did not abuse its discretion in refusing to deduct \$700 from the amount of restitution.¹

III. Stanke’s remaining pro se arguments are forfeited due to inadequate briefing.

In his pro se brief, Stanke also argues that witnesses committed perjury and that the victim engaged in witness tampering. “[P]ro se litigants are generally held to the same standards as attorneys” *State v. Fellegy*, 819 N.W.2d 700, 704 (Minn. App. 2012), *review denied* (Minn. Oct. 16, 2012). “Arguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law

¹ We note that Stanke did include photos of several checks in his pro se brief; however, “[i]t is well settled that an appellate court may not base its decision on matters outside the record on appeal, and that matters not produced and received in evidence below may not be considered.” *State v. Little*, 851 N.W.2d 878, 885 (Minn. 2014) (quotation omitted); *see also* Minn. R. Civ. App. P. 110.01 (“The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.”). Moreover, even if we were to consider the checks, they would not substantiate Stanke’s claim that the district court abused its discretion. The memo on the check Stanke claims was for a security deposit, check 1123, indicates that it was for “rent,” which is identical to the other “rent” checks included in his brief, as opposed to “security deposit” or any other phrase of a similar nature.

when claiming that errors of law occurred.” *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017). Stanke provides nothing from the record, nor any legal analysis, in support of these arguments in his pro se brief. Moreover, we discern no obvious error based on our inspection of the record. *See State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (holding that unsupported assignments of error are forfeited “unless prejudicial error is obvious on mere inspection”), *aff’d*, 728 N.W.2d 243 (Minn. 2007). Stanke’s arguments are therefore forfeited, and we do not address them.

Affirmed.