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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1603**

State of Minnesota,
Respondent,

vs.

David Edward Palmer,
Appellant.

**Filed October 21, 2019
Affirmed; motion granted
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-17-22612

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and
Kalitowski, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant David Edward Palmer challenges his convictions for domestic assault-harm, domestic assault-fear, and domestic assault by strangulation. Palmer argues that the evidence introduced at trial is insufficient to support the three convictions. Palmer also asserts several pro se claims. Because we conclude that the evidence is sufficient to support the convictions and that Palmer's pro se claims are either without merit or not properly before this court, we affirm.

FACTS

In 2017, the state charged appellant David Edward Palmer with: (1) domestic assault-harm under Minn. Stat. § 609.2242, subd. 4 (2016); (2) domestic assault-fear under Minn. Stat. § 609.2242, subd. 4; and (3) domestic assault by strangulation under Minn. Stat. § 609.2247 (2016). The charges relate to an incident involving his romantic partner, R.J. The state also gave notice that it would seek an aggravated sentence based on the fact that a child was present during the incident. The case proceeded to a bench trial. Palmer stipulated that he had two or more previous qualified domestic violence-related convictions, making the charges under Minn. Stat. § 609.2242 felony-level offenses.

The state called R.J. to testify. R.J. had been in a relationship with Palmer since early 2016. She testified that on September 3, 2017, she and Palmer got into an argument about Palmer's infidelity. At about 1:30 a.m. on September 4, Palmer came to R.J.'s home while R.J. was sleeping and entered her bedroom. Palmer asked R.J. to fight someone for him, and R.J. refused. R.J. testified at trial that Palmer was intoxicated. She said that

Palmer yelled at her and called her names. R.J. attempted to get out of bed and leave her room, but Palmer prevented her from leaving by grabbing her from behind and choking her. R.J. lost consciousness. At some point near the beginning of this altercation, Palmer took R.J.'s phone and keys.

Palmer lightly hit R.J. on the face to wake her up after she lost consciousness. When R.J. woke up, Palmer was standing over her. R.J. tried to crawl out of the bedroom, but Palmer blocked the exit. At that point, R.J.'s young son came out of his bedroom and told Palmer to stop. Palmer told R.J. to be quiet, threatened to kill her, and shoved her head into a wall. The child again told Palmer to stop. Palmer told the child that he was probably going to kill R.J. but that he would let the child live.

Palmer continued to threaten to kill R.J. and insult her with the child in their presence. R.J. testified that Palmer had been holding a black handgun during the incident, and that Palmer used a significant amount of force during the assault. Palmer eventually went to a different room. When he fell asleep, R.J. gathered her son and her other children who were in the house, found her spare keys, and drove to a relative's house where she called 911. She told the 911 operator that Palmer choked her, was abusive, and threatened to kill her. R.J. then went to the emergency room.

The emergency room doctor (the ER doctor) testified that R.J. reported that her "significant other" assaulted her, strangled her, and hit her in the head. R.J. told the ER doctor that she had passed out. R.J. testified that the ER doctor had observed swelling on R.J. during the hospital examination, but the ER doctor testified that she saw no external signs of bruising, swelling or lacerations. The ER doctor also testified that it is "not

unusual” for there to be no external signs of trauma after a strangulation and that it does not take much force to cause a person to lose consciousness via strangulation. The ER doctor also testified that the pain that R.J. reported “could be” consistent with R.J.’s report that she was strangled.

Maple Grove Police Officer Anton, who has 29 years of experience as a police officer, spoke with R.J. at the hospital. R.J.’s account of the assault was generally consistent with her trial testimony. R.J. told Officer Anton that it felt like her eyes were going to pop out of her head when Palmer choked her. Officer Anton testified that he was surprised that he did not observe any injuries on R.J. at the hospital, but R.J. told Officer Anton that she had pain in her neck, arms, and head.

After speaking with R.J., Officer Anton attempted to locate Palmer by going to R.J.’s house, but Palmer was not there. Officer Anton then called R.J.’s phone in an attempt to contact Palmer because Palmer had taken R.J.’s phone during the assault. Palmer answered R.J.’s phone. Palmer said that he was not at R.J.’s home and that he was in another city.

The day after the incident, Detective Tschida recorded a conversation she had with R.J. R.J. provided a description of the assault that was generally consistent with her trial testimony and with the account she had given to Officer Anton. Tschida also asked R.J. if Palmer had ever used a weapon against her or threatened her before this incident. R.J. told Tschida about an incident in which Palmer grabbed a knife during an argument.

About a week after the incident, R.J. sought medical care at an urgent care facility. The urgent-care doctor testified that R.J. reported that she had a sore throat and jaw pain

that started after she was choked by her boyfriend. R.J. also asked the urgent-care doctor to administer a strep test. The urgent-care doctor observed redness and swelling in R.J.'s throat and jaw area. The strep test was negative. The urgent-care doctor agreed on cross-examination that if someone applied a significant amount of force in strangling someone, he would expect to see a physical injury on the victim shortly after the strangulation.

Palmer and another woman, B.H., with whom Palmer was romantically involved, testified to a different account of the incident. They both testified that they were watching a movie together at R.J.'s house when R.J. unexpectedly came home. They testified that R.J. became angry, yelled at them, and threw shoes and her phone at them. Palmer and B.H. claimed that they then left, and that Palmer never assaulted R.J.

Palmer and his friend E.E. also testified that Palmer spoke to R.J. on the phone a few days after the incident. E.E. testified that he was present during the call and Palmer had the call on speakerphone at the time. According to Palmer and E.E., R.J. told Palmer that she would not retract her statement about Palmer because she did not want to be charged with making a false police report and because she did not want to lose her housing.

The district court found that R.J.'s testimony was credible and, accordingly, found Palmer guilty of all three counts. The district court also found that the state had proven that a child was present during the incident. At the verdict return and sentencing hearing, the district court orally pronounced that it was formally convicting Palmer only of the domestic assault-harm count and that it would not enter a conviction on the other two counts. The warrant of commitment, however, shows that Palmer was formally convicted

of all three counts.¹ The district court sentenced Palmer to 42 months in prison for the domestic assault-harm offense and did not pronounce a sentence on the other two counts.

Palmer appeals.

DECISION

Palmer maintains that the evidence supporting his convictions is insufficient because R.J. was not credible, arguing that the absence of corroborating evidence of

¹ We observe that the district court appears to have intended to adjudicate a conviction on only one count. This approach is consistent with the procedure outlined by the Minnesota Supreme Court in *State v. LaTourelle*:

We hold that the proper procedure to be followed by the trial court when the defendant is convicted on more than one charge for the same act is for the court to adjudicate formally and impose sentence on one count only. The remaining conviction(s) should not be formally adjudicated at this time. If the adjudicated conviction is later vacated for a reason not relevant to the remaining unadjudicated conviction(s), one of the remaining adjudicated convictions can then be formally adjudicated and sentence imposed, with credit, of course, given for the time already served on the vacated sentence.

343 N.W.2d 277, 284 (Minn. 1984); *see also* Minn. Stat. § 609.04 (2016) (“Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.”).

While the district court’s orally pronounced sentence prevails over an inconsistent record due to clerical error, appellate courts look to the official judgment of conviction in the district court file “as conclusive evidence of whether an offense has been formally adjudicated.” *Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007) (quotation omitted); *see also State v. Staloch*, 643 N.W.2d 329, 331 (Minn. App. 2002) (concluding that the district court’s oral pronouncement of a sentence controls over a written sentencing order if the two conflict). Because the parties acknowledge that Palmer was convicted of multiple offenses in their appellate briefs, and because Palmer has not raised the issue of multiple convictions on appeal, we review the sufficiency of the evidence supporting all three convictions, consistent with the warrant of commitment.

physical injuries immediately after the assault and other inconsistencies in her testimony cast “grave doubt” over her trial testimony and out-of-court statements. Palmer also makes a number of pro se claims in a supplemental brief. We first address the sufficiency challenge and then turn to Palmer’s pro se arguments.

I. The evidence is sufficient to support Palmer’s convictions.

Palmer was convicted of two counts of felony domestic assault, harm and fear, under Minn. Stat. § 609.2242, subd. 4. A person is guilty of felony domestic assault if the person assaults a family or household member and the assault occurs within ten years of the first of two or more previous qualified domestic violence-related convictions or adjudications. Minn. Stat. § 609.2242, subds. 1, 4 (2016). A person commits an assault if the person commits an act with intent to cause fear in another of immediate bodily harm or death, or intentionally inflicts or attempts to inflict bodily harm upon another. *Id.*, subd. 1. Palmer’s two convictions for domestic assault reflect these two means of committing an assault—one conviction is for intentionally inflicting harm and the other is for committing an act with intent to cause fear.

Palmer was also convicted of domestic assault by strangulation under Minn. Stat. § 609.2247. A person is guilty of domestic assault by strangulation if the person assaults a family or household member by “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.” Minn. Stat. § 609.2247.

Palmer argues that the evidence is insufficient to support all three of his convictions. In reviewing the sufficiency of the evidence supporting a conviction, this court conducts

“a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that “the [fact-finder] believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). “[W]e will not disturb the verdict if the [fact-finder], acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

Palmer’s convictions were primarily supported by R.J.’s testimony about the assault. The supreme court has held that “a conviction can rest on the uncorroborated testimony of a single credible witness.” *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted). “The weight and credibility of individual witnesses is for the [fact-finder] to determine.” *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990). The court of appeals “cannot retry the facts.” *Id.* at 391.

Here, the district court found R.J. to be credible. R.J.’s testimony established that she and Palmer were family or household members, that Palmer assaulted her both by committing acts with intent to cause R.J. fear of immediate bodily harm or death and by intentionally inflicting bodily harm on R.J., and that Palmer strangled R.J. by intentionally impeding normal breathing or circulation by applying pressure to R.J.’s throat or neck. R.J.’s testimony alone is therefore sufficient to support each of the district court’s guilty verdicts. *See Foreman*, 680 N.W.2d at 539. Consequently, we conclude that the evidence was sufficient to support Palmer’s three convictions.

Palmer, however, argues that we should reverse his convictions notwithstanding the district court's credibility determination because of the evidence that there were no observable signs of injury immediately after the assault and because of inconsistencies in R.J.'s purportedly uncorroborated testimony. He argues that this evidence—or lack thereof—should cause this court to entertain “grave doubts” as to Palmer's guilt and reverse the conviction or remand for a new trial. See *State v. Kallestad*, 206 N.W.2d 557, 557 (Minn. 1973) (reversing and remanding a conviction for a new trial based on “grave doubts” as to the defendant's guilt).

The Minnesota Supreme Court has reversed convictions that rested on a witness's uncorroborated testimony only when there were “additional” reasons to question the witness' credibility. *Foreman*, 680 N.W.2d at 539. Palmer likens the evidence here to that in *State v. Langteau*, in which the appellant was convicted based on the uncorroborated testimony of the alleged robbery victim. 268 N.W.2d 76, 77 (Minn. 1978). The supreme court ordered a new trial despite the jury's verdict that the appellant was guilty of robbery, noting oddities and omitted information in the record:

The reason why [the victim] would have remained at the hospital until almost midnight—long after normal visiting hours—is unexplained. The reason why [appellant] would have held up [the victim], with whom he was well acquainted, is left a mystery.

Id.

Palmer asserts that the ER doctor's testimony and Officer Anton's testimony create a similarly unexplained or mysterious aspect of R.J.'s testimony—essentially, Palmer asks if he had assaulted R.J. with significant force, why did the ER doctor and Officer Anton

not observe any external injuries immediately after the assault? But unlike in *Langteau*, the answer to this question is neither unexplained nor mysterious. The ER doctor testified that it is “not uncommon” for there to be no observable external injuries after a strangulation, and that a significant amount of force is not required to cause someone to lose consciousness.

The other inconsistencies cited by Palmer are minor and were considered by the district court in its findings supporting the guilty verdicts. Palmer argues that R.J. testified about details of the assault that she had not told police in prior statements. He notes that R.J. testified that Palmer had punched a hole in the wall during the incident, and that she sent a picture of the hole to the police, but the police did not have a picture of the hole. Finally, he argues that it is plausible that R.J. fabricated the report because she was angry with Palmer over his infidelity. The district court considered the inconsistencies and omissions in R.J.’s testimony, but still determined that R.J. was credible because any inconsistencies were “within the realm of human nature,” that R.J. had a lot going on at the time of the prior statements, and that R.J. had only responded to questions that she was asked. We defer to the fact-finder’s credibility determinations and its weighing of conflicting or inconsistent statements. See *Foreman*, 680 N.W.2d at 539; see also *State v. Triplett*, 435 N.W.2d 38, 44-45 (Minn. 1989) (deferring to the jury’s credibility determination when the jury was apprised of evidence that arguably impugned a witness’s credibility). These minor inconsistencies and omissions are not uncommon in a trial, and

we do not conclude that they undermine the district court’s credibility determination in this case.²

We are not persuaded that there are unexplained or mysterious aspects of R.J.’s testimony as there were in *Langteau*, and we conclude that the district court properly considered inconsistencies in R.J.’s testimony before determining that she was credible. In short, we entertain no “grave doubts” as to Palmer’s guilt, and are not convinced that there are “additional” reasons to question R.J.’s credibility not considered by the district court. See *Foreman*, 680 N.W.2d at 539; *Kallestad*, 206 N.W.2d at 557.

Finally, Palmer contends that the district court made a clearly erroneous finding of fact when it found that both the ER doctor and the urgent-care doctor observed swelling in R.J.’s neck. This finding is erroneous because the ER doctor testified that she did not observe swelling. Only the urgent-care doctor testified to observing swelling. Although this specific finding is clearly erroneous, we conclude that R.J.’s testimony alone is sufficient to support the convictions.³ See *Hanka v. Pogatchnik*, 276 N.W.2d 633, 636 (Minn. 1979) (“Where a decisive finding of fact is supported by sufficient evidence and is

² We also note that, unlike in *Langteau*, R.J.’s testimony was corroborated—her consistent and repeated accounts of the incident corroborate her trial testimony, and the urgent-care doctor observed redness and swelling on R.J.’s throat and jaw that were consistent with R.J.’s allegations. See *State v. Daby*, 359 N.W.2d 730, 733 (Minn. App. 1984) (noting that a complainant’s “prompt and consistent accounts” of an assault may corroborate the complainant’s trial testimony). Thus, Palmer’s conviction was not based on wholly uncorroborated testimony, as he asserts in his appellate brief.

³ We also observe that, in discussing its reasons for finding R.J. credible, the district court did not cite the ER doctor’s testimony, and while the ER doctor did not observe swelling, the urgent-care doctor did.

adequate to sustain the conclusions of law, it is immaterial whether some other findings are not so sustained.”).

II. Palmer’s pro se arguments are meritless or not properly before this court.

Palmer submitted a pro se supplemental brief that asserts several arguments. The brief is difficult to follow. While a self-represented litigant “is usually accorded some leeway in attempting to comply with court rules, he is still not relieved of the burden of, at least, adequately communicating to the court what it is he wants accomplished and by whom.” *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987). We will address Palmer’s pro se arguments to the extent we understand them.

A. Motion to Strike Addendum Documents

As a preliminary matter, we address the state’s motion to strike the documents contained in Palmer’s supplemental addendum. Palmer’s addendum includes email exchanges, medical records, and other documents that were never submitted to the district court. The state argues that the documents are outside the record on appeal and should not be considered. The record on appeal includes the papers filed in the district court, the offered exhibits, and the transcript of the proceedings, if any. Minn. R. Crim. P. 28.02, subd. 8. We agree that the documents contained in Palmer’s addendum are not contained in the record on appeal. Accordingly, we grant the state’s motion to strike and do not consider those documents in our review of Palmer’s arguments on appeal.

B. Fraud and Conspiracy

Palmer asserts that the district court judge, the prosecutor, and his defense attorney committed fraud on the court⁴ for several reasons, including that the district court judge was biased and should have recused himself, that the prosecutor issued an arrest warrant without probable cause, that the district court judge shifted the burden of proof from the state to prove guilt to Palmer to prove his innocence, and that the district court judge ignored Officer Anton and the ER doctor's testimony that there were no observable signs of injury. Palmer also argues that the district court judge, the prosecutor, and his defense attorney were involved in a conspiracy to kidnap him for the purpose of profiting on bail money that he posted.

Palmer makes no citations to the record to support many of these claims, and we discern no support for them in our review of the record. Generally, Palmer's argument on these issues appear to be based on his belief that the district court judge could not have convicted him based on the evidence produced at trial, and that the only logical explanation of the guilty verdicts are that the district court judge and the attorneys were biased or conspiring against him. But as discussed above, we conclude that there was sufficient evidence to support the guilty verdicts. Additionally, we find no factual support in the record for Palmer's claims that the district court shifted the burden of proof to Palmer, that the district court judge was obligated to recuse himself from the case, or that the prosecutor

⁴ Fraud on the court is a doctrine that allows a party to move to set aside a judgment based on "an intentional course of material misrepresentation or non-disclosure, having the result of misleading the court and opposing counsel." See *Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989).

authorized a warrantless and unsupported arrest. Because the district court's verdict was supported by sufficient evidence and because there is no evidence in the record that the district court or prosecutor engaged in any of the conduct alleged by Palmer, we conclude that these claims are meritless.

C. Ineffective Assistance of Counsel

Palmer maintains that he received ineffective assistance of counsel for a variety of reasons, including that trial counsel coerced him into waiving his right to a jury trial, telling Palmer that there is no chance that he would be convicted, lying to Palmer, failing to make pretrial motions and object to the admission of evidence, and refusing to provide discovery to Palmer. "To prevail on an ineffective-assistance-of-counsel claim, [appellant] must prove that (1) counsel's performance fell below an objective standard of reasonableness, and (2) a reasonable probability exists that, but for counsel's errors, the outcome would have been different." *Staunton v. State*, 784 N.W.2d 289, 300 (Minn. 2010) (citing *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064 (1984)). Because both prongs of the *Strickland* test are required, we need not analyze both if one is determinative. *Id.*

"When a claim of ineffective assistance of trial counsel can be determined on the basis of the trial record, the claim must be brought on direct appeal or it is *Knaffla*-barred." *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). But when the claim requires examination of evidence outside of the record or additional fact-finding, the claim is better brought in a postconviction proceeding. *Id.*

Palmer's ineffective-assistance-of-counsel claim is based on statements and discussions outside the record on appeal, and the record therefore does not adequately reflect whether appellant's trial counsel provided ineffective advice or assistance. Because the record is insufficient to decide Palmer's ineffective-assistance-of-counsel claim, we decline to address the issue. Palmer is free to raise this issue in a subsequent postconviction proceeding following this appeal. See *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000) (preserving appellant's right to pursue ineffective-assistance-of-counsel claim in postconviction proceedings).

D. *Miranda* Issue

Citing *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), Palmer argues that the district court erred by admitting evidence of a phone call between himself and police. The right to a *Miranda* warning only attaches during a "custodial" interrogation. *State v. Miller*, 573 N.W.2d 661, 670 (Minn. 1998). "The determination of whether a suspect is in custody is an objective inquiry—would a reasonable person in the suspect's situation have understood that he was in custody?" *Id.* The only evidence of a phone call between Palmer and police is evidence that Palmer answered a call and said that he was not at R.J.'s home. This is not a custodial interrogation. Consequently, we conclude that the district court did not admit any evidence obtained in violation of *Miranda*.

E. Cruel and Unusual Punishment and an Improper Upward Departure

Palmer argues that his 42-month prison sentence constitutes cruel and unusual punishment because R.J. suffered no injuries. Similarly, Palmer argues that the district court erred by imposing an upward sentencing departure based on the presence of a child

because R.J. purportedly testified that the assault had ended by the time the child arrived. But besides citing to the Eighth Amendment of the United States Constitution, Palmer cites no relevant law to support either argument. Moreover, the arguments lack factual support—the district court found beyond a reasonable doubt that Palmer did inflict harm on R.J., and R.J. testified that the assault continued after the child attempted to intervene. Because Palmer does not cite any relevant law to support his cruel-and-unusual-punishment claim, we deem the arguments waived. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (deeming pro se arguments waived for failure to cite legal authority to support the claims).

Affirmed; motion granted.