

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0859**

State of Minnesota,
Respondent,

vs.

Donald Joseph Hall, Jr.,
Appellant.

**Filed May 4, 2020
Affirmed
Kalitowski, Judge***

Yellow Medicine County District Court
File No. 87-CR-18-175

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Keith R. Helgeson, Yellow Medicine County Attorney, Granite Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Kalitowski, Judge.

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Donald Joseph Hall, Jr., challenges the sufficiency of the evidence supporting his convictions for making threats of violence, arguing that the state failed to prove beyond a reasonable doubt that he had the requisite intent because his statements were expressions of transitory frustration and anger. We affirm.

DECISION

When a defendant challenges the sufficiency of the evidence to sustain a conviction, “our review on appeal is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume the jury believed the state’s witnesses and disbelieved any contrary evidence. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

The parties do not dispute that the following circumstances were proven at trial: appellant, who had recently bought a home, left the previous homeowner a series of 25 voicemails expressing his anger and frustration over a broken furnace between 11:44 p.m. on February 26, 2018, and 2:48 p.m. on February 27, 2018. The contents of these voicemails were provided to the jury in a transcript and in a recording. The recipient of the voicemails listened to most of the voicemails in the morning on February 27. The voicemails frightened and disturbed him, and he reported them to the Yellow Medicine County Sheriff’s Office later that day. A deputy from the sheriff’s office responded to the report and listened to the voicemails with the recipient at his home. The deputy noticed

that the recipient of the voicemails and his wife appeared frightened about the voicemails. The deputy then went to appellant's home to speak with him. While talking to the deputy, appellant acknowledged leaving the voicemails, but denied that they were threatening.

The jury found appellant guilty of two counts of threats of violence in violation of Minn. Stat. § 609.713, subd. 1 (2016). A person is guilty of making threats of violence if he (1) "threatens, directly or indirectly," (2) "to commit any crime of violence," (3) "with purpose to terrorize another" or "in a reckless disregard of the risk of causing such terror or inconvenience." *Id.*

Appellant challenges the sufficiency of the evidence to prove the third element of this crime. This element requires the state to establish that the defendant made a threatening statement with either an intent to terrorize, *State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975) ("Purpose . . . means aim, objective, or intention."), or a reckless disregard "of a known, substantial risk" that such a statement would terrorize another. *State v. Bjergum*, 771 N.W.2d 53, 57 (Minn. App. 2009), *review denied* (Minn. Nov. 17, 2009).

Intent is a "subjective state of mind" that usually can only be established based on "reasonable inferences from surrounding circumstances." *Schweppe*, 237 N.W.2d at 614. When a conviction is supported by circumstantial evidence, appellate courts must apply a heightened standard of review. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013); *see also State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (defining circumstantial evidence as "evidence from which the fact[-]finder can infer whether the facts in dispute existed or did not exist") (quotation omitted).

The heightened circumstantial-evidence standard involves two steps. *Silvernail*, 831 N.W.2d at 598-99. First, we must identify the circumstances proved. *Id.* at 598. In doing so, we review the record in the light most favorable to the conviction. *Id.* at 598-99. At this step, we assume that the jury believed the state's witnesses and disbelieved any contrary evidence. *Id.* at 599. Second, we must "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved" to determine whether they are "consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotations omitted). During this step, we give no deference to the jury's choice between reasonable inferences. *Id.* The evidence must "form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). If the evidence is insufficient, the proper remedy is to reverse the defendant's conviction without a new trial. *Webb*, 440 N.W.2d at 431.

Appellant concedes that the circumstances proved support a reasonable inference that his words "showed an intent to terrorize [the recipient] or a reckless disregard of the risk of causing such terror." But he argues that this is not the only rational hypothesis that can be gleaned from the circumstantial evidence. Appellant contends that the circumstances also raise the inference that his statements were merely expressions of transitory anger without an intent to terrorize. He supports this argument by implying that the context of the situation—appellant's frustration with the house he purchased—shows that the phone calls were merely a series of "tactics aimed at trying to motivate [the

recipient] to remedy the deficiencies in the house.” Appellant further alleges that he had back issues that “prevented him from following through on any perceived threat.” Appellant asserts that this evidence supports a reasonable inference that his statements were merely expressions of transitory anger.

Appellant is correct that Minn. Stat. § 609.713, subd. 1, does not encompass “verbal threats expressing transitory anger without intent to terrorize.” *State v. Dick*, 638 N.W.2d 486, 492-93 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002). Transitory anger is understood to be a short-lived, spur-of-the-moment expression. *State v. Fischer*, 354 N.W.2d 29, 34 (Minn. App. 1984), *review denied* (Minn. Dec. 20, 1984). In *Fischer*, the appellant was convicted for making threats of violence based on a six-hour time span during which he made six phone calls that contained threatening statements and sounds of gunshots. *Id.* at 31-32. He challenged his conviction by arguing that his actions were expressions of transitory anger and that he was merely “letting off steam.” *Id.* at 33. We rejected his argument, stating that “[i]t is a mockery to suggest his actions were spur-of-the-moment threats” and that there are “other methods of blowing off steam besides” threatening people. *Id.* at 34.

The circumstantial evidence here does not support an inference that appellant’s statements were expressions of transitory anger. Rather, his anger was continuous and became more aggressive over time. Appellant left 25 voicemails over the span of 14 hours, all of which used profane language and expressed anger over a broken furnace. He initially told the recipient of the voicemails that “the f---ing furnace went out” and he would wait for him to “call me and tell me what the f---s going on” at 11:44 p.m. At 4:29 a.m. the next

morning, by which time appellant had left 11 voicemails, appellant threatened “to put your face on the curb and smash my f---ing foot into the back of your head or I can always cut your head off too you know.” Appellant did not leave another message until 7:32 a.m., when he threatened to “walk up the f---ing road you are at and grab hold of your f---ing throat and slam you to the ground and f---ing stomp on you.” Appellant’s phone calls persisted until 2:48 p.m. that day. Moreover, appellant persistently expressed frustration towards the recipient of the voicemails for hours before and after making the threatening statements for which he was convicted of threats of violence. These circumstances do not lead to an inference that the threats were made in the heat of the moment. But the circumstances do support the hypothesis that appellant either intended to terrorize or did so in reckless disregard because he made specific threatening statements several hours after his initial and persistent expressions of anger.

A victim’s reaction to a threat can also be relevant circumstantial evidence to the element of intent. *Schweppe*, 237 N.W.2d at 614. The recipient of the voicemails explained at trial that appellant’s threats caused him fear, which was also confirmed by the deputy, who testified that the recipient appeared scared for his and his wife’s safety on the date of the incident. This evidence is consistent with the jury’s verdict and does not support an inference that appellant’s statements were expressions of transitory anger. See *Silvernail*, 831 N.W.2d at 598-99.

Appellant also asserts that he had a back injury at the time of the incident which would have prevented him from carrying out any threats and thus he could not have had the requisite intent. This argument fails because the recipient of a threat need not know

whether or not the person making a threat can actually carry out said threat in order to be convicted under Minn. Stat. § 609.713, subd. 1. The person making the threat need only intend, or recklessly disregard the risk, that the threat terrorizes its recipient. *Id.*

The aggressive persistence of appellant's voicemails, coupled with the terror that the recipient experienced, does not lead to a rational hypothesis that appellant was merely acting in the spur of the moment. Moreover, the only rational hypothesis that can be drawn from the circumstantial evidence in this case is that appellant either intended to terrorize the recipient of the voicemails by escalating the situation to threats of violence or that he made such threats with reckless disregard to the risk that the recipient would take them seriously. Therefore, because the circumstantial evidence supports the jury's verdict and does not support a contrary rational hypothesis, there was sufficient evidence to find appellant guilty.

Affirmed.