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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1009**

State of Minnesota,
Respondent,

vs.

Shawn William Lampi,
Appellant.

**Filed June 15, 2020
Affirmed
Slieter, Judge**

McLeod County District Court
File No. 43-CR-18-1459

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

Michael K. Junge, McLeod County Attorney, Glencoe, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Bjorkman,
Judge.

UNPUBLISHED OPINION

SLIETER, Judge

In this direct appeal from final judgment, appellant, Shawn William Lampi, argues
that his conviction of threats of violence must be reversed because (1) the district court

erred by failing to appoint advisory counsel, (2) the evidence was not sufficient to support his conviction, and (3) the district court erred by admitting *Spreigl* evidence.¹ Because the appointment of advisory counsel is discretionary, the district court did not abuse its discretion by not appointing advisory counsel. Because Lampi repeatedly threatened to harm and kill an officer over an extended period of time, his statements constitute threats of violence. Finally, the district court did not abuse its discretion by admitting *Spreigl* evidence of Lampi’s past conviction for threats of violence.² We affirm.

FACTS

The state charged Lampi with threats of violence, in violation of Minn. Stat. § 609.713, subd. 1 (2018), after he made several statements threatening to physically harm a law enforcement officer. A second charged offense of disorderly conduct was dismissed prior to trial. The case proceeded to a jury trial at which Lampi represented himself. The following facts were established at trial.

In July 2018, Glencoe police officers and McLeod County sheriff deputies executed an arrest warrant at Lampi’s residence pursuant to an alleged probation violation. After

¹ *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965).

² Lampi, in a *pro se* supplemental brief, challenged the grounds for the issuance of the arrest warrant and asked this court to subpoena two witnesses for a future court proceeding. Lampi contends that he did not violate the terms of his probation and therefore no arrest warrant should have been issued. The proper forum to challenge the probation violation would be at the probation-violation hearing. And because “[t]he function of the court of appeals is limited to identifying errors and then correcting them[,]” *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988), our court has no authority to subpoena witnesses. Further, we determine that the remaining issues raised in his brief are sufficiently addressed in this opinion.

law enforcement arrived, Lampi refused to leave his residence, shouted obscenities from a window, and said that a search warrant was needed to enter his home. Lampi then threatened to punch one officer in the face and “knock [him] out.” Lampi eventually left the home voluntarily.

Law enforcement placed Lampi under arrest and transported him to the McLeod County jail, where Lampi told the same officer that if he ever kicked his door again Lampi would kick him and knock him out, and that he was lucky he did not “beat [the officer] to death.” This officer testified that Lampi threatened “at least four or five times” to punch him in the face while the officer was outside of Lampi’s residence. The jury heard testimony from the officers involved and viewed video of the incident from the police camera. The jury found Lampi guilty of threats of violence. This appeal follows.

D E C I S I O N

I. The district court did not prejudice Lampi by not appointing advisory counsel.

A district court’s decision regarding the appointment of advisory counsel is reviewed for an abuse of discretion. *State v. Gunderson*, 812 N.W.2d 156, 163-64 (Minn. App. 2012). A district “court may appoint advisory counsel to assist a defendant who voluntarily and intelligently waives the right to counsel.” Minn. R. Crim. P. 5.04, subd. 2. Appointment of advisory counsel under this rule “is permissive, not mandatory.” *Dobbins v. State*, 845 N.W.2d 148, 155 (Minn. 2013). While the Minnesota Constitution provides that defendants have a right to the assistance of defense counsel, *see* Minn. Const. art. I, § 6, the Minnesota Supreme Court has “decline[d] to read the Minnesota Constitution as

guaranteeing advisory counsel for pro se defendants[,]” *State v. Clark*, 722 N.W.2d 460, 466 (Minn. 2006).

Lampi argues that the judgment must be reversed because the district court failed to consider the appointment of advisory counsel. Lampi asked the district court for assistance in structuring his case at various times during his pretrial hearings. During one hearing, he asked the district court to provide him with “legal representation in the form of just, like, advice so that I can help set up my case regarding this entire matter.” At a subsequent hearing, Lampi again indicated that he “would like legal assistance” but “would like to speak for myself.” He also asked if it were possible to obtain legal aid through a nonprofit organization such as the ACLU. The district court informed Lampi that such assistance could be available but that he would need to explore those resources on his own because the district court could not appoint such representation. The district court gave Lampi three options for representation: (1) represent himself, (2) hire a lawyer, or (3) apply for a public defender and, notably, told him there was no “hybrid or an in-between option.”

Though the record shows that the district court never considered the option of advisory counsel, our supreme court concluded in *Clark* that the failure to exercise discretion to appoint advisory counsel is not subject to *per se* reversal. *Id.* at 467. As background, Clark argued on appeal to the supreme court that the district court’s failure to consider appointing advisory counsel warranted *per se* reversal. *Id.* The supreme court concluded that failure to consider the appointment of advisory counsel was not an abuse of discretion because, based on the trial record, the lack of advisory counsel did not ultimately prejudice Clark such that a new trial was warranted. *Id.* at 468. ““Standby counsel are

present to steer a defendant through the basic procedure of the trial’ and ‘to relieve the judge of the need to explain and enforce basic rules of [the] courtroom.’” *Id.* (quoting *State v. Richards*, 552 N.W.2d 197, 206 (Minn. 1996)).

As in *Clark*, Lampi was not prejudiced by the failure of the district court to consider appointing advisory counsel. After finding that Lampi intelligently and voluntarily waived his right to counsel, the district court explained that Lampi would be held to the same standard as an attorney and described the procedures to be followed at trial, including the process for jury selection, filing witness lists, giving opening and closing statements, reviewing jury instructions, objecting at trial, filing pretrial evidentiary motions, and calling and questioning witnesses. The district court also cautioned Lampi about the importance of following these procedures to maintain a clear court record and protect Lampi’s rights on appeal. Moreover, the district court took further steps during the trial to clarify the proper method of questioning witnesses on cross-examination and to clarify the scope of issues and admissible evidence at trial. In sum, the record reflects that the district court provided Lampi with ample assistance throughout all proceedings, and fulfilled the district court’s general duty to treat him with respect. The record reflects that Lampi was not prejudiced by the district court not appointing advisory counsel.

II. The evidence was sufficient to convict Lampi of threats of violence.

To obtain a guilty verdict, the state was required to prove that Lampi threatened an officer with a crime of violence with the purpose to terrorize the officer, or in reckless disregard of the risk of terrorizing the officer. *See* Minn. Stat. § 609.713, subd. 1. Although the statute does not define “threat,” the supreme court has interpreted “threat” to mean “a

declaration of an intention to injure another or his property by some unlawful act.” *State v. Schweppe*, 237 N.W.2d 609, 613 (Minn. 1975). Whether a statement is a threat, therefore, “turns on whether the communication in its context would have a reasonable tendency to create apprehension that its originator will act according to its tenor.” *Id.* (quotation omitted). A defendant’s “[i]ntent is a state of mind that is generally proved using circumstantial evidence by drawing inferences from the defendant’s words and actions in light of the totality of the circumstances.” *State v. Smith*, 825 N.W.2d 131, 136 (Minn. App. 2012) (quotation omitted), *review denied* (Minn. Mar. 19, 2013).

We, therefore, must assess the circumstantial evidence produced at trial. “A conviction based on circumstantial evidence warrants particular scrutiny.” *State v. Bolstad*, 686 N.W.2d 531, 539 (Minn. 2004). And appellate courts apply a two-step analysis when reviewing the sufficiency of circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved, construing the evidence “in the light most favorable to the verdict.” *Id.* at 599 (quotation omitted). Then, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *See State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quotation omitted). The state’s evidence need not exclude all inferences other than guilt, but it must “exclude all *reasonable* inferences other than guilt.” *State v. Tschau*, 758 N.W.2d 849, 857 (Minn. 2008). We must view the circumstances proved as a “complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude . . . any reasonable inference other than guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010).

The circumstances proved show: (1) six law enforcement officials arrived at Lampi's home to arrest him on a probation-violation warrant; (2) Lampi was hostile and shouted obscenities at the officers; (3) Lampi, while at his house, repeatedly threatened to punch one particular officer; (4) Lampi threatened to kick, knock out, and kill the same officer after Lampi was taken to the law enforcement center, several minutes after he was initially arrested; and (5) the officer testified that the incident was alarming and that he subsequently installed a security system in his home out of concern for his safety. These circumstances suggest Lampi threatened the officer with a crime of violence with the purpose of terrorizing the officer.

Lampi argues that the circumstances proved support a reasonable hypothesis inconsistent with guilt, which is that he was expressing transitory anger. He contends that the statute criminalizing threats of violence "is not meant to 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).

However, the circumstances proved do not reflect an expression of transitory anger. Lampi directed most of his anger at one particular officer, who testified that Lampi threatened to punch him in the face at least four or five times, and threatened to kill him. Lampi's anger and threatening statements extended over a lengthy period of time, from the moments after officers arrived outside of his home until after he was placed in a squad car and taken to the law enforcement center. The encounter with Lampi also left the officer alarmed and fearful of his safety so much so that he installed a security system in his home. A "victim's reaction to the threat is circumstantial evidence relevant to the element of

intent.” *Sykes v. State*, 578 N.W.2d 807, 811 (Minn. App. 1998), *review denied* (Minn. July 16, 1998). Lampi’s repeated threats directed at one officer over an extended period of time are a reflection of sustained—not transitory—anger. In sum, viewing the evidence in the light most favorable to the jury verdict, the circumstances show that Lampi threatened to commit a crime of violence to terrorize the officers and support no reasonable hypothesis other than guilt.

III. The district court did not abuse its discretion in admitting *Spreigl* evidence.

Minn. R. Evid. 404(b) governs the admissibility of *Spreigl* evidence. Although *Spreigl* evidence is not admissible to prove that a defendant acted in conformity with prior bad acts, it is admissible for other purposes, such as proving knowledge or absence of mistake. Minn. R. Evid. 404(b)(1). There is potential danger in admitting this evidence because the jury may convict on account of these other crimes or misconduct and not because of the defendant’s guilt of the charged crime. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006).

We review a district court’s decision to admit *Spreigl* evidence for an abuse of discretion. *See State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). The defendant “bears the burden of showing an error occurred and any resulting prejudice.” *Id.* If we determine “that the district court erroneously admitted *Spreigl* evidence, [we] must then determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *See id.*

The district court must follow a five-step process in determining whether *Spreigl* evidence is admissible:

(1) the state must give notice of its intent to admit the evidence; (2) the state must clarify what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

Ness, 707 N.W.2d at 685-86. The district court admitted *Spreigl* evidence of Lampi's 2017 conviction for threats of violence on grounds that such evidence proved absence of mistake or accident. A review of the record indicates that the district court did not abuse its discretion in admitting evidence of Lampi's prior conviction.³ The district court made a clear record at trial that the state provided proper notice, that there was a clear indication of what the evidence would be offered to prove, that there was clear and convincing evidence that Lampi was convicted of the prior incident, and that the charge was relevant in that it demonstrated an absence of mistake or accident in that Lampi knew or had reason to know that his statements would cause fear or terror in the officers. The district court acknowledged the risk of prejudice in presenting evidence of the conviction to the jury but concluded that the probative value of the evidence outweighed the prejudice. The district court also mitigated the prejudice by reading cautionary instructions. *See State v. Kennedy*,

³ This evidence consisted of an officer's testimony that he received a report of a bomb threat at the Minnesota Department of Revenue in March 2016. After receiving the report, the officer listened to the voicemail of appellant's threat and then spoke with appellant on the phone. The officer testified to appellant's demeanor during the voicemail and phone call, and to the existence of the charge. The state also introduced a certified copy of the conviction into evidence.

585 N.W.2d 385, 392 (Minn. App. 1998) (that court read cautionary instructions “lessened the probability of undue weight being given by the jury to the evidence.”)

The district court did not abuse its discretion in allowing *Spreigl* evidence of Lampi’s past conviction.

Affirmed.