

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1154**

State of Minnesota,
Respondent,

vs.

Carlos Rosas,
Appellant.

**Filed July 24, 2023
Affirmed
Johnson, Judge**

Polk County District Court
File No. 60-CR-21-538

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney,
Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Paul J. Maravigli, Special Assistant Public Defender, Minneapolis, Minnesota (for
appellant)

Considered and decided by Gaïtas, Presiding Judge; Johnson, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Polk County jury found Carlos Rosas guilty of first-degree burglary based on
evidence that he entered the home of a woman who recently had ended a long-term

relationship with him and committed domestic assault by making a threat that caused her to fear immediate death. We conclude that the evidence is sufficient to support the jury's verdict and that the district court did not plainly err by admitting hearsay evidence. Therefore, we affirm.

FACTS

Rosas was in a long-term relationship with J.R. for more than ten years, during which time they had two young children together. In early 2021, J.R. ended the relationship but attempted to encourage and coordinate visits between Rosas and the children, who then were nine and four years old.

On March 29, 2021, the Polk County District Court issued a pre-trial domestic-abuse no-contact order (DANCO) in a pending criminal case. The DANCO prohibited Rosas from, among other things, contacting J.R. or being present at her residence, “[e]xcept with a police escort to recover prescription medications, personal clothing and toiletries.”

Nine days later, on April 7, 2021, Rosas went to J.R.’s residence and entered her home through a locked door, apparently by using a key. J.R. was at home, upstairs with the two children. Rosas walked up the stairs. J.R. told Rosas “that he couldn’t be there,” that he “need[ed] to leave,” and that she “was going to call the cops.” Rosas responded by saying, “If I’m going to jail, it’s because I’m going to kill you.”

J.R. called police, who arrived approximately five minutes later. Rosas no longer was at J.R.’s residence when police arrived, but an officer found him later that day and arrested him. In a custodial interview, Rosas told the officer that he was aware of the

DANCO and understood that he was forbidden from having contact with J.R. but that he went to her home to retrieve identification cards so that he could seek employment.

In an amended complaint, the state charged Rosas with four offenses: (1) first-degree burglary by entering a building without consent and assaulting a person inside the building, in violation of Minn. Stat. § 609.582, subd. 1(c) (2020); (2) first-degree burglary by entering without consent a building that is an occupied dwelling, in violation of Minn. Stat. § 609.582, subd. 1(a) (2020); (3) violation of a DANCO, in violation of Minn. Stat. § 629.75, subd. 2(b) (2020); and (4) domestic assault by committing an act with intent to cause fear of immediate bodily harm or death, in violation of Minn. Stat. § 609.2242, subd. 1(1) (2020).

The case was tried to a jury on two days in March 2022. The state called three witnesses: J.R. and two police officers. Rosas did not testify and did not call any other witnesses or introduce any exhibits. The jury found him guilty of all four charges. The district court imposed a sentence of 79 months of imprisonment on count 1 and concurrent jail sentences of 90 days each on counts 3 and 4. Rosas appeals.

DECISION

I. Sufficiency of the Evidence

Rosas first argues that the evidence is insufficient to prove beyond a reasonable doubt that he committed the offense of first-degree burglary by entering a building without consent and assaulting a person inside the building.

In analyzing an argument that the evidence is insufficient to support a conviction, this court ordinarily undertakes “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 jury 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). We will not overturn a verdict if the jury, “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.

The statute setting forth the offense charged in count 1 required the state to prove that Rosas entered J.R.’s home without consent and “assault[ed] a person within the building.” See Minn. Stat. § 609.582, subd. 1(c). The state sought to prove that Rosas committed the predicate assault by committing the domestic-assault offense alleged in count 4. The statute setting forth the offense charged in count 4 required the state to prove that Rosas committed an act against a family or household member “with intent to cause fear in another of immediate bodily harm or death.” See Minn. Stat. § 609.2242, subd. 1(1). As stated above, the jury found Rosas guilty on both count 1 and count 4.

Rosas contends that the evidence is insufficient to prove that he committed the offenses charged in both count 1 and count 4 on the ground that his statement to J.R. does not show that he intended to threaten her with *immediate* death but, rather, with death at some time in the future. He explains that his statement to J.R. was a “hypothetical” statement about what he would do if he were to go to jail and, thus, was a threat that “was conditioned on whether or not [he] was going to jail.” He also asserts, “Any threats of future harm, or harm conditioned on some act or event, do not fall under the [domestic-

assault-by-causing-fear] statute.” At oral argument, Rosas’s appellate attorney argued further that Rosas’s statement should have been charged under the statute prohibiting threats of violence, Minn. Stat. § 609.713, subd. 1 (2020), which the supreme court has held requires a threat “to commit a *future* crime of violence,” *State v. Murphy*, 545 N.W.2d 909, 916 (Minn. 1996), and that the threats-of-violence statute is the *only* statute that criminalizes his threat.

Neither party has cited any caselaw that limits the meaning of the word “immediate,” as used in the domestic-assault statute. Lay dictionaries define the word to mean “[o]ccurring at once” or “[o]f or near the present time,” *The American Heritage Dictionary of the English Language* 878 (5th ed. 2018), and “occurring or accomplished without delay; instant,” *The Random House Dictionary of the English Language* 956 (2d ed. 1987). Given those meanings, Rosas’s statement to J.R. about the possibility of killing her is sufficient to prove that the threatened killing would occur immediately. Rosas’s statement suggests that, if J.R. were to call the police in Rosas’s presence, Rosas would respond by killing J.R., *before* being apprehended and taken to jail. In that scenario, Rosas’s killing of J.R. would be close enough in time to his threat to be considered “immediate” and would not be conditioned on his first going to jail.

To determine whether Rosas had the requisite intent to cause J.R. to fear immediate death, we must rely on circumstantial evidence. If a conviction depends on circumstantial evidence, we apply a heightened standard of review with a two-step analysis. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). “The first step is to identify the circumstances proved.” *Id.* “In identifying the circumstances proved, we assume that the jury resolved

any factual disputes in a manner that is consistent with the . . . verdict.” *Id.* The second step is to “examine independently the reasonableness of [the] inferences that might be drawn from the circumstances proved” and “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (alteration in original) (quotations omitted). At the second step, we do not give deference to the jury’s verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). A defendant’s intent typically is proved by circumstantial evidence. *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015). Accordingly, we apply the heightened circumstantial-evidence standard of review to the evidence concerning Rosas’s “intent to cause fear in another of immediate bodily harm or death.” *See* Minn. Stat. § 609.2242, subd. 1(1); *see also State v. Harris*, 895 N.W.2d, 592, 598-601 (Minn. 2017); *Moore*, 846 N.W.2d at 88.

We first identify the relevant circumstances proved, which are as follows. On March 29, 2021, a court issued a DANCO that prohibited Rosas from having contact with J.R. and from being present at her residence. Rosas was aware of the DANCO and understood its terms. Nine days later, on April 7, 2021, while J.R. was at home, Rosas went to her place of residence and entered her home. J.R. told Rosas that he was not allowed to be there, that he must leave, and that she “was going to call the cops.” Rosas responded by saying, “If I’m going to jail, it’s because I’m going to kill you.” When asked how she felt when Rosas made that statement, J.R. testified, “Scared, fear for my life. Like I don’t want to die.”

The circumstances proved support a rational inference that Rosas intended to cause J.R. fear of immediate death by telling her, in essence, that if she called police, he would

kill her. Rosas had a motive for causing her fear: to persuade her to not call the police, who likely would arrest him for violating the DANCO and likely would take him to jail.

We next consider whether there are rational inferences from the circumstances proved that are inconsistent with guilt in that they support an alternative hypothesis that Rosas did *not* intend to cause J.R. fear of immediate death. *See Harris*, 895 N.W.2d at 600-01. We struggle to find an alternative hypothesis in Rosas’s brief. He suggests that his threat “was a warning of harm if he thought he was going to jail.” He also asserts, “It is just as reasonable to view the alleged threat . . . as idle, meant to convey Mr. Rosas’s desire not to go to jail.” Rosas’s alternative hypotheses are not rational because they are inconsistent with his statement that he might “kill” J.R. In addition, Rosas’s alternative hypotheses are inconsistent with the circumstantial evidence that J.R. feared for her life. Rosas’s threat can reasonably be interpreted only as a threat that was intended to cause J.R. to fear that, if she called the police to report Rosas’s violation of the DANCO, he would kill her.

Accordingly, we conclude that the circumstances proved are inconsistent with any rational hypothesis except that of guilt. This conclusion is consistent with our conclusion in a similar case in which the defendant threatened another person by saying, “If I’m going to jail, I’m going to f—ing kill you.” *State v. Boyd*, No. A11-1951, 2012 WL 6097119, at *1 (Minn. App. Dec. 10, 2012). We concluded in that case that the circumstantial evidence was sufficient to prove the defendant’s intent to cause another person to fear immediate bodily harm or death. *Id.* at *7.

Thus, the evidence is sufficient to support the jury's verdicts on both count 1 and count 4.

II. Hearsay Evidence

Rosas also argues that the district court erred by admitting hearsay evidence.

During the direct examination of J.R., she testified that, after Rosas walked up the stairs to the second floor of her home, she told him to leave and that she was going to call police. The prosecutor asked her whether Rosas said anything to her in response. J.R. responded, "That he wanted to see the girls." When the prosecutor asked a similar question about what Rosas said in response to J.R.'s statement that she would call police, J.R. answered, "I don't remember." When the prosecutor asked J.R. what she told the police officer who responded to her call, J.R. initially did not answer. The prosecutor established that J.R. did not want to testify but had been served with a subpoena. Eventually the prosecutor was able to elicit testimony from J.R. that she told the responding police officer, Officer Bannert, that Rosas said, "If I'm going to jail, it's because I'm going to kill you." J.R. also testified that Rosas said those words to her. In addition, Officer Bannert testified about his interactions with J.R. when he responded to her call, including J.R.'s statement that Rosas threatened her.

Rosas challenges the district court's admission of three statements: (1) J.R.'s testimony about Rosas's threatening statement to her, (2) J.R.'s testimony about her statement to Officer Bannert about Rosas's threatening statement to her, and (3) Officer Bannert's testimony about J.R.'s statement to him about Rosas's threatening statement to J.R.

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). A hearsay statement generally is inadmissible, unless it fits into an exception to the hearsay rule. Minn. R. Evid. 802, 803, 804. In addition, some out-of-court statements are deemed to be “not hearsay” and, thus, not subject to the general rule of exclusion. Minn. R. Evid. 801(d).

Rosas concedes that his trial attorney did not make hearsay objections to the statements he challenges on appeal. Accordingly, we review only for plain error. *See* Minn. R. Crim. P. 31.02. Under the plain-error test, an appellant is entitled to relief on an issue for which no objection was made at trial only if (1) there is an error, (2) the error is plain, and (3) the error affects the appellant’s substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If these three requirements are satisfied, the appellant also must satisfy a fourth requirement, that the error “seriously affects the fairness and integrity of the judicial proceedings.” *State v. Little*, 851 N.W.2d 878, 884 (Minn. 2014). An error is “plain if it is ‘clear’ or ‘obvious,’ which is typically established ‘if the error contravenes case law, a rule, or standard of conduct.’” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quoting *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006)).

The plain-error rule applies with special force to an argument that evidence is inadmissible hearsay. The supreme court has explained the rationale for that approach as follows:

The number and variety of exceptions to the hearsay exclusion make objections to such testimony particularly important to the creation of a record of the trial court’s decision-making process

in either admitting or excluding a given statement. The complexity and subtlety of the operation of the hearsay rule and its exceptions make it particularly important that a full discussion of admissibility be conducted at trial.

State v. Manthey, 711 N.W.2d 498, 504 (Minn. 2006). The supreme court concluded in *Manthey* that the statements at issue were not “clearly or obviously inadmissible hearsay” because, “[i]n the absence of an objection, the state was not given the opportunity to establish that some or all of the statements were admissible under one of the numerous exceptions to the hearsay rule.” *Id.* Similarly, because Rosas did not make any hearsay objections, the state was not given an opportunity to make counter-arguments that the statements at issue are either non-hearsay or within exceptions to the hearsay rule. Consequently, we seek to determine only whether each of the statements at issue are “clearly or obviously inadmissible hearsay.” *See id.*

First, we consider J.R.’s testimony about Rosas’s threatening statement to her. That statement could have been admitted as a non-hearsay statement of a party-opponent because it is Rosas’s own statement and was offered against him. *See* Minn. R. Evid. 801(d)(2)(A); *State v. Reed*, 737 N.W.2d 572, 590 (Minn. 2007) (affirming admission of defendant’s statements to jailhouse informant); *State v. Tovar*, 605 N.W.2d 717, 726 (Minn. 2000) (affirming admission of defendant’s statements to witness).

Second, we consider J.R.’s testimony about her statement to Officer Bannert about Rosas’s threatening statement to her. That testimony arguably consists of hearsay within hearsay, which requires that each hearsay statement be admissible. *See* Minn. R. Evid. 805; *State v. Martin*, 614 N.W.2d 214, 223 (Minn. 2000). The first part—J.R.’s statement

to Officer Bannert—could have been admitted as a non-hearsay prior statement “describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter.” Minn. R. Evid. 801(d)(1)(D); *see also State v. Pieschke*, 295 N.W.2d 580, 583 (Minn. 1980) (affirming admission of victim’s prior consistent statement made to police officers within minutes of incident). In addition, if Rosas had objected, the prosecutor could have reordered the direct examination of J.R. so that the first part of her testimony could have been admitted as a non-hearsay prior consistent statement. *See* Minn. R. Evid. 801(d)(1)(B); *State v. Nunn*, 561 N.W.2d 902, 908-09 (Minn. 1997) (affirming admission of witness’s testimony about her prior out-of-court statement); *State v. Bakken*, 604 N.W.2d 106, 109-10 (Minn. App. 2000) (affirming admission of videotaped interview of victim on ground that victim’s testimony was central to case), *rev. denied* (Minn. Feb. 24, 2000). The second part of J.R.’s testimony—Rosas’s threatening statement to J.R.—could have been admitted as a statement of a party-opponent, as stated above. *See* Minn. R. Evid. 801(d)(2)(A); *Reed*, 737 N.W.2d at 590; *Tovar*, 605 N.W.2d at 726.

Third, we consider Officer Bannert’s testimony about J.R.’s statement to him about Rosas’s threatening statement to J.R. That testimony arguably is hearsay within hearsay. The first part—Officer Bannert’s testimony about J.R.’s statement to him—could have been admitted as a non-hearsay statement pursuant to Minn. R. Evid. 801(d)(1)(D), as stated above. In addition, the first part could have been admitted pursuant to the excited-utterance exception to the hearsay rule. *See* Minn. R. Evid. 803(2). Under that exception, a statement is admissible if it was made “under the stress of excitement caused by the

event.” *Id.* The evidence shows that J.R. told Officer Bannert about Rosas’s threat approximately five minutes after she called 911 and that her speech was “rapid.” *State v. Berrisford*, 361 N.W.2d 846, 851 (Minn. 1985) (affirming admission of witness’s statement to witness 90 minutes after murder); *State v. Berry*, 309 N.W.2d 777, 783 (Minn. 1981) (affirming admission of witness’s statements about conversation with defendant less than hour after incident); *see also State v. Smith*, 333 N.W.2d 879, 880 n.1 (Minn. 1983) (stating in *dicta* that victim’s statement to fellow employee immediately after incident would have been admissible over hearsay objection). The second part of Officer Bannert’s testimony—Rosas’s threatening statement to J.R.—could have been admitted as a statement of a party-opponent, as stated above. *See* Minn. R. Evid. 801(d)(2)(A); *Reed*, 737 N.W.2d at 590; *Tovar*, 605 N.W.2d at 726.

Because each of the three challenged statements could have been ruled admissible, either as non-hearsay or under an exception to the hearsay rule, the statements are not “clearly or obviously inadmissible hearsay.” *See Manthey*, 711 N.W.2d at 504. Thus, the district court did not plainly err by admitting the three statements.

Affirmed.