

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0416**

State of Minnesota,
Respondent,

vs.

Jawane Deshawn Bellazan,
Appellant.

**Filed February 24, 2025
Affirmed in part, reversed in part, and remanded
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-23-12019

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

Mary F. Moriarty, Hennepin County Attorney, Robert I. Yount, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Jesson,
Judge.*

SYLLABUS

A defendant forfeits the right to confront a witness at a trial for criminal offenses
the defendant allegedly committed against the witness if the record shows that the witness

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

would not have been available to testify at some reasonable point during the trial and that the defendant intentionally procured the witness's unavailability by wrongdoing.

OPINION

LARKIN, Judge

In this direct appeal from his convictions for first-degree criminal sexual conduct, kidnapping, first-degree burglary, second-degree assault, domestic assault by strangulation, felony violation of an order for protection (OFP), and misdemeanor violation of an OFP, appellant argues that the district court erred as follows: (1) by admitting the victim's out-of-court statements in violation of his constitutional right to confrontation, (2) by entering a judgment of conviction on his misdemeanor OFP offense, and (3) by ordering a conditional-release period for the burglary offense. Appellant filed a supplemental brief raising several additional issues. Because the district court erred by entering a judgment of conviction for appellant's misdemeanor OFP offense and by ordering a term of conditional release for appellant's burglary sentence, we reverse and remand for the district court to vacate the misdemeanor OFP conviction and to vacate the unauthorized conditional-release period. We affirm appellant's remaining convictions.

FACTS

Respondent State of Minnesota charged appellant Jawane Deshawn Bellazan by amended complaint with first-degree criminal sexual conduct, kidnapping, first-degree burglary, second-degree assault, domestic assault by strangulation, felony violation of an OFP (while possessing a dangerous weapon), and misdemeanor violation of an OFP. The

state alleged that Bellazan held his girlfriend, CG, hostage and that he physically and sexually assaulted her. A jury found Bellazan guilty of all seven charges.

The following recitation of facts is based on the evidence presented at Bellazan's jury trial. Bellazan and CG were in a relationship and have a child. On May 21, 2023, CG phoned her family and said that Bellazan was assaulting her. CG's father testified that he met her at a gas station, that she was "beat up pretty bad," and that she appeared to have been strangled. He urged her to press charges, but she refused "because she was in fear."

On May 23, CG phoned her father and said that Bellazan had taken her car. CG, her father, and others found the car at Bellazan's mother's home and called the police. Officers responded but were called away without resolving the situation. After the officers left, Bellazan came out of the home with a gun, and CG and the others left. CG reported Bellazan's conduct to a police officer. She told the officer that during the previous week, Bellazan had held her hostage, "pistol whipped" her, and threatened to kill her. The officer took photos of CG's injuries.

The next day, another police officer talked to CG about her history with Bellazan. That officer referred CG to domestic-violence services, and CG obtained an OFP. The OFP was issued on May 25, but it was not immediately served on Bellazan.

On May 30, CG called 911 and whispered that Bellazan was inside her apartment and that she could not get him to leave. She cried and said, "I don't want to die. I want to live." When officers arrived, they found Bellazan sleeping in CG's living room. They served him with the OFP and escorted him out of CG's apartment.

On May 31, 911 callers reported that a woman had been pushed out of a vehicle. One caller reported that the woman was shot at before being pushed out of the vehicle. A police officer was dispatched to the scene. When the officer arrived, CG was in an ambulance. She was crying, had numerous injuries, and was missing her eyebrows. The officer asked CG to explain what happened. CG said that after the police served Bellazan with the OFP and removed him from her apartment, he returned to her apartment, beat her, and strangled her. CG also said that Bellazan fired a gun at her and pushed her out of a moving vehicle.

The ambulance transported CG to a hospital. CG called her aunt and told her that she had been raped. CG's aunt went to the hospital and spoke with CG. CG told her aunt that Bellazan had tied her up, raped her, choked her, held a knife to her throat, cut off her hair, shaved her eyebrows off, poured alcohol over her, and threatened to set her on fire.

A forensic nurse examined CG. CG told the forensic nurse that she had been held hostage for approximately one week and sexually assaulted. CG said Bellazan bound her hands and feet, threatened to throw her in the river, choked her until she passed out, held a knife to her throat, penetrated her vaginally, and ejaculated inside her. CG also told the forensic nurse that Bellazan cut her hair, shaved her eyebrows, beat her, and put her in her child's playpen. At some point, Bellazan and CG got into her car, and Bellazan shot at her and pushed her out of the vehicle.

On June 1, CG called the police and left a voicemail stating, "I'm gonna die soon, bro. Please give me a call." An officer took a statement from CG on June 5. CG told the officer about being assaulted on May 21, trying to retrieve her car on May 23, obtaining

the OFP, and the police serving Bellazan with the OFP on May 30. As to the events of May 30-31, CG told the officer that after Bellazan was served with the OFP she went to her father's house, and when she returned home Bellazan was in her apartment. CG said that Bellazan pulled her inside and began punching her. She said that Bellazan took her to his mother's house to get his gun, and when they got back to her apartment, he "pistol whip[ped]" her, held a knife to her neck, poked her with the knife, and poured alcohol on her. CG said Bellazan bound her legs and wrists, took her clothes off, penetrated her vaginally, and ejaculated in her vagina.

On June 7, police arrested Bellazan. At his first court appearance on the underlying charges, the district court issued a domestic-abuse no-contact order (DANCO) prohibiting him from contacting CG. Bellazan nonetheless repeatedly called CG from jail, and the calls were recorded. On June 29, after some of Bellazan's unauthorized calls to CG, CG talked to a prosecutor and a victim advocate and told them she wanted to recant her allegations against Bellazan. But the state did not dismiss the charges. Later, the state subpoenaed CG to appear as a witness at Bellazan's trial. On October 4, a prosecutor and victim advocate spoke to CG over the phone and confirmed that CG had received the subpoena.

Prior to trial, Bellazan moved the district court to exclude "any evidence or testimony that would violate the Confrontation Clause." The state moved to admit CG's out-of-court statements under the theory of forfeiture by wrongdoing, arguing that Bellazan had called CG numerous times from jail, threatened her, and encouraged her not to testify.

On October 11, the district court filed an order addressing the parties' pretrial motions. The court ruled on the admissibility of CG's out-of-court statements to 911, police officers, paramedics, and the forensic nurse.¹ But the district court did not expressly address the state's forfeiture-by-wrongdoing motion at that time.

On October 17, CG met with the victim advocate and prosecutors and told them she had lied about what happened. She said that Bellazan did not steal her car, kidnap her, sexually assault her, or shoot at her. CG acknowledged that Bellazan told her not to come to court if she was going to lie, but she said that she had not talked to Bellazan in approximately two months. CG said that she would be coming to court.

Bellazan's jury trial began on October 19. The state planned to call CG as a witness on October 20. Although the state had subpoenaed CG, she did not appear at Bellazan's trial. The state asked the district court to find that CG was an unavailable witness, that Bellazan had forfeited his right to confront CG, and that CG's out-of-court statements were admissible under Minn. R. Evid. 804(b)(6), the forfeiture-by-wrongdoing exception to Minnesota's hearsay rule. The district court held a hearing to address the issue. The court received audio recordings of 20 of Bellazan's jail calls that occurred between June 9 and August 27, as well as testimony from the victim advocate who had communicated with CG. The district court found that Bellazan repeatedly contacted CG in violation of the OFP and DANCO. During those calls, Bellazan threatened CG and encouraged her to contact the prosecutor and request that the charges against him be dismissed. For example, he told

¹ These rulings are not challenged on appeal.

CG, “the best thing for you . . . is to just shut your mouth Just, just keep that sh-- until you die brother. ‘Cause I am not finna play with you”

The district court determined that Bellazan had forfeited his right to confront CG and allowed the state to admit evidence regarding CG’s out-of-court statements.

During the presentation of its case, the defense called three witnesses, including the victim advocate and an investigator for the defense, who testified about CG’s recantations.

In closing arguments, the prosecutor urged the jury to find Bellazan guilty based on CG’s many consistent statements. Defense counsel conceded that Bellazan committed the offense of domestic assault by strangulation and the misdemeanor OFP violation, but it challenged CG’s credibility regarding the other offenses. The jury found Bellazan guilty of all seven offenses.

CG appeared at Bellazan’s sentencing hearing. She apologized for having “falsely accused” Bellazan of kidnapping and rape, and she told the court, “I did not appear in court because I understood the huge amount of trouble I may have been in.” The district court refused to consider defense counsel’s request to readdress the court’s forfeiture-by-wrongdoing ruling because the issue was not “properly before the [c]ourt.” But the court allowed counsel to make a record of a conversation between defense counsel, the prosecutors, and CG, in which she stated that she did not appear at trial “because she was afraid of legal jeopardy” for lying to the court and lying in reports about the charged offenses.

The district court entered a judgment of conviction for each of Bellazan’s offenses and sentenced him to serve consecutive prison sentences totaling 240 months for burglary,

criminal sexual conduct, and kidnapping. The court also ordered a ten-year conditional-release term for his burglary conviction. The court later ordered a ten-year conditional-release term for Bellazan's criminal-sexual-conduct conviction.

Bellazan appeals.

ISSUES

- I. Did the district court err in determining that Bellazan forfeited his right to confrontation by wrongdoing?
- II. Did the district court err by entering judgment of conviction on Bellazan's misdemeanor OFP violation?
- III. Did the district court err by ordering a ten-year conditional-release term for Bellazan's first-degree-burglary conviction?
- IV. Does Bellazan's supplemental brief provide a basis for relief?

ANALYSIS

I.

Bellazan contends that the district court erred by determining that he forfeited his right to confront CG by wrongdoing.

Criminal defendants have a constitutional right to confront the witnesses against them. U.S. Const. amends. VI, XIV; *State v. Shaka*, 927 N.W.2d 762, 766 (Minn. App. 2019), *rev. granted* (Minn. July 16, 2019) and *appeal dismissed* (Minn. Nov. 19, 2019). The admission of "testimonial" hearsay statements violates that right unless the declarant is unavailable to testify at trial and the defendant had a prior opportunity for cross-examination. *Crawford v. Washington*, 541 U.S. 36, 68 (2004); *Shaka*, 927 N.W.2d at 766-67. However, a defendant can forfeit his right to confrontation by intentionally procuring

a witness's absence from trial by wrongdoing. *Giles v. California*, 554 U.S. 353, 366-68 (2008). The Minnesota Supreme Court has described the forfeiture-by-wrongdoing exception as a narrow doctrine that “extinguishes confrontation claims on essentially equitable grounds.” *State v. Cox*, 779 N.W.2d 844, 850 (Minn. 2010) (quotation omitted).

The forfeiture-by-wrongdoing doctrine is “codified” in Minn. R. Evid. 804(b)(6). *Shaka*, 927 N.W.2d at 767. Under Minn. R. Evid. 804(b)(6), “[a] statement offered against a party who wrongfully caused or acquiesced in wrongfully causing the declarant’s unavailability as a witness and did so intending that result” is not excluded by the hearsay rule. Thus, under the forfeiture-by-wrongdoing exception, hearsay is admissible without the need for the witness to appear at trial and be subject to cross-examination. *See id.*; *Cox*, 779 N.W.2d at 850-51.

To establish that a defendant forfeited his right to confrontation, the state must prove the following elements by a preponderance of the evidence: “(1) that the declarant-witness is unavailable, (2) that the defendant engaged in wrongful conduct, (3) that the wrongful conduct procured the unavailability of the witness and (4) that the defendant intended to procure the unavailability of the witness.” *Cox*, 779 N.W.2d at 851-52.

We review de novo whether the admission of evidence violates the Confrontation Clause. *State v. Trifiletti*, 6 N.W.3d 79, 87 (Minn. 2024). But we review the district court’s findings regarding the four forfeiture-by-wrongdoing elements for clear error. *See State v. Fields*, 679 N.W.2d 341, 347 (Minn. 2004) (“[T]he district court’s findings that Fields engaged in wrongful conduct, that he intended to procure the unavailability of Johnson and that the intentional wrongful conduct actually did procure the unavailability of Johnson,

were not clearly erroneous.”); *State v. Her*, 781 N.W.2d 869, 875 (Minn. 2010) (“The district court is the best place in which to undertake the inherently fact-driven intent analysis that [the forfeiture-by-wrongdoing doctrine] requires.”); *Shaka*, 927 N.W.2d at 766 (citing *Fields* as support for application of the clearly-erroneous standard when reviewing the district court’s findings of fact in support of application of the forfeiture-by-wrongdoing exception). Consistent with *Fields* and *Shaka*, we review the district court’s findings in this case for clear error.

When reviewing factual findings for clear error, “we examine the record to see if there is reasonable evidence in the record to support the court’s findings.” *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotation omitted). A finding of fact is clearly erroneous if we are “left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

Bellazan does not challenge the district court’s finding that he engaged in wrongful conduct. But he challenges the district court’s findings regarding the three remaining elements of forfeiture-by-wrongdoing. We first set forth the district court’s unchallenged findings regarding Bellazan’s wrongful conduct. Next, we address the district court’s findings on the three remaining elements of forfeiture-by-wrongdoing.

Wrongful Conduct

As support for its forfeiture motion, the state introduced evidence of Bellazan’s prohibited, repeated calls to CG, which were threatening and coercive. The state

introduced audio recordings of 20 such calls.²

In its order regarding the forfeiture-by-wrongdoing exception, the district court made findings of fact regarding Bellazan's calls to CG from jail. The district court found that the calls submitted by the state started on June 9, 2023, and that the following exchange occurred during a June 10 call:

Bellazan: Yeah, (inaudible) I just, I think you, the best thing for you to for is to just shut your mouth and yeah, sh-- that you got, n-----. Just, just keep that sh-- until you die brother. 'Cause I am not finna play with you, n-----. I don't know why you running around this b---- trying to be your n----- for, act like you a n-----, woo, woo, woo, try'na get on cool with the ops and sh--, like. 'Cause, uh, I'm not finna play with you. I'm not finna play with you. I'm not. (inaudible).

Bellazan: I don't give a f--- what I did out here, n-----. 'Cause what the f--- n-----? Hurt people hurt people, n-----. The f--- n----- don't bust the first jug, n-----. The f---. (inaudible)

CG: You never needed to hurt me like you did the way you did though. (inaudible)

Bellazan: Doesn't matter, n-----. Don't matter, n-----. The f---. Hurt people hurt people, n-----. Don't be out here doing n----- dirty, woo, woo, woo, n----- and [expect] mother----- to be happy, happy, joy, joy, cheese and pickles, n-----. F--- don't work like that, slime. The f---, n-----, it doesn't work like that, n-----. F---, you're a-- crazy, boy. Now they talking to the ops, n-----. You gonna get treated like the ops, n-----. You see that? F--- (inaudible).

The district court found that during a June 12 call Bellazan appeared to tell CG to speak with the prosecutor and to get the charges against him dismissed:

Bellazan: That's why I say you gotta call, you gotta call Hennepin County. You gotta give [my] court number. You

² Although the state alleges in its brief to this court that Bellazan made over 250 calls to CG, we consider only the calls that were offered to the district court in support of the state's motion to apply the forfeiture-by-wrongdoing doctrine.

gotta, gotta give my case number and, us, figure out who my prosecutor is. Woo, woo, woo. So, ask for like somebody's help or whatever, like, so I, I—

CG: Okay

Bellazan: - (inaudible) talk to somebody (inaudible). They gotta give you my prosecutor[']s name. Put my prosecutor's name inside Google search and her office is gonna pop up. Woo, woo, woo. Call the office and ask to speak to my prosecutor and give her a statement, n-----. 'Cause I feel like at this point, Cuz, they just gonna be like, oh the state has it. Oh, it's nothing really, we can really do but—

CG: Okay

Bellazan: Whole time my prosecutor gonna be the one that, you feel me? Just like my um, my gun case last year. Woo, woo, woo. She gonna be the mother----- to be like, oh we just figured out something. Woo, woo. Just end up dropping that b----.

The district court found that in another call, Bellazan seemed to instruct his mother to reach out to CG on his behalf and tell CG to “[a]nswer the phone before I whoop you a--.” The district court noted that it had restricted Bellazan’s phone usage based on his repeated DANCO violations and found that, “[d]espite this second court order prohibiting Mr. Bellazan from contacting [CG], there is a call from August 28, 2023, where [CG] is audibly distraught and asks, ‘Why are you calling me from this number?’[,] to which Mr. Bellazan responds, ‘They got me restricted.’”

As Bellazan concedes, the evidence established that he engaged in wrongful conduct.

Unavailability

“A witness is not ‘unavailable’ for Confrontation Clause purposes unless the prosecutorial authorities have made a good-faith effort to obtain [her] presence at trial.” *Cox*, 779 N.W.2d at 852 (quotation omitted). “[T]he lengths to which the prosecution must

go to produce a witness is a question of reasonableness.” *Id.* (quotation omitted). “[B]ut if there is a possibility, albeit remote, that affirmative measures might produce the declarant, the obligation of good faith may demand their effectuation.” *Id.* (emphasis omitted) (quotation omitted).

The district court made the following findings regarding the state’s efforts to procure CG’s appearance as a witness at trial:

On Friday, October 20, 2023, a hearing was held regarding the [s]tate’s motion for forfeiture-by-wrongdoing. Prior to the hearing, the sheriff’s office attempted to serve a subpoena on [CG] beginning in early September 2023. Officers spoke in person with [CG’s]’s grandmother and made her aware of the subpoena. Additionally, officers attempted to serve the subpoena at [CG]’s apartment, but she had been evicted. *On October 4, 2023, the [s]tate and victim advocate spoke with [CG] over the phone, and she confirmed that she received the subpoena but was afraid.*

At the hearing, the [s]tate called the victim witness advocate . . . to testify about her contact with [CG]. According to [that advocate], [CG] was in contact with the [s]tate up until the morning of October 20, 2023, when [she] was instructed to appear in court. The [s]tate had regular contact with [CG] until she was instructed to appear in court. [CG] did not appear in court.

(Emphasis added.) Based on these facts, the district court found that “the [s]tate made a good-faith effort to procure [CG’s] availability,”³ noting that even though CG knew that

³ Although this statement is included in the “Conclusions of Law” section of the district court’s order, we treat the district court’s determinations regarding the four elements of forfeiture by wrongdoing as findings of fact. *See Dailey v. Chermak*, 709 N.W.2d 626, 631 (Minn. App. 2006) (“There is caselaw authority that the mislabeling of a finding of fact as a conclusion of law, or vice versa, is not determinative of the true nature of the item.”), *rev. denied* (Minn. May 16, 2006).

she “was under subpoena, [she] failed to appear in [c]ourt.” The district court therefore found that CG was unavailable.

Bellazan assigns error to this finding, relying on *Trifiletti*, which was decided after the trial in this case. In *Trifiletti*, the supreme court held that, “[b]ecause the [s]tate failed to establish that a witness would not have been available to testify in person at some reasonable point in time during the trial, the district court erred in determining that a witness against the defendant was unavailable under the Confrontation Clause.” 6 N.W.3d at 81. The supreme court further held that “a witness’s unavailability under the Confrontation Clause cannot be judged at a single point in time.” *Id.* at 92. Instead, “a district court should consider not only whether the witness is unavailable on the day that the [s]tate desires to call the witness, but also whether the witness will be unavailable at any reasonable point in time during the trial when witness testimony may be heard.” *Id.*

Bellazan argues that his “case was not submitted to the jury until Wednesday, October 25” and that although the state may have established that CG was unavailable when it intended to call her as a witness on Friday, October 20, it failed to establish that she was unavailable “the following Monday, Tuesday, and Wednesday.” Bellazan notes that CG phoned the victim advocate on October 20 and said she might have COVID and that the state did not indicate that it subsequently made any effort to contact CG or to otherwise inquire about her health.

We are not persuaded that *Trifiletti* supports a reversal in this case, largely because *Trifiletti* did not involve application of the forfeiture-by-wrongdoing exception. *See id.* at 88 (describing the issue as “whether the district court’s decision to allow [a witness] to

testify without being physically present in the courtroom was justified under *Crawford*”). Thus, this case presents a very different set of circumstances than those considered by the supreme court in *Trifiletti*.

The *Trifiletti* witness was purportedly unavailable to testify because of a medical condition—potential exposure to COVID-19—which triggered application of quarantine requirements. *Id.* at 92-93. The availability issue in *Trifiletti* could be determined based on accepted public-health guidelines directed at controlling the spread of COVID-19, as applied to dates shared by the witness regarding her potential exposure to the disease. *Id.* The supreme court’s decision reveals no reason to believe that the witness would not have testified on the last day of trial—which fell outside of the applicable quarantine period—if the state had arranged for her to do so. *Id.* Finally, the *Trifiletti* witness was someone who happened to drive by and witness the crime for which Trifiletti was on trial. *Id.* at 84. There is no indication that the witness knew Trifiletti, had any relationship with him, had been contacted by him, or had been threatened by him.

Unlike *Trifiletti*, this case involves a witness whose unavailability was purportedly due to repeated threatening and coercive phone calls from the defendant, which were placed while he was in jail pending trial for domestic-abuse offenses against the witness and prohibited from contacting the witness by two court orders. The context of this case cannot be ignored, and it is not comparable to the context in *Trifiletti*, in which a witness’s availability to testify without delaying the trial could be determined with reference to public-health guidelines. We review the district court’s finding that CG was unavailable in light of the particular circumstances in this case.

The charges against Bellazan were based on CG's allegations that he had physically and sexually assaulted her. Even though the district court more than once ordered Bellazan not to contact CG, he persistently ignored those orders. The fact that he repeatedly called CG in violation of the district court's OFP, DANCO, and phone restrictions reasonably conveyed that the court could not protect CG from Bellazan, even while he was in jail. Unsurprisingly, CG told the prosecutors that she had received the subpoena but was afraid. These circumstances suggest that CG was unwilling to appear as a witness against Bellazan because she feared Bellazan. And unlike a COVID-19 exposure and applicable quarantine period, fear has no readily ascertainable end date. It is in this context that we review the district court's finding that the state made a good-faith effort to secure CG's appearance at trial as a witness.

The record shows that a victim advocate spoke to CG the day before her scheduled testimony and that CG told the advocate that she would appear the following day at 8:30 a.m. for trial. On the day of CG's scheduled testimony, she did not appear at trial. The victim advocate left two messages for CG and texted her. The victim advocate received a text from CG at around 11:00 a.m., but when the victim advocate returned CG's call, CG did not answer. The victim advocate tried to locate CG by contacting a relative who lived with CG, and the relative confirmed that CG had left that morning. CG ultimately called the victim advocate that day and said she was "not feeling well" and planned to take a COVID test. CG's testimony was scheduled for a Friday, and the victim advocate asked CG if she might be able to come in that following Monday. CG said that she was not sure.

Given the underlying criminal allegations and the content of Bellazan's prohibited, threatening communications to CG, there is little reason to believe additional phone calls from the prosecutor or victim advocate would have secured CG's testimony at trial. We are not willing to say that, in this case, good-faith efforts to secure CG's presence at trial should have included an attempt to have CG arrested for her failure to obey the subpoena and to have her brought before the jury as a contemptuous custodial witness. *See Burrell v. State*, 858 N.W.2d 779, 784-85 (Minn. 2015) (explaining that the district court may order a person's arrest for failure to appear in court in response to a subpoena and that although "[f]ailure to appear on a properly served subpoena is constructive contempt of court," a district court is not required to issue a bench warrant for such contempt).

Under these circumstances, we agree with the state's assessment of the circumstances: "It was reasonable to infer [CG] would not show up on October 23, 24, or 25 for the same reason she did not show up on October 20." As the district court found, CG "had shown that she does not want to be here and [does] not [want to] be part of this case." Although the district court did not have the benefit of the *Trifiletti* decision, its reasoning reflects an implicit determination that CG would not have appeared at any point during the trial and satisfies the supreme court's instruction that "a district court should consider not only whether the witness is unavailable on the day that the [s]tate desires to call the witness, but also whether the witness will be unavailable at any reasonable point in time during the trial when witness testimony may be heard." 6 N.W.3d at 92. The district court did not err by finding that CG was unavailable.

Wrongful Conduct Procured Unavailability

Bellazan argues that the state did not prove that his wrongful conduct was the reason that CG did not appear at trial. He posits three other reasons for her nonappearance: (1) she was sick as she claimed, (2) she feared that testifying would put her in legal jeopardy, and (3) “she decided on her own that it would be to Bellazan’s benefit for her not to testify.” He argues that, based on the evidence, “it is pure speculation to suggest that the phone calls were the reason [CG] did not appear” and that “[t]he district court’s contrary conclusion is erroneous because it is against the greater weight of the evidence.” *See State v. Curtis*, 921 N.W.2d 342, 347 n.6 (Minn. 2018) (stating that “preponderance of the evidence” means the “greater weight of the evidence”).

As to this element, the district court explained that:

Although it is impossible for the [c]ourt to know exactly why [CG] failed to appear in court on October 20, 2023, the law allows the trial court to make factual determinations based on direct and circumstantial evidence.

“To establish that a defendant’s wrongful conduct caused the unavailability of a witness under the forfeiture-by-wrongdoing exception, the state may rely on direct or circumstantial evidence.” *Shaka*, 927 N.W.2d at 764. Circumstantial evidence is “evidence from which the [fact-finder] can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). “In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (quotations omitted).

The district court found:

In the present matter [CG's] testimony and statements to the police were relatively consistent until the phone calls from Mr. Bellazan began. In these calls, Mr. Bellazan instructs [CG] to get the charges against him dropped and speak to the prosecutor in this case. After the phone calls, [CG] begins to recant and express increased hesitation about her role in the trial. Considering the volume and content of the calls, as well as the nature of the underlying charges, the [c]ourt finds that Mr. Bellazan's wrongful conduct procured [CG's] unavailability.

The record amply supports the district court's finding on this point: circumstantial evidence shows that CG failed to testify at trial because she was frightened to do so after receiving repeated threatening calls from Bellazan while he was in jail for assaulting her and prohibited from contacting her. There was no evidence that CG was medically unable to testify. And although the record includes evidence that CG feared being put in legal jeopardy if she testified, the district court did not err by implicitly reasoning that it was more likely that CG did not appear because she was afraid of Bellazan as a result of his alleged physical and sexual assaults and the threatening phone calls that he made in violation of court orders. Bellazan's 20 threatening and coercive phone calls belie his assertion that CG "decided on her own" not to testify, and it is not "pure speculation to suggest that the phone calls were the reason [CG] did not appear."

In sum, as found by the district court, CG's statements to police were consistent until Bellazan started calling her from jail. The district court found that Bellazan's jail calls show that he was attempting to persuade CG to "shut [her] mouth" and get the charges dropped. The district court did not err by finding that Bellazan's wrongful conduct procured CG's unavailability.

Intent to Procure Unavailability

Bellazan argues that the evidence does not support the district court's finding that he intended to procure CG's unavailability. As to this element, the district court noted that the United States Supreme Court has emphasized the relevance of the domestic-violence context when assessing intent under the forfeiture-by-wrongdoing doctrine. The district court relied on *Giles*, in which the Court explained:

Domestic violence is an intolerable offense that legislatures may choose to combat through many means—from increasing criminal penalties to adding resources for investigation and prosecution to funding awareness and prevention campaigns. But for that serious crime, as for others, abridging the constitutional rights of criminal defendants is not in the [s]tate's arsenal.

The domestic-violence context is, however, relevant for a separate reason. Acts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions. Where such an abusive relationship culminates in [wrongful conduct], the evidence may support a finding that the [conduct] expressed the intent to isolate the victim and to stop her from reporting abuse to the authorities or cooperating with a criminal prosecution—rendering her prior statements admissible under the forfeiture doctrine. Earlier abuse, or threats of abuse, intended to dissuade the victim from resorting to outside help would be highly relevant to this inquiry, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify.

554 U.S. at 376-77.

In this case, the district court soundly reasoned:

Here, the phone calls show Mr. Bellazan instructs [CG] to speak to the prosecutor and get the charges against him dropped. On the call from June 10, 2023, Mr. Bellazan directly tells [CG] it would be best for her to “shut your mouth.”

Additionally, the record reflects that [CG] and Mr. Bellazan were in a domestic relationship and had a child together. The alleged charges in this matter relate to acts Mr. Bellazan allegedly committed on [CG]. Therefore, [CG] was familiar with Mr. Bellazan, and *her fear about testifying against him is contextual.*

Defense argues it was advantageous for Defense that [CG] testify. Therefore, they posit that Mr. Bellazan did not intend to make [CG] unavailable when he called her. However, considering the volume and content of calls from Mr. Bellazan to [CG] directing [CG] to get the charges dropped and threatening her, the Court finds that Mr. Bellazan did in fact intend to prevent [CG] from testifying when he made those calls.

As such, the Court finds that this fourth element is met, and Mr. Bellazan intended to prevent [CG] from testifying when he called her in violation of the DANCO and court order.

(Emphasis added.)

The record supports the district court's finding that Bellazan intended to procure CG's unavailability. There is no other reasonable interpretation of Bellazan's 20 recorded calls to CG from jail. To be clear, we do not suggest that there is a "special, improvised, Confrontation Clause" protection for crimes involving domestic violence. *Giles*, 554 U.S. at 376. But under the circumstances of this case, the domestic-abuse context is highly relevant. And in that context, the district court did not err by finding that Bellazan intended to procure CG's unavailability.

To summarize, the district court did not err in determining that the state met its burden to prove by a preponderance of the evidence that CG was unavailable as a witness, that Bellazan engaged in wrongful conduct, that Bellazan's wrongful conduct procured CG's unavailability as a witness, and that Bellazan intended to procure the CG's

unavailability. Thus, Bellazan forfeited his right to object to the admission of CG's out-of-court statements on confrontation grounds.

Our decision is influenced by the purpose of the forfeiture-by-wrongdoing exception:

which extinguishes confrontation claims on essentially equitable grounds. The forfeiture-by-wrongdoing exception is aimed at defendants who intentionally interfere with the judicial process. . . . [W]hen defendants seek to undermine the judicial process by procuring or coercing silence from witnesses and victims, the Sixth Amendment does not require courts to acquiesce. . . . [W]hile defendants have no duty to assist the [s]tate in proving their guilt, they *do* have the duty to refrain from acting in ways that destroy the integrity of the criminal-trial system.

Cox, 779 N.W.2d at 850-51 (quotations and citations omitted).

Bellazan's repeated, prohibited, and threatening calls to CG were an intentional effort to interfere with the judicial process. He attempted to undermine that process by procuring or coercing silence from CG. We will not acquiesce in his conduct by failing to reasonably appreciate the likely effect of his threatening and coercive calls to CG in violation of court orders or by demanding more from the prosecution in this case. We therefore hold that a defendant forfeits the right to confront a witness at a trial for criminal offenses the defendant allegedly committed against the witness if the record shows—as is the case here—that the witness would not have been available to testify at some reasonable point during the trial and that the defendant intentionally procured the witness's unavailability by wrongdoing.

II.

Bellazan contends that the district court erred by entering a judgment of conviction on his misdemeanor OFP offense. The state concedes that the district court erred.

A defendant “may be convicted of either the crime charged or an included offense,” which is defined to include “a crime necessarily proved if the crime charged were proved.” Minn. Stat. § 609.04, subd. 1(4) (2022). Section 609.04 “bars multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident.” *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985).

According to the complaint, both OFP violations occurred on or about May 31. As the prosecutor explained to the jury, the offenses had the same elements except that the felony offense required additional proof that Bellazan possessed a dangerous weapon, a fact that enhanced the offense from a misdemeanor to a felony. *See* Minn. Stat. § 518B.01, subd. 14(b), (d)(2) (2022). Thus, as the state concedes, the misdemeanor OFP violation was necessarily proved when the felony OFP violation was proved, and the district court should not have entered a judgment of conviction for the misdemeanor offense.

When a district court erroneously enters judgments of conviction on both an offense and a lesser-included offense, the proper disposition on appeal is to reverse and remand to the district court with instructions to vacate the conviction on the lesser-included offense, while leaving the determination of guilt on that offense intact. *State v. Hallmark*, 927 N.W.2d 281, 300 (Minn. 2019). We remand for the district court to vacate Bellazan’s misdemeanor OFP conviction.

III.

Bellazan contends that the district court erred by ordering a conditional-release term for his first-degree burglary conviction. The state concedes that the district court erred.

In *State v. Brooks*, this court held that the district court erred by ordering a term of conditional release for a first-degree burglary conviction because “there [was] no statutory authority” for the court to do so. 555 N.W.2d 761, 762 (Minn. App. 1996). Like the circumstances in *Brooks*, here there is no authority supporting the conditional-release term that the district court ordered for Bellazan’s burglary conviction. We therefore reverse and remand for the district court to vacate that conditional-release term.

IV.

Bellazan filed a supplemental brief raising multiple issues, which are identified in his table of contents as follows: (1) inconsistent statements, (2) ineffective assistance of counsel, (3) recantation, (4) forfeiture by wrongdoing, (5) irrelevant evidence, (6) fabricated evidence, and (7) the right to present a complete defense. We begin our consideration of these issues with the standards that govern our review in all cases.

“[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it.” *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quotation omitted). Issues that are not adequately briefed are waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that “[t]his issue was not argued in the briefs and accordingly must be deemed waived.”). And “[a]n assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be

considered on appeal unless prejudicial error is obvious on mere inspection.” *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). Finally, we will not consider pro se claims that are unsupported by argument or citation to legal authority unless prejudicial error is obvious. *State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008).

With these principles in mind, we note that the forfeiture-by-wrongdoing issue was adequately addressed in Bellazan’s principal brief and that we rejected it in our analysis above. His supplemental briefing does not change our decision on this issue. As to the other issues in Bellazan’s supplemental brief, some are not supported by citation to legal authority or by legal analysis, such as his ineffective-assistance-of-counsel claim. Other issues, such as his claim that that district court admitted irrelevant evidence, are supported only by citation to the relevant rule of evidence without corresponding legal analysis. Having carefully reviewed Bellazan’s supplemental briefing and considered the applicable legal standards, we discern no obvious prejudicial error justifying reversal.

To the extent that Bellazan appears to argue that the evidence was insufficient to sustain his convictions—based on his own weighing of the evidence and credibility determinations—we note that when considering a challenge to a guilty verdict based solely on direct evidence, we carefully analyze the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to permit the fact-finder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume the fact-finder believed the state’s witnesses and disbelieved any contrary evidence. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). We defer to the fact-finder’s credibility determinations and will not reweigh the evidence on appeal. *State v. Franks*, 765 N.W.2d

68, 73 (Minn. 2009); *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002). And we will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could have reasonably concluded that the state proved the defendant's guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

The trial evidence is summarized in the facts section of this opinion. It showed that CG repeatedly reported to family members, police officers, and medical personnel that Bellazan had physically and sexually assaulted her. She reached out to the police for help after the assaults. And CG's allegations were corroborated by signs of physical injury that were observed by her father and photographed by the police, by the 911 callers who saw a woman being pushed out of a vehicle, and by the 911 caller who reported that shots were fired before the woman was pushed out of the vehicle.

Applying the deferential standards that govern our review, we conclude that the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have reasonably concluded that the state proved Bellazan's guilt. We therefore do not disturb the verdict.

DECISION

Because the district court erred by entering a judgment of conviction for Bellazan's misdemeanor OFP offense and by ordering a term of conditional release based for appellant's first-degree burglary conviction, we reverse and remand for the district court to vacate that conditional-release term and the misdemeanor OFP conviction. But because

the district court did not err in ruling that Bellazan forfeited his right to confront CG, and we discern no other basis for reversal, we affirm appellant's remaining convictions.

Affirmed in part, reversed in part, and remanded.