

*This opinion is nonprecedential except as provided by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
A25-0495**

State of Minnesota,
Respondent,

vs.

Maxwell Donovan Anderson,
Appellant.

**Filed February 17, 2026
Affirmed in part, reversed in part, and remanded
Harris, Judge**

Mower County District Court
File No. 50-CR-24-1103

Keith Ellison, Attorney General, Lydia Villalva Lijó, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Smith, Tracy M., Judge; and
Florey, Judge.*

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

NONPRECEDENTIAL OPINION

HARRIS, Judge

In this direct appeal from the judgment of conviction for domestic assault and threats of violence under Minnesota Statutes sections 609.2242, subdivision 4, and 609.713, subdivision 1 (2022), appellant Maxwell Donovan Anderson argues that his threats-of-violence conviction should be reversed for insufficient evidence. He also argues that he is entitled to a new trial because the district court erred by admitting the victim's testimonial hearsay statements at trial under the forfeiture-by-wrongdoing exception, asserting that the state failed to prove that he procured the victim's unavailability. We conclude that the evidence is insufficient to support the conviction for threats of violence but that the district court did not err by admitting the victim's testimonial hearsay statements. We therefore affirm in part, reverse in part, and remand for resentencing on the domestic-assault conviction.

FACTS

The following relevant facts stem from the officer's trial testimony and video footage from the squad car, which captured the victim's statement.

In June 2022, an officer from the Austin police department responded to a domestic disturbance call around 3:30 a.m. and found the victim, N.H., in a frantic state. The officer testified that N.H. was "in some distress" and found it difficult to speak with him at the scene. N.H. told the officer that his boyfriend, Anderson, assaulted him.

N.H. got into a fight with his roommate and contacted Anderson to pick him up in Iowa late one night. N.H. explained that he and Anderson had been dating for seven

months and were driving to Austin that day to stay with their mutual friend, L.H. According to N.H., Anderson did not like him talking to L.H. When they arrived at L.H.'s home, N.H. stayed in the car while Anderson went inside to ask about spending the night. After some time, Anderson walked back outside and told N.H. to "take a walk," emphasizing that he did not want N.H. going inside. N.H. wanted to know whether they could sleep overnight and felt he had "every right to go knock on the door." Anderson responded, "If you do that, I'm gonna beat you down." N.H. ignored him and walked up the steps towards the front door. Anderson followed behind and struck N.H. in the back of the head three times. Anderson then stepped in front of N.H., blocking his path to the front door. N.H. began to walk away when Anderson grabbed onto a backpack that N.H. was wearing; the two struggled over the backpack and its contents. N.H. fell to the ground and Anderson stood over him, leaned down, and punched N.H. "[a]t least seven [times]" with both fists.

Once the punching stopped, N.H. tried approaching L.H.'s home for help, but Anderson again grabbed him by the backpack and "swung" N.H. to the ground in the street. Anderson got on top of N.H., hit him "a couple times," and "kicked [him] at least five times," including twice to the head and once to the ribs. N.H. told the officer that he may have lost consciousness by that point. N.H. also told the officer that Anderson has threatened him "every day" by saying, "I'm gonna make sure your pretty little teeth are gone." The officer observed "numerous injuries" on N.H., including multiple abrasions and scratches, and swelling behind his left ear and temple. An ambulance arrived to evaluate N.H.'s injuries.

About an hour after the 911 call, the officer learned that Anderson's car was found at a local autobody shop and that Anderson was hiding inside the building. The officer, along with his colleagues, drove to that location, announced their presence and ordered Anderson to exit the shop. Anderson was initially noncompliant but eventually was arrested.

Respondent State of Minnesota charged Anderson with felony domestic assault and threats of violence under Minnesota Statutes sections 609.2242, subdivision 4, and 609.713, subdivision 1. At his first appearance, the state requested a domestic abuse no-contact order (DANCO). The state indicated that N.H. was "already changing his version of events, which [was] concerning." The district court granted the DANCO and prohibited Anderson from contacting N.H.

While in jail, Anderson spoke to N.H. over the phone on at least four occasions.¹ In the first conversation on June 17, 2024, Anderson told N.H., "What I need you to do is . . . for all these charges just to go away . . . you need to not be . . . locatable." N.H. replied, "Done." Then on June 23, 2024, Anderson explained to N.H. that "if [his] victim isn't served papers then the whole case is a 'he said he said thing.'"

Anderson and N.H. spoke again on July 8, 2024. Anderson told N.H., "If you want to help my situation . . . contact my public defender and recant your statements." N.H.

¹ A Mower County Jail employee testified that when individuals are booked into the jail, they are provided a phone account number with a unique personal identification number. Inmates can make calls and send text messages through the account, which are recorded. The jail reviewed five jail calls and text messages made by Anderson and provided those calls to the state who offered them to the court.

responded, “I don’t know about that.” They both continued talking the following day by text. In one message, N.H. texted Anderson, “I’ll never recant f--k you.” N.H. changed his mind a week later and told the victim-witness coordinator that “he wanted to recant his statements.”

The fourth phone conversation with N.H. was on July 16, 2024. Anderson stated, “I told the prosecutor [in Olmsted County] that I had no f--king intention of testifying against you. Now you do the same and I will thank you for that. Just make sure you’re not around for them to serve you papers, and we’ll be Gucci.” Two days later, N.H. texted Anderson, “Zoom call with the prosecutor tomorrow . . . I will be telling them there is no reason to go any f[u]rther and that I recant my statement. I’ll be calling your attorney to file.”

Before trial, the state moved to admit hearsay evidence of N.H.’s initial statements to the officer on the scene under the forfeiture-by-wrongdoing exception. The state argued that hearsay evidence was necessary because Anderson’s conduct procured the unavailability of N.H. as a witness. The district court held a motion hearing, in which it heard testimony from the Mower County jail employee, L.H., and the victim-witness coordinator. The district court also reviewed audio, video, and text-message exhibits as described above.

The coordinator testified that when she first spoke with N.H. in July 2024, he “wanted to recant his statements.” The coordinator scheduled a zoom call the next day between herself, N.H., and the prosecutor to discuss his feelings and concerns, but N.H. did not attend. The coordinator tried calling and texting N.H., but he did not respond. The

coordinator's next communication with N.H. occurred a week later when she sent him a copy of Anderson's plea offer letter. According to the coordinator, N.H. said that "it would be . . . in his best interest . . . to accept that offer."

The coordinator spoke with N.H. again a while later and asked if he would like his subpoena emailed to him rather than have it served by a deputy. When N.H. asked what a subpoena was, the coordinator explained that it was an order by the district court to appear in court, and N.H. stated that he did not want to do that because he lives out-of-state. The coordinator testified that N.H. told her, "[T]his is [Anderson's] issue" and that he, as the victim, should not have to testify. During this conversation, the coordinator "could hear someone whispering." The coordinator suggested scheduling a zoom meeting later that day with the prosecutor so that N.H. could share his feelings, and he agreed.

After she sent the Zoom link, N.H. called her back and said that he "had been talking with his family, and he did not want to talk with an attorney, especially, the prosecutor." Again, the coordinator heard whispering on the other end. N.H. instructed that any further communication with him "should go through [his] attorney." When the coordinator asked for his attorney's name, "[N.H.] got really quiet," the coordinator heard some more whispering, and then N.H. said he was not going to provide his attorney's name and was unsure why she needed that information. The coordinator reminded N.H. that moments earlier, he said any communication with him must go through his attorney. N.H. emphasized that he was not going to provide his attorney's name, nor was he going to speak with the prosecutor; but he agreed to continue talking to the coordinator. Later that day,

N.H. texted the coordinator that he “would have to block [her] number.” The state attempted to serve a subpoena at N.H.’s home address in Iowa, but N.H. refused service.

After hearing witness testimony, the district court heard arguments from the parties. The state argued that N.H. was unavailable to testify because Anderson allegedly instructed N.H. “to avoid service of the subpoena, hang up any phone calls from the state, and to ‘remain a ghost.’” The state believed it was “obligated” to honor N.H.’s request to stop contacting him and that doing so otherwise would be inappropriate. The prosecutor also informed the district court that she encountered N.H. in the courthouse earlier that day, but he “ran out of the courthouse” when she asked if he wanted to talk.

Anderson opposed the state’s forfeiture-by-wrongdoing motion, arguing that the state failed to show N.H. was an “unavailable witness” because it gave up on serving the subpoena. He argued that N.H. was still in the area and that the state could still serve a subpoena. And even if N.H. continued refusal of service, the state had other means of procuring N.H.’s availability at trial. The district court granted the state’s forfeiture-by-wrongdoing motion. It determined that Anderson “intended to procure the witness’s unavailability.”

After a two-day trial, the jury found Anderson guilty of domestic assault and threats of violence under sections 609.2242, subdivision 4 and 609.713, subdivision 1. The district court convicted Anderson on both counts. The district court sentenced Anderson to 15 months in prison with execution of sentence stayed for three years.

Anderson appeals.

DECISION

I. The evidence is insufficient to sustain Anderson’s threats-of-violence conviction.

Anderson first challenges the sufficiency of the evidence for his threats-of-violence conviction. He specifically argues that the evidence is insufficient to prove (1) that there was a reasonable apprehension that he would follow through with his threat to “make sure [N.H.’s] pretty little teeth are gone,” (2) that he threatened N.H. with the intent to terrorize him, and (3) that he acted in reckless disregard of the risk that his statements would cause such terror.

When reviewing the sufficiency of the evidence, we must “determine whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged.” *State v. Smith*, 9 N.W.3d 543, 564–65 (Minn. 2024). In doing so, we view the evidence in the light most favorable to the verdict. *Id.* at 565.

The parties do not dispute that Anderson’s conviction was based on circumstantial evidence. Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotations omitted). Under the circumstantial evidence standard of review, we first “identify the circumstances proved by winnowing down the evidence presented at trial to a subset of facts that is consistent with the jury’s verdict and disregard evidence that is inconsistent with the jury’s verdict.” *Smith*, 9 N.W.3d at 565 (quotation omitted). Second, we consider whether the reasonable inferences “drawn from the circumstances

proved . . . are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* We view the record as a whole, not isolated facts. *Id.*

Minnesota’s threats-of-violence statute criminalizes direct or indirect threats “to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror or inconvenience.” Minn. Stat. § 609.713, subd. 1. “A threat is 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 the words or phrases are threatening depends upon the context in which they are used. *Id.* The underlying question is whether the statement “would ‘have a reasonable tendency to create apprehension that its originator will act according to its tenor.’” *Id.* (quoting *United States v. Bozeman*, 495 F.2d 508, 510 (5th Cir. 1974)). However, the threatening statement “must be to commit a *future* crime of violence which would terrorize a victim.” *State v. Murphy*, 545 N.W.2d 909, 916 (Minn. 1996).

Here, the state alleged that Anderson threatened to commit third-degree assault—a crime of violence—when he told N.H. that “[h]is pretty little teeth will be gone” while kicking N.H. in the face.² To convict Anderson of felony threats of violence, the state had to prove that (1) he communicated an intention to injure N.H., by words or actions, (2) in context, Anderson’s words or actions created a reasonable apprehension that he would

² Anderson does not appear to contest that his statement to N.H. that he would “make sure [his] pretty little teeth are gone” constituted a “crime of violence”—that being, third-degree assault. “Third-degree assault” includes anyone who “assaults another and inflicts substantial bodily harm.” Minn. Stat. § 609.223, subd. 1 (2022).

follow through with the act or threat, and (3) Anderson made the threat in conscious disregard of a substantial and unjustifiable risk that his words or conduct would cause extreme fear. *State v. Mrozinski*, 971 N.W.2d 233, 240 (Minn. 2022). Anderson contends that the evidence is insufficient to prove elements two and three.

We first identify the circumstances proved as viewed in the light most favorable to the verdict. *Smith*, 9 N.W.3d at 565. Those circumstances include the following: (1) N.H. got into a fight with his roommate and had Anderson pick him up in Iowa late one night; (2) Anderson drove N.H. to L.H.’s residence in Austin and “got aggressive in the car”; (3) upon arrival, Anderson walked inside the residence to make sleeping arrangements while N.H. waited in the car; (4) Anderson returned to the car, told N.H. to “take a walk,” and then reapproached the home with N.H. following behind; (5) Anderson told N.H. that if he approached the front door, he would “beat [N.H.] down”; (6) N.H. ignored Anderson and approached the front door; (7) Anderson struck N.H. in the back of the head three times and blocked his path to the front door; (8) when N.H. began walking away from the front door, Anderson grabbed the backpack that N.H. was wearing, and they struggled over the backpack and its contents; (9) N.H. fell to the ground and Anderson punched N.H. “at least seven times” with closed fists; (10) N.H. tried to reapproach the front door to get help; (11) Anderson grabbed N.H. by the backpack again, “swung” him to the ground in the street, got on top of N.H., hit him “a couple times,” and kicked him “at least five times”; (12) N.H. felt “vulnerable,” “controlled,” and “frightened” during the physical struggle with Anderson; (13) when the officer asked N.H. whether Anderson made any threats, such as “I’m gonna kill you, I’m gonna choke you, I’m gonna stab you,” N.H. replied, “he said,

‘I’m gonna make sure your pretty little teeth are gone’”; and (14) when the officer followed up, “[D]id he say that over there or in the street or down here?” N.H. answered, “He says it every day to me.”

We next consider whether the reasonable inferences drawn from the circumstances proved are consistent with the guilty verdict and “inconsistent with any rational hypothesis other than guilt.” *Smith*, 9 N.W.3d at 565.

Anderson argues that the evidence is insufficient because the circumstances proved allow for a reasonable inference other than guilt—that he made the statement out of “frustration or anger.” Anderson advances two arguments in support. First, he argues that, viewed in the broader context, his statement did not create a reasonable apprehension that he would follow through with the threat because he “made the same statement hundreds of times in the past without acting on it.” Second, he contends that when N.H. reported the threat to the officer, N.H. did not affirm that Anderson made the threat on the day of the offense and did not indicate his tone of voice or whether Anderson was angry when making the threat.

Anderson argues that, if he made the same statement to N.H. every day throughout their relationship and never followed through, then that pattern would diminish the gravity of the threats. Thus, his statement on the day of the offense would not have created a reasonable apprehension that he intended to act upon it. But as the state points out, Anderson does not cite to any authority to support this argument. And, as the state persuasively argues, this logic “would lead to a perverse result—that a threat to commit

substantial bodily harm is not a threat of violence if the defendant has made the same threat before.”

The state maintains that Anderson’s statement reasonably created apprehension that he would carry out his threat. To support its claim, the state cites to this court’s nonprecedential opinion, *State v. Sprowls*, A24-1584, 2025 WL 2042275 (Minn. App. July 21, 2025), *rev. granted* (Minn. Oct. 15, 2025).³ In that case, police officers responded to a domestic-disturbance call from an individual at Sprowl’s residence. *Id.* at *1. Upset that the officers entered his home, Sprowls reacted in a hostile manner by “[s]wearing and using an aggressive tone” and repeatedly asking why the officers were there. *Id.* Sprowls approached one officer “with his forearm raised, cursing and appearing angry,” and displaying “prefight indicators.” *Id.* at *2. An officer eventually handcuffed Sprowls, who then kicked a chair and threatened to kill the officer by stating, “I’m gonna f---ing kill you . . . I wish I was back in Cali, I could just blast your ass away with a shotgun for entering my home without consent, without a f---ing warrant.” *Id.* Notably, the officer “testified that he believed [Sprowls] would follow through on his threats.” *Id.* We concluded that the circumstantial evidence was sufficient to create a reasonable apprehension that Sprowls would carry out his threats. *Id.* at *3.

Similar to *Sprowls*, the state argues that Anderson uttered his threat while also engaging in physical conduct that created a reasonable apprehension in N.H. that Anderson would carry out his threat to knock out N.H.’s teeth. In response, Anderson convincingly

³ Nonprecedential opinions are nonbinding and are cited as persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1.

argues that the *Sprowls* court reached its determination based on evidence that Sprowls “was aggressive and confrontational” and threatened “physical conduct at multiple points”; and even while handcuffed, Sprowls “kicked and physically resisted [the officer’s] commands to calm down.” *See id.* at *4. But here, there was no evidence of Anderson’s tone or conduct when he made the threat to N.H.

N.H. reported to the officer that Anderson made the threatening statement “every day.” But we do not know where or when Anderson made that threatening statement, or whether he said it that day at all. If, for example, N.H. told the officer that Anderson made the threatening statement while he was driving them to Austin, while N.H. was approaching L.H.’s residence, or after N.H. fell on the ground and was being assaulted, then the evidence may well be sufficient to sustain his conviction. But there is no evidence that Anderson conveyed a present threat. Instead, N.H. spoke in general terms of Anderson’s threats.

In conclusion, while the circumstances proved may be consistent with the guilty verdict, they are also consistent with a rational hypothesis of innocence. The evidence is therefore insufficient to support the conviction for threats of violence.

II. The district court did not violate Anderson’s rights under the Confrontation Clause when it admitted N.H.’s hearsay statements under the forfeiture-by-wrongdoing exception.⁴

Anderson next argues that he is entitled to a new trial on the remaining domestic-assault charge because the district court erred when it admitted N.H.’s hearsay statements as evidence under the forfeiture-by-wrongdoing exception. He argues that N.H. was not an “unavailable” witness because the state did not make reasonable efforts to secure his presence at trial.⁵

Defendants have a constitutional right to confront witnesses against them at trial. 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, and the defendant had a prior opportunity for cross-examination. *Crawford v.*

⁴ The state argues for the first time on appeal that N.H.’s on-scene statements to the officer are not testimonial because the statements were “made during an ongoing emergency.” The state relies on *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003) for support. Under *Grunig*, a party may raise an alternative theory for the first time on appeal if (1) the record contains sufficient facts for an appellate court to evaluate the alternative arguments, (2) legal support exists for the arguments, and (3) the alternative grounds “would not expand the relief previously granted.” *Id.* at 137. Anderson counters that the *Grunig* test applies “to a party’s waiver by silence,” not to a party’s affirmative waiver. Here, neither party disputed the “testimonial” nature of N.H.’s statements for purposes of the state’s forfeiture-by-wrongdoing motion. In fact, in its forfeiture-by-wrongdoing motion, the state argued that the hearsay exception allowed the admission of “out-of-court *testimonial* statements.” (Emphasis added). Accordingly, we decline to consider the state’s argument.

⁵ The state claims that Anderson did not preserve this argument for appeal because he did not timely and specifically object to the admission of evidence. The state is wrong. Anderson’s argument on appeal follows the argument made below—that the state failed to show that N.H. was an “unavailable witness.”

Washington, 541 U.S. 36, 68 (2004); *Shaka*, 927 N.W.2d at 766–67. However, a defendant can forfeit their 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 embraced the U.S. Supreme Court’s description of 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) (quoting *Crawford*, 541 U.S. at 62). “The forfeiture-by-wrongdoing doctrine is ‘codified’ in Minn. R. Evid. 804(b)(6).” *State v. Bellazan*, 18 N.W.3d 385, 394 (Minn. App. 2025) (quotation omitted).

Under rule 804(b)(6), the forfeiture-by-wrongdoing exception provides that “[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 under the hearsay rule. *Id.* As a result, a hearsay statement may be admissible without the declarant’s presence at trial. *Id.* For the forfeiture-by-wrongdoing exception to apply, the state must demonstrate, 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.” *Id.* On appeal, Anderson only contests that N.H. was unavailable and that his wrongful conduct procured the unavailability of N.H.

While evidentiary rulings are within the district court’s discretion, whether the admission of evidence violates a defendant’s rights under the Confrontation Clause is a

question of law that is reviewed de novo. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). The district court’s findings of fact regarding the forfeiture-by-wrongdoing elements are reviewed for clear error. *Bellazan*, 18 N.W.3d at 394. A violation of the Confrontation Clause is subject to the constitutional harmless-error analysis and does not require reversal if the reviewing court determines that the error was harmless beyond a reasonable doubt. *Caulfield*, 722 N.W.2d at 314.

A. N.H. was an “unavailable” witness.

“A witness is not unavailable for Confrontation Clause purposes unless the prosecutorial authorities have made a good-faith effort to obtain his presence at trial.” *State v. Trifiletti*, 6 N.W.3d 79, 91 (Minn. 2024) (quotations omitted). To meet this requirement, the state “need not exhaust every avenue of inquiry, no matter how unpromising,” but it must “exhaust some avenues.” *Id.* (quotation omitted). “[I]f there is a possibility, albeit remote, that affirmative measures might produce the declarant, the obligation of good faith may demand their effectuation.” *Cox*, 779 N.W.2d at 852 (quotation omitted). The supreme court held that we do not solely examine “unavailability” “at a single point in time.” *Trifiletti*, 6 N.W.3d at 91. Rather, we consider whether the declarant “will be unavailable at any reasonable point in time during the trial when witness testimony may be heard.” *Id.*

In its order regarding the forfeiture-by-wrongdoing exception, the district court determined that:

the State has made a good faith effort to procure the witness’s availability. The victim/witness coordinator made several attempts to contact the victim. The victim ultimately told her

not to contact him again. She attempted to get the victim served with the subpoena well before trial. From the evidence, it appears that the victim is evading service as promised. The state has clearly made sufficient efforts to bring the victim to court.

Anderson argues that although the state made reasonable efforts in July and August, it did not make reasonable efforts in the following three months leading up to trial. The state informed the district court on the first day of trial that it attempted to subpoena N.H. again but that it was unsuccessful because he refused service.

Both parties cite to this court's decision in *Bellazan*, which involved allegations that *Bellazan* physically and sexually assaulted the victim-witness. 18 N.W.3d at 397. In that case, the sheriff's office attempted to serve the witness with a subpoena one month before the forfeiture-by-wrongdoing motion hearing. *Id.* at 396. Officers spoke with the witness's grandmother, making her also aware of the subpoena, and later attempted to serve the subpoena at the witness's apartment. *Id.* The witness told the victim advocate that she had received the subpoena "but was afraid." *Id.* The state and the victim advocate maintained contact up until the hearing date, where the witness was instructed to appear in court. *Id.* When the witness did not appear, the victim advocate attempted to reach the witness and left two messages and a text message. *Id.* at 398. The victim advocate also contacted a relative who lived with the witness. *Id.* The witness called the victim advocate later that day and explained she was not feeling well and would take a COVID test. *Id.* When asked whether she could appear the following Monday to testify, the witness said that she was unsure. *Id.*

The Bellazan argued that although the witness was unavailable to appear in court for the Friday hearing, the state failed to show that the witness was also unavailable the following Monday, Tuesday, or Wednesday. *Id.* at 397. This court rejected his argument, concluding that “the [witness] was unwilling to appear as a witness against [Bellazan] because she feared [him].” Moreover, “unlike a COVID-19 exposure and applicable quarantine period, fear has no readily ascertainable end date.” *Id.* Notably, this court was reluctant to say that “good-faith efforts to secure [the witness’s] presence at trial should have included an attempt to have [the witness] arrested for her failure to obey the subpoena.” *Id.* at 398.

Similar to *Bellazan*, Anderson was alleged to have physically assaulted N.H. In addition, the state maintained regular contact with N.H. until he blocked the state’s number and eventually the coordinator’s number. Although N.H. instructed the coordinator to communicate with him through his attorney, N.H. refused to share his attorney’s information, leaving the state with no way to contact his attorney. But unlike in *Bellazan*, where the witness accepted service of the subpoena and then failed to comply, N.H. refused service of the subpoena from the outset.

Anderson argues that the state could have done more to secure N.H.’s presence at trial by offering him transportation from his home in Iowa to the courthouse and back, or by threatening him with contempt of court. His argument is unavailing.

Although the state must exercise some reasonable measures to secure a witness’s appearance at trial, it need not exhaust *every* measure in doing so. *Trifiletti*, 6 N.W.3d at 91. In its order, the district court determined that the state made reasonable efforts to

produce N.H. at trial. But despite the state’s efforts, N.H. was “evading service as [he] promised.”

On this record, the district court did not err by determining that N.H. was “unavailable” because its conclusion was well-supported by the evidence.

B. Anderson’s wrongful conduct procured N.H.’s unavailability.

The forfeiture-by-wrongdoing exception also requires the state to prove that Anderson’s “wrongful conduct procured the unavailability” of N.H. *Bellazan*, 18 N.W.3d. at 394. For this element, the district court determined that Anderson “engaged in wrongdoing” by communicating with N.H. and instructing him to avoid service.

Anderson argues that even if the state proved N.H.’s unavailability, it failed to show that he procured it. Specifically, he contends that he could not have procured N.H.’s unavailability because “N.H. had already changed his story” before the jail calls and text messages in June and July. We are not persuaded.

While Anderson is correct that N.H. “changed his story” before the jail calls and text messages urging N.H. to recant his statement, the record shows that N.H. was also uncertain about recantation and, at times, appeared cooperative with the state and the coordinator. For example, Anderson made it clear to N.H. that his charges would “go away” if N.H. were not “locatable” to be served a subpoena to testify. He additionally urged N.H. during a phone call to recant his statement if he wanted to help his situation. N.H. expressed hesitation, responding, “I don’t know about that.” On July 6, N.H. texted Anderson, saying, “I don’t ever want to hear from you.” During another phone call on July 16, Anderson told N.H., “I told the prosecutor [in Olmsted County] that I had no f--king

intention of testifying against you. Now you do the same and I will thank you for that. Just make sure you're not around for them to serve you papers, and we'll be Gucci." But on July 24, N.H. spoke with the coordinator about Anderson's plea offer, and told the coordinator that accepting the plea offer would be "in his best interest." N.H. also explained to the coordinator that he was not going to provide his attorney's name or contact information, nor was he going to speak with the prosecutor. Despite agreeing to continue speaking with the coordinator, N.H. blocked her number later that day.

Moreover, Anderson's recorded jail conversations with L.H. underscores his wrongdoing. A few days after the date of the offense, he told L.H. that the jury would reject the state's case if N.H. was not present to testify and that, in the event he did appear, N.H. would "be testifying against his own statement." Anderson additionally mentioned that if N.H. were not present to testify, "then [his case] just goes poof."

This record shows that N.H. wavered on whether he wanted to recant his statements or testify in court. Although N.H. began changing his story the day of Anderson's arrest, it appears that Anderson's insistence that N.H. call his public defender to recant his statement, evade the district court's subpoena, and remain "unlocatable," among other things, influenced N.H.'s refusal to cooperate with the state. Just as the district court found, "[t]he timing of [Anderson's] conversations coupled with the timing of the victim refusing to cooperate with service of the subpoena shows that [Anderson's] conduct procured the unavailability of the victim."

As a result of Anderson's wrongful conduct, N.H. was not available to testify. Accordingly, the district court did not err by admitting N.H.'s statements to police.

Affirmed in part, reversed in part, and remanded.