

*This opinion is nonprecedential except as provided by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
A25-1303**

Jason Lee Martin, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 6, 2026
Affirmed
Johnson, Judge**

Nicollet County District Court
File No. 52-CR-21-305

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

Keith Ellison, Attorney General, Jacob Campion, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Zehnder Fischer, Nicollet County Attorney, St. Peter, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In 2022, Jason Lee Martin was convicted of multiple offenses, including first-degree burglary. In 2024, Martin petitioned for postconviction relief, arguing that the district court plainly erred at his trial by admitting an out-of-court statement made by a person who,

Martin contends, was not unavailable as a witness, as required for the statement-against-interest exception to the hearsay rule. The postconviction court denied the petition. We conclude that the district court did not err by determining that the declarant of the out-of-court statement was unavailable as a witness because he persisted in refusing to testify concerning the subject matter of his out-of-court statement and also testified to a lack of memory of the subject matter. Therefore, we affirm.

FACTS

This appeal concerns the burglary of a property in rural Nicollet County. During the morning of December 28, 2020, J.P., who lives near the property, noticed that a four-wheeler belonging to neighbors was running but unattended, with its lights on in a nearby field. J.P. knew that the neighbors, whose last name begins with O, had gone out of town a few days earlier. J.P. called the neighbors' son, C.O., who went to check on the property with him. C.O. and J.P. noticed tire tracks in a snowdrift in the driveway and broken tow straps on the ground, which suggested that a vehicle had gotten stuck and was towed. J.P. also noticed that the door to the machine shed, where the four-wheeler was kept, was open. J.P. called 911 to report a break-in.

Deputy sheriffs McMonagle and Nelson responded to the 911 call. They and C.O. entered the O family's home. Several firearms were missing. An axe, a metal grinder, and an acetylene torch were found near a safe in the basement, which was damaged but not breached. Outside the home, the deputies saw two different sets of footprints in the snow, which indicated that more than one person had been there. J.P. and C.O. also saw one of

the O family's vehicles—a Buick Enclave—on the side of the road a few miles from their residence. The Enclave had a broken tow strap hanging from it.

Three days after the discovery of the burglary, law-enforcement officers arrested Martin on suspicion of involvement in multiple burglaries. Officers searched Martin's home and his Chevrolet Avalanche pursuant to a warrant. Inside Martin's home, officers found an unlabeled pill bottle containing the same type of pills that were missing from the O family's home. Officers also found a pair of size-9.5 men's shoes that matched footprints at the O family's property. In the Avalanche, officers found jewelry, a watch that belonged to Mr. O, and a broken tow strap that matched the tow strap found on the Enclave.

The day before Martin was arrested, law-enforcement officers arrested Ryan Jensen, a longtime close friend of Martin, for fleeing police in a stolen Ford Mustang. Officers searched the Mustang and found items belonging to the O family, including jewelry, legal documents, medical documents, banking documents, tax statements, and a bottle of prescription medication. Officers also found a pair of size-10 Puma shoes that matched footprints at the O family's property and footprints on the side of the road where the Enclave was found. Officers also searched a hotel room registered to Jensen, where they found burglary tools and additional items belonging to the O family, including jewelry, documents, and other items bearing the names of members of the O family. Jensen later was convicted of burglarizing the O family's residence.

In August 2021, the state charged Martin with 14 offenses related to the burglary of the O family's property. The case was tried to a jury on three days in October 2022. The state called 16 witnesses, including Jensen.

At the time of trial, Jensen was imprisoned at the Minnesota Correctional Facility in Rush City. At the beginning of the prosecutor's direct examination, Jensen stated, "I'm not going to answer your questions," and "I'm not going to testify against Jason." When the prosecutor attempted to elicit testimony from him, Jensen usually responded by saying "I don't recall" or "no comment." Jensen testified only that he "did it alone" and that a prior statement he had made to an investigator, which incriminated Martin, "was a lie." On cross-examination, Jensen provided a few substantive answers to questions asked by Martin's trial attorney. But on re-direct-examination, Jensen responded to the prosecutor's questions with "no comment."

The state's next witness was B.L., who lived with Martin on and off for eight years and had a child with him. The prosecutor offered six exhibits with images of text messages that B.L. apparently had exchanged with Jensen. Martin's attorney objected on hearsay grounds and asserted that Jensen "was never asked about the text messages." After a bench conference, the state recalled Jensen. The district court instructed Jensen to answer the prosecutor's questions. The prosecutor asked Jensen whether he ever had exchanged text messages with B.L. Jensen responded by saying that he did not recall. When the prosecutor showed Jensen the same six exhibits that had been shown to B.L., Jensen said that he did not recognize them. The state then resumed questioning B.L. When the state again offered one of the six exhibits, Martin's attorney conceded that Jensen was unavailable and objected on other grounds.

The state's next witness was S.P., who previously was a friend of or in a relationship with Jensen. The prosecutor asked S.P. whether Jensen ever had told her about any

burglaries he had committed and what he had disclosed about them. Martin's attorney objected and argued that Jensen "was never asked about statements to" S.P. The prosecutor argued that Jensen had "made himself very unavailable by repeatedly indicating that he was going to make no comment about any matters." The district court sustained Martin's objection. The state recalled Jensen for a second time. The state asked Jensen five questions, including questions about whether he had spoken with S.P. about the burglary of the O family's property. Jensen answered each question by saying "no comment." The state then resumed questioning S.P. She testified that Jensen told her that he had been arrested for committing a burglary in Nicollet County with Martin, during which they had broken into a house and stolen a car and an ATV, but that the ATV "got stuck" and they could not move it, so they left.

At the end of the second day of trial, the district court and counsel discussed the state's notice of intent to offer *Spreigl* evidence concerning two other burglaries in which Martin purportedly was involved. The following morning, the district court ruled that the state could introduce *Spreigl* evidence concerning only one of those burglaries, which occurred in Blue Earth County. The state recalled Deputy Nelson, who had testified the day before about his interview with Jensen. The state introduced and played for the jury an audiorecording of that interview. In the recorded interview, Jensen repeatedly denied that Martin took part in the burglary of the O family's property. But when Deputy Nelson asked Jensen who committed the Blue Earth County burglary, Jensen responded, "Me and Jay," meaning Jason Martin. The admission of that statement is the focus of this appeal.

Martin did not testify and did not call any other witnesses. The jury found Martin guilty of all 14 charges. The district court imposed a sentence of 92 months of imprisonment on count 5; the district court did not impose a sentence on any other count. Martin did not pursue a direct appeal.

In December 2024, Martin petitioned for postconviction relief, with the assistance of an assistant state public defender. Martin's petition alleged that the district court erred by admitting Jensen's out-of-court statement under the statement-against-interest exception to the hearsay rule on the ground that Jensen was not unavailable as a witness. In a memorandum of law, Martin argued that the district court plainly erred by admitting Jensen's recorded statement that he and Martin committed the Blue Earth County burglary. Specifically, Martin argued that Jensen was not unavailable because "the state did not recall Jensen to ask him whether he told [Deputy] Nelson that he committed the [Blue Earth County] burglary with Martin." In response, the state argued that Jensen was unavailable because he "consistently refused to testify regarding any of the disputed issues," either by saying that he did not recall "or by becoming argumentative or confrontational with the prosecutor."

In June 2025, the postconviction court filed an order in which it denied Martin's petition. The postconviction court identified numerous instances in which Martin refused to give responsive answers to questions posed by the prosecutor. The postconviction court reasoned that "Jensen was unavailable at trial of this matter within the meaning of rule 804(b)(3)" because he "consistently refused to answer questions about the disputed issues during the times he was called to the witness stand." Martin appeals.

DECISION

Martin argues that the postconviction court erred by denying his petition. He contends that the district court plainly erred at trial by admitting the audiorecording of Jensen's out-of-court statement to Deputy Nelson under the statement-against-interest exception to the hearsay rule on the ground that Jensen was not unavailable as a witness.

Because Martin did not object when the state offered the audiorecording of Deputy Nelson's interview of Jensen, we review 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); *see also Pulczynski v. State*, 972 N.W.2d 347, 356 (Minn. 2022). If any requirement of the plain-error test is not satisfied, this court need not consider the other requirements. *State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012).

Hearsay is defined as "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). As a general rule, hearsay is inadmissible. Minn. R. Evid. 802. But the rules of evidence provide numerous exceptions to the general rule of exclusion. *See* Minn. R. Evid. 803, 804, 807. One such exception is a statement against interest. Minn. R. Evid. 804(b)(3). A statement against interest is a statement that

was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true.

Id.

The statement-against-interest exception applies only if the declarant of the out-of-court statement is “unavailable as a witness.” Minn. R. Evid. 804(b). A witness may be unavailable for various reasons, only some of which involve absence from the courtroom. *See* Minn. R. Evid. 804(a). A witness is “unavailable” for these purposes if the witness is present in the courtroom and is sworn but “persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so” or “testifies to a lack of memory of the subject matter of the declarant’s statement.” Minn. R. Evid. 804(a)(2), (3). “The definition of unavailability indicates that the primary concern is the unavailability of the testimony and not necessarily the unavailability of the declarant.” Minn. R. Evid. 804, 1989 comm. cmt. An abuse-of-discretion standard of review applies to a district court’s ruling that a witness is unavailable under rule 804(a). *State v. Morales*, 788 N.W.2d 737, 761 (Minn. 2010).

The supreme court’s opinion in *Morales* illustrates these principles. The state called a witness, Vega-Lara, who refused to answer the prosecutor’s questions, despite having been granted use immunity. *Id.* at 744. The state then called another witness, M.G., to testify about statements Vega-Lara had made to him concerning the charged offense. *Id.* at 745. The district court admitted M.G.’s testimony under the statement-against-interest

exception. *Id.* On appeal, the supreme court considered whether Vega-Lara was unavailable as a witness. *Id.* at 762-63. The supreme court reasoned that, even though “Vega-Lara was physically present at Morales’s trial, it is undisputed that he consistently refused to testify about the robbery and murder—the subject matter of his statements to M.G.—as well as his conversation with M.G.” *Id.* at 763. The supreme court concluded that “Vega-Lara’s persistent and consistent refusal to testify, despite the court’s order compelling him to do so, made Vega-Lara unavailable for purposes of Rule 804(b)(3).” *Id.*

This case is quite similar to *Morales*. When Jensen was called as a witness by the state, he persistently refused to answer the prosecutor’s questions or testified to a lack of memory. The state then sought to elicit testimony from three other witnesses about statements Jensen had made to them. On the first two occasions, Martin objected, and the state recalled Jensen to ask him questions about the same subject matter. Each time, Jensen continued to refuse to answer the prosecutor’s questions. On the third occasion, Martin did not object, perhaps because it would have been futile to force the district court to sustain the objection for a third time and to force the state to recall Jensen for a third time. But the lack of an objection is immaterial. The applicable rule is flexible enough to allow the district court to have deemed Jensen unavailable based on his demonstrated pattern of refusing to answer questions or claiming a lack of memory. *See Minn. R. Evid.* 804(a)(2), (3).

Martin contends that, although Jensen “refused to answer some of the prosecutor’s questions, he answered many of them.” Jensen answered relatively few of the questions posed to him by the prosecutor. He agreed with the prosecutor that he committed the

burglary at the O family's property and that he was interviewed about it by Deputy Nelson, and he testified that he lied during that interview. But he said little more than that. During his initial direct examination, he responded to 23 questions by saying "no comment." And 18 times he responded to a question by saying that he did not remember. In addition, Jensen responded to numerous questions of the prosecutor with argumentative statements in which he expressed displeasure about being called to testify and vigorously stated that he would not testify against Martin. More importantly, he refused to answer any questions when recalled twice. When asked about text messages apparently exchanged by B.L. and him, he testified only that he did not recall and did not recognize the text messages. Likewise, when asked whether he made an oral statement to S.P. about the burglary of the O family's property, he responded only by saying "no comment" five times.

Given this record, we have little difficulty concluding that Jensen "persist[ed] in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so" and "testifie[d] to a lack of memory of the subject matter of the declarant's statement." *See* Minn. R. Evid. 804(a)(2), (3). The district court did not abuse its discretion by admitting hearsay evidence of Jensen's prior statement to Deputy Nelson because Jensen had demonstrated that he was unwilling to cooperate with the prosecutor's examination. The requirements of rule 804(a)(2) and 804(a)(3) were satisfied. Thus, the postconviction court did not err by denying Martin's postconviction petition.

Before concluding, we note that Martin filed a *pro se* supplemental brief in which he makes two additional arguments. First, he argues that Jensen's prior statement that Martin was with him at the Blue Earth County burglary was uncorroborated. Second, he

argues that Jensen's purported unavailability led to a violation of his rights under the Confrontation Clause. Martin did not present these arguments to the postconviction court. Martin's petition alleges only that the district court erred by admitting Jensen's out-of-court statements under the statement-against-interest exception on the ground that "Jensen was not unavailable to testify at trial." Martin's memorandum is limited to that one issue. Martin did not include in his petition or his supporting memorandum any claim or argument that resembles his *pro se* arguments on appeal. Because Jensen did not present his *pro se* arguments to the postconviction court, he cannot raise them for the first time on appeal. *See Griffin v. State*, 883 N.W.2d 282, 285-86 (Minn. 2016); *Greer v. State*, 836 N.W.2d 520, 523 n.4 (Minn. 2013); *Brocks v. State*, 753 N.W.2d 672, 676 (Minn. 2008).

Affirmed.