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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1580**

State of Minnesota,
Respondent,

vs.

Kelly Eugene Jenkins,
Appellant.

**Filed September 8, 2026
Affirmed in part, reversed in part, and remanded
Harris, Judge**

Anoka County District Court
File No. 02-CR-24-916

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

Brad Johnson, Anoka County Attorney, Carl E. Erickson, Assistant County Attorney,
Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Wheelock, Judge; and
Larson, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

In this direct appeal from the judgment of conviction for attempted aggravated first-degree witness tampering and third-degree witness tampering, appellant argues that (1) the state presented insufficient evidence to sustain his conviction for attempted aggravated

first-degree witness tampering because the evidence was insufficient to prove that he took a substantial step toward the commission of the underlying crime or threatened the victim, and (2) the state presented insufficient evidence to sustain his conviction for third-degree witness tampering. Applying the direct-evidence standard, we conclude that the evidence was insufficient to support appellant's conviction of attempted aggravated first-degree witness tampering, but the evidence was sufficient to support appellant's conviction of third-degree witness tampering. Accordingly, we affirm in part, reverse in part, and remand.

FACTS

Respondent State of Minnesota charged appellant Kelly Eugene Jenkins with aggravated first-degree witness tampering, attempted aggravated first-degree witness tampering, and third-degree witness tampering. After a probable cause hearing, the district court dismissed the attempted aggravated first-degree witness tampering charge, and the state amended the remaining two charges to attempt offenses. The matter proceeded to a jury trial on two counts: attempted aggravated first-degree witness tampering and attempted third-degree witness tampering. Minn. Stat. § 609.498, subds. 1b(a)(1), 2a(a)(3) (2022).¹ At trial, the state called four witnesses: Jenkins's ex-girlfriend, S.E.; a Minneapolis police detective; an Anoka County detective; and Jenkins's former cellmate,

¹ The attempted third-degree count was amended again during trial to third-degree witness tampering, in violation of Minnesota Statutes section 609.498, subdivision 2a(a)(4) (2022), removing the reference to attempt.

M.H. The following factual summary stems from the trial record and is presented in the light most favorable to the verdict and conviction.

In 2023, Jenkins was charged and held in custody for a separate proceeding relating to first-degree criminal sexual conduct (CSC). While Jenkins was in custody, law enforcement began monitoring his jail phone calls and discovered that Jenkins had contacted his ex-girlfriend, S.E., on three occasions between October 23 and 25, to discuss S.C., the victim in his CSC matter. Law enforcement later learned that Jenkins was asking other cellmates how he could get S.C. to “disappear before trial.” Jenkins’s conversations with S.E. and his cellmate are summarized below.

Jenkin’s October 23, 2023 Phone Call

On October 23, 2023, Jenkins called S.E. from jail. He told S.E. that he was “freaking the f--k out” and that “[he] did not do this sh-t.” Jenkins explained that he had not been able to eat or sleep. Jenkins asked S.E. if “it was on the news or anything,” and S.E. replied, “No.” Jenkins then shared the victim’s name with S.E. He told S.E. that he was “looking at 12 to 30 for the first count” and “0 to 15 for the third.” S.E. responded, “Well, regardless, I don’t think there’s any reason for it because now you’re playing with someone’s life.” Jenkins stated, “I do not want to come out of prison an old man with sh-t [to] show for it, who’s gonna want me then?” Jenkins asked for S.E.’s “support” and apologized for the way things ended. Minutes after hanging up, S.E. looked up S.C. on Facebook and messaged her that she “ha[d] a question.”²

² All of the communication between S.C. and S.E. occurred through the Facebook Messenger application.

Jenkin's October 24, 2023 Phone Call

When S.C. replied to S.E.'s Facebook message the following morning, S.E. asked, "Did [Jenkins] really do that to you? I was just dating [him] less than a month ago . . . [and] I am so confused right now . . . we literally just broke up [and] I don't even know what to think." S.C. replied, "Yes he did, I wouldn't be going through all this sh-t if he didn't." S.C. also asked how S.E. learned about the allegations and how S.E. found her. S.E. did not immediately reply.

Jenkins called S.E. again and stated that S.C. "really needs to understand how much time I'm looking at, you know? This is crazy." He also stated, "She needs to recant her statements because . . . it's not the truth. Like it's not what happened, so how can you f--king say that and be okay with that." Jenkins continued, "Like I'm looking at . . . the first count I'm looking at 12 to 30 . . . and then the second count is 0 to 15." He added, "She needs to understand the severity of this, and that this is not a f--king game, like this is crazy." Jenkins then asked S.E., "Do you understand where I'm coming from?"

Two hours after that phone call, S.E. responded by message to S.C. S.E. told S.C. that she learned about the allegations "through the grape vine." S.E. also stated, "I'm hearing multiple stories tho . . . you realize he's gonna be going away [a long] time? Like 15-30 years . . . this is no joke. . . . I'm shocked."

S.C. responded that she did not believe that S.E. learned about the allegations "through the grapevine" because S.C. only told people in her inner circle and because the information was not public. S.C. wrote that she knew that S.E. had spoken to Jenkins. S.C. said she was not comfortable providing S.E. with any further information and asked her

not to contact her again. S.E. responded, “I respect that [and] I’m sorry you[’re] going through this.”

Jenkin’s October 25, 2023 Phone Call

The next day, Jenkins called S.E. again. Jenkins asked, “So, do you remember what I told you the other day, how, like, what I was telling you, about, you know what I’m talking about?” S.E. responded, “Yeah.” Jenkins clarified, “how she needs to understand,” referring to S.C. Jenkins asked, “What’s up with that?” and S.E. responded, “she doesn’t feel bad, she’s being a straight up b-tch.” S.E. then offered to read her message exchange with S.C., which Jenkins declined. Towards the end of the call, S.E. stated, “she said she wouldn’t be doing all of this if it wasn’t true.”

On October 26, 2023, S.C. contacted an Anoka County detective with screenshots of her Facebook conversation with S.E. According to the detective, S.C. was “traumatized” and “very disturbed” by S.E.’s messages. After learning about these messages, a Minneapolis police detective spoke with S.E. That detective played audio recordings of S.E.’s phone calls with Jenkins. The detective asked S.E. why she contacted S.C., and S.E. explained that she wanted to know whether the allegations were true. The detective reminded S.E. that he reviewed the phone calls and the messages, and that it was “apparent” that Jenkins had “put [S.E.] up to this.” S.E. testified that she admitted to the county detective that she contacted S.C. on behalf of Jenkins after feeling pressured to do so.

At trial, S.E. denied understanding what Jenkins meant when he asked, “What’s up with that,” referencing his earlier statement to Jenkins that S.C. needed to recant. The prosecutor asked S.E., “Did you understand it to mean that you were supposed to message

[S.C.] and make her understand?” S.E. answered, “He didn’t ask me to do that.” S.E. also testified that she “chose to message” S.C. “out of [her] own free will” and that, “[r]egardless of what [Jenkins] wanted [her] to say, [S.E.] needed [S.C.] to know that if she was lying, how serious it is[.]”

April 2025 Video Calls

The state also introduced two recordings of video calls in April 2025 between Jenkins and S.E. In the April 17 video call, Jenkins and S.E. discussed the fact that S.E. had been subpoenaed as a witness for his upcoming trial. S.E. asked what the state would want from her as a witness, and Jenkins suggested that it was a “desperate attempt” by the state “to make sh-t sticky” because S.E. was his girlfriend. Jenkins also referenced the Minneapolis police detective’s call with S.E., which he described as an attempt to “intimidate” and “coerce” S.E.

In the April 25 video call, S.E. confirmed with Jenkins that she had to testify at trial. She explained that the state wanted her to testify about her conversation with the Minneapolis police detective. S.E. also told Jenkins that if she had to testify about something that could harm him, it would be “out of [her] control.” When S.E. reminded Jenkins of his jail phone calls in October 2023 and how he said that S.C. needed to recant, Jenkins defended his statements as “self-expression.” S.E. told Jenkins that she was going to “block him” and “cut [him] off” because his “baggage was affecting [her] life,” and Jenkins replied that it was the prosecutor who was affecting her life.

Alleged Jail Solicitation

M.H. was Jenkins's jail cellmate for approximately two weeks, prior to his trial for CSC. He explained that Jenkins discussed his case with him. M.H. testified that Jenkins asked him for help with his CSC case, stating, "[Jenkins] asked me if I knew anybody or if myself was willing to harm [S.C.] to protect himself." M.H. did not take Jenkins seriously at first, but he began writing down what Jenkins told him because he "wanted to keep record" of it and because he "really didn't want to be involved in it."

One of M.H.'s handwritten notes, dated January 2, 2024, states, "Jenkins confirms he wants [S.C.] to disappear before trial in April." On January 3, M.H. wrote, "Jenkins confirms he would pay up to \$3,000 cash to make her disappear." M.H. testified that Jenkins told him, "the easiest and quickest and the unlikely seen way would be to add fentanyl to her coffee at a coffee shop." Jenkins also said that "it would be easier for a female to do it 'cause she's very friendly" and that if a man approached her it "might be a little more intimidating." Jenkins also specified the coffee shop that S.C. frequented.

Jenkins gave M.H. a description of S.C., describing her "as a thicker woman, not too skinny, not fat, just kind of in the middle." He also described her as having tattoos, earrings, and a nose ring. Jenkins told M.H. about the specific car that S.C. drove, the sticker on the car's back windshield, and her apartment. M.H. wanted to see if Jenkins "really wanted this kind of thing done," so M.H. "fed into it" and "kind of interrogated him at the same time as [Jenkins] was asking [him] all this." M.H. continued writing about his conversations with Jenkins and held onto them until "the time was right."

M.H. eventually disclosed the substance of these conversations to jail authorities. M.H. also met with the Minneapolis police detective, who later corroborated what M.H. told him about S.C., such as where she lived, her tattoos, her car, and the sticker on the back of her car. M.H. testified that Jenkins did not give him any cash or demonstrate an ability to pay him at all, did not provide M.H. the fentanyl, did not instruct M.H. where to procure the fentanyl, did not arrange for M.H. to go to the coffee shop with anyone, and did not give the name of a woman who could slip the fentanyl in S.C.'s coffee. M.H. also testified there was "nothing on paper" about the plans to make S.C. disappear and that it was "all talk, talk, talk."

Jury Instructions

The parties had a lengthy discussion over the proper jury instructions.³ The final charges as presented to the jury were attempted aggravated first-degree witness tampering⁴ under Minnesota Statutes section 609.498, subdivision 1b(a)(1), and third-degree witness tampering⁵ under Minnesota Statutes section 609.498, subdivision 2a(a)(4) (2022).

Jenkins requested that the district court include the "impossibility of attempt" jury instruction, to which the state objected. The state argued that the case centered around Jenkins's behavior while in jail, and that it did not want to mislead the jury to believe that just because Jenkins and M.H. were in jail that an attempt to kill a witness was impossible.

³ During the jury instruction discussions, the state amended the charges for a third time.

⁴ Identified as count 1 in the verdict form and count 2 in the warrant of commitment.

⁵ Identified as count 2 in the verdict form and count 3 in the warrant of commitment.

In response, counsel for Jenkins argued that M.H. testified that any alleged attempt to kill the witness was “a mere fiction” because M.H. testified that “there was no way he [was] going to carry this out” and that “he had no idea how long anybody was going to be in jail.” The district court excluded the impossibility-of-attempt jury instruction, stating, “I don’t think it is obvious that it couldn’t have been carried out. You asked the questions. Those questions are geared more towards was there a substantial step[.]”

For the attempted aggravated first-degree witness tampering count, the district court instructed the jury on the crime of attempt. The district court instructed that, “whoever causes or threatens to cause great bodily harm or death to another person while intentionally preventing or dissuading, or attempting to prevent or dissuade, a person who is or may become a witness from attending or testifying at any criminal trial or proceeding is guilty of a crime.” The district court continued, “A person is guilty of an attempt to commit a crime when, with intent to commit the crime, the person does an act that is a substantial step [t]oward, and more than mere preparation for, the commission of a crime.”

Verdict and Sentencing

The jury found Jenkins guilty of both attempted aggravated first-degree witness tampering, and third-degree witness tampering. The district court convicted Jenkins and sentenced him to 73 months in prison for attempted aggravated first-degree witness tampering. The district court also convicted Jenkins of the third-degree witness tampering and imposed a concurrent sentence of 90 days.⁶ Jenkins appeals.

⁶ Jenkins received 90 days credit for time served.

DECISION

Jenkins raises two arguments on appeal. First, he argues that his conviction for attempted aggravated first-degree witness tampering must be reversed because there is insufficient evidence to prove that he took a substantial step toward “preventing or dissuading or attempting to dissuade” S.C. from testifying. Second, Jenkins argues that his conviction for third-degree witness tampering must be reversed because the circumstances support an alternative reasonable hypothesis that he was merely expressing frustration over his possible prison sentence and not attempting to influence a person to provide false information concerning a crime to law enforcement authorities. We address each argument in turn.

I. The evidence is insufficient to sustain Jenkins’s conviction for attempted aggravated first-degree witness tampering.

First, Jenkins argues that the state presented insufficient evidence to sustain his conviction for attempted aggravated first-degree witness tampering.⁷ Specifically, he argues that the evidence was insufficient to prove that he took a substantial step toward attempting to prevent or dissuade S.C. from attending or testifying at trial. *See* Minn. Stat. §§ 609.17, subd. 1, .498, subd. 1b(a)(1). And even if his statements to his cellmate were enough to constitute an attempt to prevent or dissuade S.C., the state’s evidence was insufficient to prove that he took a substantial step toward threatening S.C.

⁷ Jenkins also argues that attempted aggravated first-degree witness tampering is not a cognizable crime under Minnesota law. Because we resolve this case on the narrow grounds of sufficiency of the evidence, we do not address whether the offense is recognized in Minnesota. However, our decision should not be interpreted as affirming that attempted aggravated first-degree witness tampering is a valid crime.

Against this backdrop, we turn to the standard of review. When reviewing a sufficiency-of-the-evidence challenge, we consider whether the state relied on direct or circumstantial evidence at trial. *State v. Segura*, 2 N.W.3d 142, 155 (Minn. 2024). “Direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Jones*, 4 N.W.3d. 495, 501 (Minn. 2024) (quotations omitted). Circumstantial evidence, in contrast, 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) (quotation omitted). If a conviction is based on circumstantial evidence, we apply a heightened standard of review. *Segura*, 2 N.W.3d at 155.

The state argues that the direct evidence standard of review applies because it presented M.H.’s testimony and his recorded interview at the jail. We agree that both constitute direct evidence and conclude that the direct evidence standard of review applies. *See State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (stating witness testimony serves as direct evidence); *State v. Blevins*, 10 N.W.3d 29, 40 (Minn. 2024) (stating that video recordings are direct evidence of “what they show”).

For an element proven by direct evidence, “we painstakingly review the record to determine whether that evidence, viewed in the light most favorable to the verdict, was sufficient to permit the jurors to reach the verdict that they did.” *Segura*, 2 N.W.3d at 155 (quotation omitted). We “view the evidence in the light most favorable to the verdict and assume that the jury disbelieved any evidence that conflicts with the verdict.” *State v. Nyonteh*, 24 N.W.3d 271, 283 (Minn. 2025) (quotation omitted). If the direct evidence is

sufficient, the verdict will be sustained if, giving due regard to the presumption of innocence and the state's burden to prove the offense beyond a reasonable doubt, the jury could "reasonably have found the defendant guilty of the charged offense." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016).

Jenkins was convicted of attempted witness tampering which provides, "Whoever, with intent to commit a crime, does an act which is a substantial step toward, and more than preparation for, the commission of the crime is guilty of an attempt to commit that crime." Minn. Stat. § 609.17, subd. 1(2022). The underlying offense for which Jenkins was convicted was aggravated first-degree witness tampering, which provides that:

(a) A person is guilty of aggravated first-degree witness tampering if the person causes or, by means of an implicit or explicit credible threat, threatens to cause great bodily harm or death to another in the course of committing any of the following acts intentionally:

(1) preventing or dissuading or attempting to prevent or dissuade a person who is or may become a witness from attending or testifying at any criminal trial or proceeding[.]

Minn. Stat. § 609.498, subd. 1b(a)(1).

To prove Jenkins committed attempted aggravated first-degree witness tampering, the state had to prove that Jenkins took a substantial step toward preventing or dissuading or attempting to prevent or dissuade S.C. from testifying at his upcoming trial. *See* Minn. Stat. §§ 609.17, subd. 1, .498, subd. 1b(a)(1).

A "substantial step" requires the state to prove that a person performed an act that was "considerable in importance, value, degree, amount or extent" towards the commission

of the intended crime. *State v. Degroot*, 946 N.W.2d 354, 360 (Minn. 2020) (quoting *The American Heritage Dictionary of the English Language* 1738 (5th ed. 2018)). The words, “more than preparation for . . . excludes substantial steps that occur beforehand to make ready for the intended offense.” *Degroot*, 946 N.W.2d at 361. Notably, the state need not prove that a “substantial step occurred at the time and place of the intended crime.” *Id.*

The supreme court has stated that an otherwise innocent act may rise to criminal conduct, but that “the moment that preparations for a crime become criminal conduct is often difficult to ascertain.” *Id.* at 363. Indeed, “[w]hat is sufficient in one case might not be sufficient in another.” *Id.* However, there is “no definite rule, applicable to all cases, [that] can be laid down as to what constitutes an attempt within the meaning of our statute. Each case must depend largely upon its particular facts and the inferences which the jury may reasonably draw therefrom.” *Id.* (quotation omitted).

The relevant facts proved, giving due deference to the jury’s credibility determinations, are as follows: Jenkins and M.H. were cellmates for approximately two weeks. Jenkins asked M.H. whether he knew anyone who was willing to harm S.C. or make her disappear before his trial date. Jenkins discussed the plan with M.H. and provided M.H. with her name, her physical description, the coffee shop that she frequented, the car she drove, a sticker she had on the car’s back windshield, and the apartment she lived in, and suggested that the “easiest and quickest” method was by “add[ing] fentanyl to her coffee at a coffee shop.” Jenkins mentioned that it would be easier if a female added fentanyl to S.C.’s coffee because a male would be “intimidating” for her.

M.H. took handwritten notes of his discussions with Jenkins. Two of the notes, dated January 2 and 3, 2024, state: “Jenkins confirms he wants [S.C.] to disappear before trial in April” and “Jenkins confirms he would pay up to \$3,000 cash to make her disappear, says put fentanyl in coffee.” M.H. testified that Jenkins did not give him any cash or demonstrate an ability to pay him, did not provide M.H. the fentanyl, did not instruct M.H. where to procure the fentanyl, did not arrange for M.H. to go to the coffee shop with anyone, and did not give the name of a woman who could slip the fentanyl in S.C.’s coffee. M.H. also testified that Jenkins assumed that M.H. would be released before him but that there was “nothing on paper” about the plans to make S.C. disappear and that it was “all talk, talk, talk.” M.H. testified that he did not take Jenkins seriously at first, but he wrote about his discussions with Jenkins because he “wanted to keep record” of it and because he “really didn’t want to be involved in it.”

Jenkins argues that the evidence was insufficient to prove that he took a substantial step towards “preventing or dissuading or attempting to prevent or dissuade a person who is or may become a witness from attending or testifying at any criminal trial or proceeding.” Minn. Stat. § 609.498, subd. 1b(a)(1). Jenkins relies on *Degroot*, 946 N.W.2d at 361 and *State v. Wilkie*, 946 N.W.2d 348 (Minn. 2020), for the assertion that “[t]alking over a plan with a cellmate to make a witness disappear is, at most, an act that occurred beforehand to make ready for the intended offense, and not a substantial step.”

Degroot and *Wilkie* both involved defendants who were charged with attempted third-degree criminal sexual conduct. *Degroot*, 946 N.W.2d at 358-59; *Wilkie*, 946 N.W.2d at 350-51. *Degroot* solicited sexual encounters online from a decoy-minor. *Degroot*, 946

N.W.2d at 363. Degroot asked the decoy whether “[he] had been a good boy” and referenced using a belt if the decoy had been “naughty.” *Id.* After agreeing to meet at the decoy’s aunt’s home, Degroot “entered his car with a bag containing an enema, personal lubrication, a long-handled spoon, and a belt.” *Id.* Degroot arrived at the home, confirmed he was at the correct address, and walked toward the home carrying the bag. *Id.* He was charged with attempted third-degree criminal sexual conduct. *Id.*

On appeal, Degroot challenged his conviction on sufficiency-of-the-evidence grounds. *Id.* at 363-64. In affirming his conviction, the supreme court concluded that Degroot took a substantial step toward the offense “*by arranging to meet the victim and gathering the necessary supplies.*” *Id.* at 364 (emphasis added). Degroot “moved beyond preparation” by driving to the agreed upon location, arriving at the parking lot and walking up to the home with the bag of items he intended to use on the decoy. *Id.*

Likewise in *Wilkie*, Wilkie communicated with a decoy-minor, repeatedly requested nude photographs, and agreed to meet the decoy the next day at a designated location. 946 N.W.2d at 353. The following day, while driving to that location, Wilkie spoke on the phone with the decoy, discussing how best to avoid detection and getting in trouble. *Id.* They eventually agreed to meet at the decoy’s home. *Id.* Wilkie parked in front of the home, walked up to the house and knocked on the door. *Id.* The supreme court found this was sufficient to prove that “he took a substantial step toward the offense *by arranging to meet [the decoy]*, and he moved beyond preparation when he walked up to [the decoy’s] house and knocked on the door.” *Id.* (emphasis added).

Degroot and *Wilkie* show that a substantial step toward the crime may occur when the defendant arranges to meet with the other person or gathers the necessary items to complete the intended crime. In each case, there was an overt act by the defendant.

We are not persuaded that the evidence is sufficient to prove that Jenkins took a substantial step toward the commission of the crime. Here, the substantial step alleged by the state consists solely of statements made by Jenkins to M.H., but there was no evidence that Jenkins took an affirmative act to further his plans. Indeed, M.H. testified that there was “nothing on paper” and that “[t]his is all talk, talk, talk.” Moreover, Jenkins never gave fentanyl to M.H., did not instruct him where to procure the fentanyl, and provided no arrangements for M.H. to go to a coffee shop with anyone. As for Jenkins’s offer to pay M.H. \$3,000, Jenkins did not demonstrate an ability to pay. Jenkins did not coordinate with anyone to facilitate payment and did not provide a date to transfer the money or suggest the form of payment that he would use.

In sum, the state presented insufficient evidence that Jenkins took a substantial step toward preventing or dissuading or attempting to prevent or dissuade S.C. from testifying at his upcoming criminal trial and we reverse the conviction for attempted aggravated first-degree witness tampering.⁸

⁸ Jenkins also argues that the district court abused its discretion when it denied his request for an impossibility-of-attempt jury instruction. Because we conclude that the evidence was insufficient to sustain his conviction for attempted aggravated first-degree witness tampering, we do not address his jury instruction argument.

II. There was sufficient evidence to sustain Jenkins’s conviction for third-degree witness tampering.

Jenkins next argues that the evidence was insufficient to sustain his conviction for third-degree witness tampering. He contends that following his phone calls with S.E., S.E. did not threaten or use intimidating language to influence S.C. to provide false information to law enforcement.

Third-degree witness tampering requires the actor to, “by means of intimidation, intentionally influence[] or attempt[] to influence a person to provide false information concerning a crime to law enforcement authorities.” Minn. Stat. § 609.498, subd. 2a(a)(4). The legislature’s use of the words “intentionally” and “attempt” make witness tampering a specific-intent crime. *State v. Muckle*, 2017 WL 6272932, at *4 (Minn. App. Dec. 11, 2017) (citing *State v. Collins*, 580 N.W.2d 36, 44 (Minn. App. 1988)), *rev. denied* (Minn. Feb. 20, 2018). A person acts “intentionally” when they believe that the act, if performed, will cause a certain result. Minn. Stat. § 609.02, subd. 9(3) (2022). “Intent is a state of mind, and therefore, it is generally proved circumstantially—by drawing inferences from the defendant’s words and actions in light of the totality of the circumstances.” *State v. Jones*, 4 N.W.3d 495, 501 (Minn. 2024) (quotation omitted).

A. Standard of Review

Both parties agree that the two-step circumstantial evidence standard applies here. “The first step requires us to winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury’s verdict, which results in a subset of facts that constitute the circumstances proved.” *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026)

(quotation omitted). At the second step, “we consider whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* (quotation omitted).

B. Circumstances Proved

The circumstances proved include the following. Jenkins was charged with first-degree and third-degree CSC for acts that occurred on October 17, 2023. Five days later, while in jail, Jenkins called his ex-girlfriend, S.E., and discussed the charges. Jenkins shared S.C.’s name with S.E. and the number of years he could be sentenced to prison. After that phone call, S.E. found S.C. on Facebook and sent her a message asking, “Did [Jenkins] really do that to you? I was just dating [him] less than a month ago . . . [and] I am so confused right now . . . we literally just broke up [and] I don’t even know what to think.” S.C. replied, “Yes he did, I wouldn’t be going through all this sh-t if he didn’t.” S.C. also stated, “I don’t blame you for asking me or for being confused. [H]ow did you find out and how did you find me?” S.E. did not reply right away.

On October 24, 2023, Jenkins and S.E. had another phone conversation where Jenkins stated that S.C. needed to understand how much time he could serve in prison. He also stated, “She needs to recant her statements because . . . it’s not the truth. Like it’s not what happened, so how can you f--king say that and be okay with that.” Jenkins reiterated the amount of time he was facing and stated, “[S.C.] needs to understand the severity of this and that this is not a f--king game.” He then asked S.E., “You understand where I’m coming from?”

Shortly after that phone call, S.E. replied to S.C.'s Facebook message, stating that she learned about the allegations "through the grape vine" and had heard "multiple stories." S.E. also wrote, "... you realize he's gonna be going away [a long] time? Like 15-30 years ... this is no joke ... I'm shocked." S.C. replied affirming that her allegations were true, that she knew S.E. had spoken to Jenkins because S.C. only told a few people in her inner circle, and that the allegations were not public knowledge. S.C. told S.E. that she was not comfortable answering any other questions and asked her not to contact her again.

The next day, Jenkins called S.E. again. He followed up on S.C. "need[ing] to understand" and asked S.E., "What's up with that?" S.E. told Jenkins, "She doesn't feel bad, she's being a straight up b-tch." Towards the end of the call, S.E. stated, "she said she wouldn't be doing all of this if it wasn't true." When the county detective asked S.E. about her Facebook messages, S.E. eventually confirmed that she messaged S.C. on Jenkins's behalf.

The county detective testified that on October 26, 2023, S.C. contacted him with screenshots of the Facebook messenger conversation with S.E. The detective also testified that S.C. was "traumatized" and "very disturbed" by S.E.'s messages. The detective added that inmates are notified at the beginning of phone calls that their calls are "subject to recording and monitoring."

C. Reasonable Inferences Drawn from the Circumstances Proved

Having established the circumstances proved, we next consider whether those circumstances are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Firkus*, 31 N.W.3d at 483. We give no deference to the factfinder and instead

independently evaluate the reasonableness of the inferences. *State v. Isaac*, 9 N.W.3d 812, 818 (Minn. 2024).

Viewed as a whole, the circumstances proved are consistent with the hypothesis that Jenkins is guilty and inconsistent with any rational hypothesis other than guilt. The timeline of events supports that conclusion. During the first phone call with S.E., Jenkins shared S.C.’s name and how long he could be in prison. Immediately after that phone call, S.E. messaged S.C. asking if the allegations against Jenkins were true. The next day, Jenkins spoke with S.E. again, emphasizing that “[S.C.] needs to understand the severity of this and that this is not a f--king game,” and that she needed to recant her statements. Jenkins also asked S.E., “You understand where I’m coming from?” After that phone call, S.E. messaged S.C., stating “. . . you realize he’s gonna be going away [a long] time? Like 15 to 30 years . . . this is no joke” The following day, Jenkins spoke with S.E. again and followed up on whether S.C. understood the severity of the allegations or was going to recant her statement. S.E. replied, “She doesn’t feel bad, she’s being a straight up b-tch.” Towards the end of the call, S.E. stated, “she said she wouldn’t be doing all of this if it wasn’t true.”

These circumstances are consistent with Jenkins’s guilt. Notably, after the second phone call, S.E. messaged S.C. using similar language used by Jenkins earlier that day by saying that Jenkins was facing “15 to 30 years.” While Jenkins’s statements during the phone calls with S.E. were veiled, they make it clear that he intended to influence S.C. through S.E.

Jenkins argues that an alternative reasonable hypothesis from these circumstances is that he merely “expressed his frustration over how much time he was facing because of [c]omplainant’s accusations” and that “S.E. was trying to find out more information about the allegations” rather than intimidate S.C. into recanting. He adds that S.C.’s reaction to S.E.’s messages are “more likely a response to her feelings toward Jenkins and the underlying charge rather than actual fear from the conversation with S.E.”

In support of his argument, Jenkins cites *State v. McGinnis*, No. A15-1043, 2016 WL 3659127, at * 4 (Minn. App. July 11, 2016), *rev. denied* (Minn. Sept. 28, 2016). There, McGinnis met with the victim at a gas station, paced in front of the victim, and pointed a gun at the victim stating, “If the cops talk to you, you don’t know me, you weren’t there, [you] don’t know nothing.” *Id.* The victim was reluctant to meet with McGinnis in the first place because she feared that he would shoot her. *Id.* One of the victim’s friends testified that following the meeting, the victim appeared scared. *Id.* On appeal, McGinnis argued that the evidence was insufficient to prove that he intimidated the victim. *Id.* This court concluded that the evidence was sufficient to sustain McGinnis’s conviction for third-degree witness tampering. *Id.*

Unlike *McGinnis*, Jenkins contends that he and S.E. did not use any threats, force, or intimidation against S.C., did not tell her what to say, or otherwise imply that she would be harmed if she refused to recant. We are not persuaded.

It is true that unlike *McGinnis*, Jenkins did not use any overt threats, force, or intimidation against S.C. However, the circumstances proved show that Jenkins enlisted the help of S.E. to get S.C. to recant her statements. Jenkins gave S.E. clear instructions

that S.C. needed to understand the severity of her allegations, recant her statements, and realize that it was not a joke. And S.E. relayed that message to S.C. later that day. Moreover, S.E. later confirmed that she messaged S.C. on Jenkins's behalf. In short, Jenkins's claim that he merely expressed his frustration over the matter is not a reasonable, alternative hypothesis.

Accordingly, the evidence is sufficient to sustain Jenkins's conviction for third-degree witness tampering.

In sum, we reverse Jenkins's attempted aggravated first-degree witness tampering conviction because, applying the direct-evidence standard of review, the state presented insufficient evidence that Jenkins took a substantial step toward preventing, dissuading, or attempting to prevent or dissuade S.C. from testifying at his upcoming criminal trial. We affirm Jenkins's third-degree witness tampering conviction because, applying the circumstantial-evidence standard, we conclude that there was sufficient evidence to convict Jenkins because the proven subset of facts is "consistent with the hypothesis that Jenkins is guilty and inconsistent with any other rational hypothesis except that of guilt." We therefore affirm in part, reverse in part, and remand for the district court to vacate Jenkins's

attempted aggravated first-degree witness tampering conviction and to resentence Jenkins for the third-degree witness tampering conviction.⁹

Affirmed in part, reversed in part, and remanded.

⁹ Jenkins also argues that his sentence must be reversed because the district court displayed actual bias at his sentencing hearing. He alleges that the district court's disagreement with the state's charging decision and the district court's frustration with the parties constitutes actual bias. Because we conclude there was insufficient evidence to sustain the attempted aggravated first-degree witness-tampering charge and reverse and remand for resentencing, we need not fully address this argument. But even if we did, we are not convinced the district court exhibited actual bias. A criminal defendant has a constitutional right to a neutral tribunal. *State v. Malone*, 963 N.W.2d 453, 468 (Minn. 2021). However, "a judge's comments that constitute 'a valid observation based on the history of the case' rather than 'prejudgment on the merits of the underlying charges' do not amount to actual bias." *Id.* (quoting *State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008)). Because we presume that a district court discharges its duties properly, the challenging party bears a heavy burden of showing actual bias. *Id.* Here, after hearing the parties' arguments and Jenkins's statement, the district court stated, "I think the thing that is most frustrating to me is the fact that I am limited to sentencing you as an attempt, because I don't think you can attempt to attempt. I think it was witness tampering, and it should be higher." The district court also expressed sympathy for the victim, stating "This justice system has failed this victim repeatedly. It's so shameful." The district court's comments were a valid observation based on the history of the case.