This opinion is nonprecedential except as provided by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

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0354

State of Minnesota,
Respondent,

vs.

John Kevin David Scruggs,
Appellant.

Filed December 19, 2022
Affirmed
Worke, Judge

Mille Lacs County District Court
File No. 48-CR-18-1818

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Joe Walsh, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

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

Mark D. Nyvold, Special Assistant Public Defender, Fridley, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Smith, Tracy M., Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his convictions of second-degree attempted murder and several other offenses. He argues that the evidence is insufficient to prove second-degree attempted murder, that the prosecutor committed misconduct, and that he received ineffective assistance of counsel. We affirm.

FACTS

Appellant went to trial on several criminal charges, including attempted second-degree murder, arising from a confrontation with C.A.

C.A. used to buy drugs from B.B. On one occasion, C.A. went to B.B.'s house to obtain drugs. B.B.'s son handed him the drugs through the driver's window of C.A.'s car. C.A. drove off without paying. B.B. informed C.A. that she was unhappy about this incident.

About six months later, C.A. stopped at his mother's house. His wife, N.A., waited for him in their vehicle. When C.A. exited the house and walked toward his vehicle, he saw Scruggs and B.B. arrive in a vehicle and park near his vehicle. B.B. had been Scruggs's occasional significant other. And at the time, Scruggs was raising B.B.'s son.

C.A. testified that Scruggs and B.B. approached him and that Scruggs was holding a gun. C.A. testified that Scruggs and B.B. started yelling that C.A. "hurt [their] kid" and that they "wanted money." C.A. replied that Scruggs and B.B. would not get any money from him and they if they wanted money, Scruggs should put the gun down and fight C.A.

C.A. testified that about a minute into the confrontation, Scruggs pointed the gun at his head and shot at him from about an "arm's length away." C.A. testified that he "moved [his] head to the side" and the bullet hit his right ear.

N.A. similarly described how Scruggs shot "towards" C.A.'s head. She testified that C.A. would have been shot in the head had he not moved.

A neighbor witnessed the confrontation from across the street. He testified that Scruggs and C.A. were arguing from about five feet apart. The neighbor testified that C.A. initially said that he had no money but then "pulled some money or somethin[g] out of his pocket," thr[ew] it on the ground," then "reached down to grab it" on Scruggs's command before "lung[ing]" at Scruggs. The neighbor testified that Scruggs then fired at C.A.

After being shot, C.A. reached into his car and pressed a button on his steering wheel that allowed him to call 911. C.A. testified that someone was punching him in the back while he tried calling 911.

The state presented a recording of the 911 call at trial. Initially, a voice is heard demanding money and another voice is heard yelling, "call 911 right now." The person yelling to call 911 then yelled, "this guy shot me in the ear." C.A. identified himself to the 911 dispatcher and reported that the assailants fled down Ojibwe Drive in a vehicle. He stated that he had been shot with a "silver handgun." He also stated that someone "shot [him] in the leg." N.A. testified that the handgun had a black handle. According to C.A.'s and N.A.'s testimony, Scruggs fired several shots, one of which struck C.A.'s right leg.

Law enforcement discovered three .40-caliber bullet casings at the scene and a .40-caliber handgun with a silver slide and a black handle on Ojibwe Drive. The handgun had

a 14-round magazine with ten bullets in the magazine and one in the chamber. Toolmark analysis showed that the handgun ejected the bullet casings found at the scene.

Scruggs testified that he arrived at C.A.'s mother's house under the impression that he was taking B.B. to a friend's house. Scruggs claimed that B.B. approached C.A. and that it looked like they were going to fight. Scruggs testified that he tried to remove B.B. from the confrontation but that C.A. started swinging at him. Scruggs claimed that he acted in self-defense and disarmed a gun and a knife from C.A. He claimed that three gunshots occurred accidentally while he disarmed C.A. and that the third shot hit C.A.'s leg.

The jury found Scruggs guilty of seven offenses, including attempted second-degree murder. The district court sentenced Scruggs to 183 months in prison for the attempted second-degree murder conviction. This appeal followed.

DECISION

Sufficiency of the evidence

Scruggs argues that the evidence is insufficient to support his attempted second-degree murder conviction because the circumstantial evidence failed to show that he acted "with intent to" kill C.A. *See* Minn. Stat. § 609.19, subd. 1(1) (2018). The parties agree that the state relied on circumstantial evidence to prove Scruggs's intent. *See State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015) ("It is rare for the [s]tate to establish a defendant's state of mind through direct evidence.").

Evidence is circumstantial when it "requires an inferential step to prove a fact." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017). When such evidence is necessary to prove a disputed element, we apply a "heightened two-step standard" to the sufficiency of

the evidence. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). First, we identify the circumstances proved by the state with deference to the jury's acceptance of the state's evidence and rejection of any evidence inconsistent with the circumstances proved. *Id.* Second, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis [but] guilt." *Id.* (quotation omitted). "We give no deference to the fact finder's choice between reasonable inferences." *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010) (quotations omitted). We must reverse if the circumstances proved permit a reasonable inference other than guilt. *See id.* at 481.

"With intent to" kill means that the defendant's purpose was to kill or that the defendant "believe[d] [that] [his] act, if successful," would cause the victim's death. *See* Minn. Stat. §§ 609.19, subd. 1(1); 609.02, subd. 9(4) (2018). "Intent can be inferred from the words and acts of the [defendant] before and after the incident, and from the idea that a person intends the natural consequences of his or her actions." *Stiles v. State*, 664 N.W.2d 315, 320 (Minn. 2003). And in the context of a shooting, intent to kill "may be inferred from the manner of shooting the victim." *State v. Campbell*, 161 N.W.2d 47, 55 (Minn. 1968).

We now turn to the first step of circumstantial-evidence review. The circumstances proved include the following:

1. C.A. stole drugs from B.B. through her son.
2. B.B. was angry about the stolen drugs.
3. Scruggs was B.B.'s occasional significant other and was raising her son.
4. Scruggs drove with B.B. to C.A.'s mother's house.

5. Scruggs brought a fully loaded .40-caliber handgun.

6. Scruggs confronted C.A. with the gun drawn.

7. C.A. and N.A. were unarmed.

8. Scruggs and B.B. demanded money from C.A. and accused him of hurting B.B.'s son.

9. C.A. told Scruggs to fight him for the money, tossed money on the ground, and went to pick it up when Scruggs commanded before lunging at Scruggs.

10. Scruggs fired a bullet at C.A. from an arm's length away as C.A. lunged at him.

11. The bullet struck C.A.'s ear but would have struck his head if he had not moved his head.

12. While C.A. called 911, Scruggs, B.B., or both hit C.A. in the back and kept demanding money.

13. Scruggs fired two more bullets, one of which struck C.A.'s right leg.

14. Scruggs and B.B. fled in a vehicle.

On the second step of circumstantial-evidence review, we conclude that the only reasonable inference is that Scruggs intended to kill C.A. The only reasonable inference from the circumstances is that Scruggs intentionally fired directly at C.A.'s head from an arm's length away because the bullet would have struck C.A.'s head had he not moved his head. This manner of shooting evinces no less than Scruggs's belief that if his act of shooting C.A. in the head was successful, it would cause C.A.'s death. That is the natural and probable result of a headshot. The short distance from which Scruggs shot at C.A.'s head strengthens the inference of intent. So do Scruggs's likely motives through his relationships with B.B. and her son. And that C.A. was lunging at Scruggs when Scruggs

fired further strengthens the inference of intent to kill and excludes any other reasonable inference because Scruggs likely perceived that C.A. was attempting to disarm him.

Caselaw confirms that shooting at a vital area like Scruggs did here, particularly from close range, is sufficient circumstantial evidence of intent to kill. In *State v. Obasi*, Obasi shot the surviving victim "in the face" from "an arm's length." 427 N.W.2d 736, 737-38 (Minn. App. 1988). Although Obasi claimed she intended only to hurt the victim with a smaller caliber firearm, we concluded that the same "short range" as here from which Obasi shot the victim was "sufficient to show intent to kill." *Id.*

In *State v. Chuon*, we held that a shot hitting the victim "in the shoulder blade" from a "moving car" "about six to eight feet" away sufficiently proved intent to kill because the "torso" (like the head) is "an area of the body containing vital organs." 596 N.W.2d 267, 271 (Minn. App. 1999), *rev. denied* (Minn. Aug. 25, 1999). Scruggs's intent to kill here is even clearer than in *Chuon*—he shot directly at C.A.'s head, which of course contains a vital organ, while standing only an arm's length away.

Scruggs argues that the evidence leaves a reasonable inference that he intended to intimidate or injure C.A. rather than kill him. Scruggs emphasizes that he did not shoot until around a minute after the confrontation began. We are mindful that we must review the circumstantial evidence "*on the whole*" instead of "break[ing] the evidence into discrete pieces." *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010). We recognize the relevance of Scruggs's words and acts before and after the first shot in determining if one could reasonably infer that he was attempting to intimidate or injure in pursuit of money or revenge rather than to kill. But because Scruggs fired directly at C.A.'s head, the

circumstances leave no reasonable inference except that Scruggs intended to kill C.A. The evidence is therefore sufficient to sustain Scruggs's attempted second-degree murder conviction.

Pro se claims

Alleged prosecutorial misconduct

In his pro se supplemental brief, Scruggs argues that the prosecutor committed several instances of misconduct. Scruggs did not object at trial to any alleged misconduct. We apply a modified plain-error test in reviewing unobjected-to prosecutorial misconduct. *See State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010). Scruggs has the initial burden to show (1) error (2) that is plain. *See id.* "An error is plain if it is clear or obvious; this means an error that violates or contradicts case law, a rule, or an applicable standard of conduct." *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014). We need not address the other requirements of the modified plain-error test because Scruggs has failed to show plain error. *See Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011) (stating that "if . . . any one of the requirements" of the modified plain-error test "is not satisfied," the appellate court "need not address any of the others.").

District court conference

First, Scruggs claims that the prosecutor committed misconduct by telling "the judge he had no problem lying and letting the jury figure it out for themselves." Scruggs apparently refers to an on-the-record conference about swapping certain highlighted exhibits for unhighlighted ones; the exhibits used during the evidentiary phase of the trial contained highlighter markings, but the parties and the district court decided to provide

only clean copies of the exhibits to the jury. The district court asked the lawyers what to do "if we get a question about where the highlighted versions are." The prosecutor replied that, during his closing argument, he could say, "I mean, . . . you know, the versions you're being provided are not highlighted. . . . I was going to lie and say I was doing that for . . . the witness's benefit but they can imply that, right?"

Even assuming this proposed statement would have been a "lie," Scruggs's argument fails. The prosecutor did not make the statement during closing argument. The prosecutor's closest statement to the proposed "lie" during closing argument occurred when he properly stated that he was reading N.A.'s witness statement to the jury "for legal reasons." No misconduct arose from the prosecutor's suggested answer to a possible question from the jury about the swapped exhibits.

Character-impugning

Scruggs also claims that the prosecutor "berated [his] character" when cross-examining him and during closing argument.

"It is improper for a prosecutor to ask questions that are calculated to elicit or insinuate an inadmissible and highly prejudicial answer." *Francis v. State*, 729 N.W.2d 584, 590 (Minn. 2007). Such impropriety includes asking questions to prove a defendant's conformance with a bad character trait. *See* Minn. R. Evid. 404(a). On cross-examination, the prosecutor asked Scruggs about his martial-arts training and questioned why he could not use that training to pull the much smaller B.B. away from the confrontation—which Scruggs claimed he was trying to do. The prosecutor properly attempted to undermine Scruggs's story, which "differed significantly from that presented by the state's witnesses."

See State v. McDaniel, 534 N.W.2d 290, 293 (Minn. App. 1995) ("The prosecutor is allowed to explore discrepancies in testimony . . . including [that of] the defendant."), *rev. denied* (Minn. Sept. 20, 1995). The prosecutor did not impugn Scruggs's character during cross-examination.

Character attacks during closing argument are also improper. *See Francis*, 729 N.W.2d at 591. Scruggs claims misconduct in the prosecutor's assertion during closing argument that the confrontation occurred over drug money and that Scruggs was B.B.'s "muscle." But the evidence supported the assertion that Scruggs confronted and shot C.A. at least in part to obtain drug money on behalf of the much smaller B.B. *See State v. Munt*, 831 N.W.2d 569, 587 (Minn. 2013) (explaining that prosecutor may present all legitimate arguments and inferences based on the evidence). And this assertion does not go to Scruggs's character. The prosecutor did not commit misconduct by arguing that Scruggs acted as B.B.'s "muscle" in recovering drug money.

Additionally, Scruggs asserts that the prosecutor "directly instructed" the jury to consider Scruggs's character during closing argument. We have reviewed the prosecutor's closing argument and discovered nothing resembling such an instruction. The prosecutor did not impugn Scruggs's character during trial.

Other alleged misconduct

Scruggs also appears to generally claim that the prosecutor committed misconduct by "[b]erat[ing] his martial[-]art[s] skills." Scruggs does not cite to the record, otherwise explain how the prosecutor committed prejudicial misconduct, or cite any legal authority for this claim. Nonetheless, we have carefully reviewed this claim and reject it as lacking

merit. *See State v. Waiters*, 929 N.W.2d 895, 902 (Minn. 2019) (stating that reviewing court need not include detailed discussion of pro se claims that lack merit).

Ineffective assistance of counsel

Finally, Scruggs argues that he received ineffective assistance of counsel. He supports this claim with an affidavit that he did not present to the district court. We decline to address Scruggs's ineffective-assistance claim because we may not review claims that rely on allegations "outside the record on appeal." *See State v. Taylor*, 650 N.W.2d 190, 204 n.12 (Minn. 2002); Minn. R. Civ. App. P. 110.01 (providing that "the record on appeal" consists of documents, exhibits, and transcripts filed in district court).

Affirmed.