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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2298**

State of Minnesota,
Respondent,

vs.

James Allen Johnson,
Appellant.

**Filed December 16, 2013
Affirmed
Smith, Judge**

Anoka County District Court
File No. 02-CR-12-5162

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Kurt B.J. Glaser, Centerville City Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Stephen L. Smith,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Judge; Kirk, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

SMITH, Judge

We affirm appellant's convictions of misdemeanor domestic assault because the
evidence presented at trial was sufficient for the jury to find him guilty.

FACTS

Appellant James Allen Johnson's wife, L.J., told him one morning that she wanted a divorce. She slept on a couch in the basement that night. Her teenage son and one of his friends slept on additional couches in the same room. Early the next morning, Johnson entered the basement, began yelling profanities, and ordered L.J. to leave the house immediately. L.J. attempted to calm him, reiterating their plan that she would leave with the children. Johnson continued to scream at L.J., causing her to be frightened. Johnson threw his coffee cup at L.J., hitting her in the arm. L.J.'s son attempted to intervene, asking Johnson to leave the basement. Johnson confronted L.J.'s son chest-to-chest, and L.J. screamed at him to stop. Johnson seized L.J.'s arm and threw her body into a wall, injuring her shoulder. The impact also caused a sconce to fall off the wall, which struck L.J. on the arm. L.J. attempted to defend herself, swinging at Johnson as he held her against the wall. Her son's friend slept through the entire incident.

L.J.'s son summoned the police. The officers who responded noticed that L.J. was shaking and crying. Her arm was bruised and swollen. Johnson told the police that L.J. had slapped him, but the officers did not observe any resulting injuries.

The state charged Johnson with misdemeanor domestic assault (intentionally inflicting or attempting to inflict bodily harm).¹ After a jury trial, the district court

¹ The state also charged Johnson with a lesser-included offense of disorderly conduct. Johnson challenges the district court's decision (with which his counsel agreed) to use two jury forms addressing the same disorderly conduct charge. Because the district court entered a conviction order only on the domestic-assault charge and because we affirm

convicted Johnson for domestic assault and sentenced him to 90 days in jail, but it stayed execution of the sentence with the exception of the two days Johnson served while awaiting trial.

DECISION

I.

Johnson argues that the evidence supporting his conviction is insufficient as a matter of law, alleging that inconsistencies in the witnesses' testimonies render those witnesses not credible. When reviewing a sufficiency-of-the-evidence claim, we are limited to conducting a painstaking analysis of the record to determine whether the evidence, viewed in a light most favorable to the conviction, is sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We defer to the jury's determinations of witness credibility and we acknowledge that any "attempt to retry [the] case by asking us to reevaluate [witness] credibility is contrary to our role." *State v. Bliss*, 457 N.W.2d 385, 390-91 (Minn. 1990).

Johnson highlights inconsistencies between L.J.'s and her son's testimony during trial and their statements to police to argue that their testimony was not credible. For example, he argues that L.J. "fail[ed] to mention that she escalated the argument to a physical confrontation" and notes that she was inconsistent about whether her arm was

that conviction, however, his challenge to the jury's finding of guilt on one of the disorderly conduct jury forms is moot. We therefore decline to address it.

injured by the thrown coffee cup or the falling scone. He also asserts that “it strains credulity to think that a person in the same room could sleep through the confrontation that L.J. Johnson described.” But “[m]inor inconsistencies in . . . testimony, or between . . . testimony and previous statements, do not deprive a verdict of sufficient support if the . . . testimony, taken as a whole, is consistent and credible” and where any inconsistencies are “brought out and argued to the jury.” *State v. Higgins*, 422 N.W.2d 277, 281 (Minn. App. 1988). Taken as a whole, L.J.’s and her son’s testimony are consistent with regard to the confrontation in Johnson’s basement, the thrown coffee cup, Johnson’s throwing L.J. into a wall, the falling scone, and the resulting injury to L.J.’s arm. Their accounts are corroborated by the observations of the responding police officers, who testified regarding L.J.’s distress, the injury one observed to her arm, and the lack of any injury supporting Johnson’s claim that L.J. had struck him. Additionally, Johnson’s counsel challenged the inconsistencies in L.J.’s and her son’s testimony during cross-examination. The jury was free to believe their testimony nonetheless, as it apparently did.

Johnson contends, however, that our deference to the jury on witness credibility “is not without limitation,” and he cites several cases in support of his contention. But all of the cases he cites involved more than mere inconsistencies or arguable implausibility. Rather, they involved a vulnerable witness exposed to suggestive materials (*State v. Huss*, 506 N.W.2d 290, 292–93 (Minn. 1993)), a complete lack of evidence that a defendant was even in the area of a crime during its commission (*State v. Langteau*, 268 N.W.2d 76, 77 (Minn. 1978)), and a tainted lineup where there were objective differences

between a witness's description to police and her later lineup identification (*State v. Gluff*, 172 N.W.2d 63, 64-66 (Minn. 1969)). None of the conditions that afflicted the cases Johnson cites apply to his case. We therefore have no basis to override the jury's determination that the witnesses were credible notwithstanding the inconsistencies and implausibility that Johnson brought to the jury's attention at trial.

Johnson also briefly and implicitly challenges whether the evidence is sufficient to prove that L.J.'s injury was intentional rather than accidental. We need not address the argument because it is limited to a single sentence in his brief and is not supported by analysis or citations to authority. *See McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (concluding that issues that are "allude[d] to" but not argued are waived). But we note that the intent requirement of the domestic-assault statute requires that the state establish that the perpetrator intended to commit the act that caused bodily harm, it does not require the state to prove that the perpetrator intended the harmful result. *See* Minn. Stat. § 609.2242, subd. 1(2) (2010); *State v. Fleck*, 810 N.W.2d 303, 309–10 (Minn. 2012) (construing substantively identical language in Minn. Stat. § 609.02, subd. 10(2)). L.J.'s and her son's testimony support the jury's conclusion that Johnson intentionally threw a coffee cup at L.J., that he threw her into a wall, and that she was injured; it is not necessary that it find that he intended her to be injured. Thus, the intent evidence is sufficient to support the jury's verdict.

II.

Johnson asserts several additional claims in a pro se supplemental brief. With the exception of one claim—unfair surprise regarding L.J.'s shoulder injury—Johnson cites

no authority in support of his arguments, so we decline to address them. *See State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (“An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection.” (quotation omitted)), *aff’d on other grounds*, 728 N.W.2d 243 (Minn. 2007).

Johnson argues that the prosecution failed to disclose L.J.’s shoulder injury before trial, resulting in unfair surprise when she testified about it. We conclude that any error was harmless. Since Johnson concedes that “[n]o objection was made” to the testimony during trial or to the prosecutor’s mention of the testimony during his closing argument, we review for plain error only, considering whether to reverse only if (1) there was error, (2) the error was plain, and (3) the error affected Johnson’s substantial rights. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

We cannot determine from the record before us whether there was error. “Upon request” a prosecutor must disclose to the defense “any material or information within the prosecutor’s possession and control that tends to negate or reduce the guilt of the accused.” Minn. R. Crim. P. 9.04. But the record contains no indication whether discovery was requested or what was provided, and the only evidence Johnson alleges was withheld clearly did not “tend[] to negate or reduce [his] guilt.” Since we do not presume error on appeal, *White v. Minn. Dep’t of Natural Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997), we cannot conclude that any error occurred.

More importantly, it is clear that any error did not affect Johnson's substantial rights. To justify reversal, Johnson bears the burden to show that the alleged error "affected the outcome of the case." *Griller*, 583 N.W.2d at 741. No such showing exists here. Although L.J. briefly testified about a shoulder injury and the prosecutor briefly mentioned it in his closing argument, the overwhelming focus regarding L.J.'s injuries was on the photographic evidence of the bruising and swelling of her arm. This alone is sufficient to support the injury element of Johnson's domestic-assault conviction, so the shoulder testimony was superfluous. We find no likelihood that the jury's verdict rested to any significant degree on L.J.'s claim of an additional shoulder injury.

Affirmed.