STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0836

State of Minnesota,
Respondent,

vs.

Travis Clay Andersen,
Appellant.

Filed May 19, 2025
Affirmed in part, reversed in part, and remanded
Larson, Judge

Carver County District Court
File No. 10-CR-23-7

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

Mark Metz, Carver County Attorney, Kevin A. Hill, Assistant County Attorney, Chaska, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Greg Scanlan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

On direct appeal, appellant Travis Clay Andersen challenges his threats-of-violence conviction. Andersen argues: (1) the state failed to present sufficient evidence to prove the crime beyond a reasonable doubt; (2) the district court abused its discretion when it

admitted evidence of prior bad acts under Minn. R. Evid. 404(b)(1); and (3) the district court made legal errors when calculating his sentence. Because we agree with Andersen that the district court made a legal error when it calculated his sentence, we reverse in part and remand. We otherwise affirm.

FACTS

On November 29, 2022, Andersen attended criminal-court hearings at the Carver County Courthouse. After being held in contempt of court, law enforcement placed Andersen in a secure holding cell. A deputy entered the holding cell and removed Andersen's restraints after the hearings concluded. As the deputy opened the cell door, Andersen rushed past the deputy, exited the holding cell, and closed the door behind him, locking the deputy inside. Andersen exited the courthouse and attempted to flee in a bystander's car before law enforcement apprehended him. Andersen was then placed in a holding cell at the Carver County Jail.

On the same day, a detective with the Carver County Sheriff's Department was assigned to investigate Andersen's escape from custody and went to the Carver County Jail to take pictures of Andersen. When the detective entered the hallway leading to the booking area, he heard Andersen banging and yelling from inside the cell. As the detective entered the booking area, the banging and yelling got louder. After entering the booking area, the detective walked past the cell and observed Andersen in an agitated state—he was "swinging something," banging, and yelling. After the detective walked past the cell, he heard Andersen yell the detective's full name and birth date. The detective then walked back to the cell door. While the detective stood at the cell door, Andersen said to the

detective: "You're number one on my list. When I get out, I'm going to kill you." After Andersen made this statement, he swung his belly belt.[1]

The detective then walked away from the cell door to a nearby desk, where he spoke with other staff. While the detective was standing at the desk, Andersen continued swinging his belly belt inside the cell. The detective walked back to the cell door, took pictures of Andersen through the cell-door window, and left the booking area. After the detective took the photos, Andersen rushed from the back of the cell towards the cell door and swung his belly belt at the cell-door window while screaming. The detective did not tell any staff working in the booking area about the incident, but he did tell his coworkers in the general-investigations unit. The detective self-reported the incident in early December. On January 3, 2023, respondent State of Minnesota charged Andersen with threats of violence, under Minn. Stat. § 609.713, subd. 1 (2022).

After charging Andersen, the state filed a notice of intent to introduce *Spreigl* evidence.[2] The state sought to introduce evidence of Andersen's 2022 convictions for harassment and retaliation against a judicial officer.[3] These convictions stemmed from an

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[1] A "belly belt" is "a tension device that secures [] handcuffed hands to a person's waist." Andersen's belly belt was attached only to his handcuffs, allowing him to swing it.

[2] Minnesota Rule of Evidence 404(b)(1) provides that "[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith." But such evidence is admissible to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b)(1). We refer to evidence offered under one of the rule 404(b) exceptions as "*Spreigl* evidence." *State v. McLeod*, 705 N.W.2d 776, 787 (Minn. 2005) (citing *State v. Spreigl*, 139 N.W.2d 167, 173 (1965)).

[3] Although the record reflects that the March 1, 2022 incident resulted in Andersen's conviction for harassment and retaliation against a judicial officer, defense counsel and the district court referred to the March 1, 2022 offense as "stalking."

incident that occurred on March 1, 2022, where the detective was the lead investigator (the *Spreigl* incident). The district court deferred ruling on the admissibility of the *Spreigl* evidence.

A jury trial was held in October 2023, and the detective testified as the state's only witness. The detective described going to the booking area to take pictures of Andersen "after an escape." The detective characterized Andersen's demeanor inside the cell as angry and rageful. The detective also testified that he took seriously Andersen's statement that Andersen would kill the detective. The detective noted that he spoke to his family about the incident when he otherwise does not talk to his family about work. He described his reaction to Andersen's statement as "high stress" and "surprising." He testified that he had "no reason not to believe" that Andersen would attempt to kill him.

The state introduced security-camera videos (with no audio) from the jail to corroborate the detective's testimony. One video, from the exterior of Andersen's cell, corroborated the detective's testimony regarding his movements in the booking area and showed Andersen intermittently appearing in the window of the cell door. When he was visible, Andersen occasionally appeared to be speaking with an irate expression. A second video, from the interior of Andersen's cell, captured the same time period and showed Andersen engaged in a variety of aggressive behaviors. Andersen swung his belly belt toward the cell-door window and against the cell walls, appeared to scream, jumped up and down erratically, and slammed his body against the wall.

After the detective finished his initial testimony and the jury left the courtroom, the parties conferenced with the district court regarding the admissibility of the *Spreigl*

evidence. The state argued the *Spreigl* evidence was highly relevant to Andersen's motive, intent, and ability to carry out the threat. Defense counsel countered that the jury had already heard prejudicial information through the detective's mention of Andersen's "escape." Defense counsel requested "a very brief instruction about the limit . . . that [Andersen] was previously convicted of [stalking]," if the district court decided to admit the *Spreigl* evidence. The district court admitted the *Spreigl* evidence, reasoning that it was relevant to show motive and intent and supported the third element of the crime charged—whether Andersen's "words or actions created a reasonable apprehension that [he] would follow through with . . . the threat." The district court also rejected defense counsel's request to use the word "stalking," noting concerns that it would be unfairly prejudicial to Andersen.

The detective was then recalled by the state. Before the detective testified, the district court gave the following instruction:

> You're about to hear evidence of occurrences or acts by the [d]efendant on occasions other than November 29th of 2022. This evidence is being offered for the limited purpose of assisting you in determining whether the [d]efendant committed those acts with which the [d]efendant is charged in this [c]omplaint.
>
> The [d]efendant is not being tried for and may not be convicted of any offense other than the charged offense here in this courtroom. You are not to convict the [d]efendant solely because of the occurrences or acts other than the alleged incident on November 29th, 2022.

The detective then testified about the *Spreigl* incident. Specifically, the detective testified that: (1) a prosecutor called 911 on March 1, 2022, because Andersen came to their house

unannounced and uninvited around 10:00 p.m.; (2) the detective was involved in the investigation; (3) Andersen was aware of the detective's involvement; and (4) the detective's investigation uncovered that Andersen had learned significant non-public information about the prosecutor's life. Finally, returning to questioning about the incident at issue in this case, the detective testified that, "with all the information [he] had," he believed Andersen would carry out the threat on his life.

Thereafter, the state rested its case, the jury exited the courtroom, and counsel discussed the jury instructions with the district court. Regarding the *Spreigl* instruction, the district court asked defense counsel if he wanted a limiting instruction. Defense counsel answered affirmatively, and the district court included a standard limiting instruction. Following its deliberation, the jury returned a guilty verdict.

On February 22, 2024, the district court held a sentencing hearing. At this hearing, the district court sentenced Andersen for several convictions that are the subjects of separate appeals. For the threats-of-violence conviction that is the subject of this appeal, the district court sentenced Andersen to an executed term of 17.4 months in prison, to be served consecutive to sentences the district court imposed for other convictions at the same sentencing hearing.[4]

Andersen appeals.

[4] Andersen was sentenced for convictions associated with the following district court files: 10-CR-22-1120, 10-CR-23-7, 10-CR-23-8, and 10-CR-23-152. This sentencing hearing is the subject of several appeals before our court, including A24-0835, A24-0837, and A24-0838.

DECISION

Andersen challenges his conviction on two grounds. First, he argues the state failed to prove beyond a reasonable doubt that he had the required mens rea for the offense. Second, he asserts the district court abused its discretion when it admitted the *Spreigl* evidence under rule 404(b)(1). In the alternative, Andersen challenges his sentence, claiming it was improperly calculated. We address each argument in turn.

I.

Andersen first argues that the state presented insufficient evidence to sustain the guilty verdict. "When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). "The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict." *Id.* "The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the [s]tate's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense." *Id.*

"[T]he [s]tate bear[s] the burden of proving beyond a reasonable doubt every element of a charged offense in a criminal trial." *State v. Pakhnyuk*, 926 N.W.2d 914, 919 (Minn. 2019). To be found guilty of threats of violence, the state must prove that Andersen: (1) "threaten[ed], directly or indirectly," (2) "to commit any crime of violence," and (3) did

so "with purpose to terrorize another . . . or in reckless disregard of the risk of causing such terror." Minn. Stat. § 609.713, subd. 1; *see also State v. Schweppe*, 237 N.W.2d 609, 613 (Minn. 1975) (describing the three elements). Here, Andersen contends the state did not present sufficient evidence to prove the third element—that he acted "with purpose to terrorize another . . . or in reckless disregard of the risk of causing such terror." Minn. Stat. § 609.713, subd. 1; *see also State v. Rund*, 896 N.W.2d 527, 534 (Minn. 2017) ("[T]he terroristic-threats statute includes more than one mens rea: either the purpose of terrorizing or a reckless disregard of the risk of terrorizing.").

To cause terror "means to cause extreme fear by use of violence or threats." *Schweppe*, 237 N.W.2d at 614. A defendant acts with such a purpose if it is their "aim, objective, or intention" to terrorize. *Id*. And a defendant acts with reckless disregard if they are "aware of a substantial and unjustifiable risk that [their] words or actions will cause terror in another, and [they] . . . act in conscious disregard of that risk." *State v. Mrozinski*, 971 N.W.2d 233, 240 (Minn. 2022); *see also* Minn. Stat. § 609.713, subd. 1. The third element is not met when a defendant's words are "merely flippant" or "spoken in jest." *State v. Knaeble*, 652 N.W.2d 551, 557 (Minn. App. 2002), *rev. denied* (Minn. Jan. 21, 2003). And expressions of "transitory anger" are insufficient to satisfy the third element. *State v. Jones*, 451 N.W.2d 55, 63 (Minn. App. 1990), *rev. denied* (Minn. Feb. 21, 1990).

We must first determine whether the evidence used to sustain the guilty verdict on the third element was direct or circumstantial. *See State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). Direct evidence is "based on personal knowledge or observation and . . . if

true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Id.* (quotation omitted). "A state of mind generally is proved circumstantially, by inference from words and acts of the actor both before and after the incident." *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000). Here, we conclude the state relied on circumstantial evidence to prove the third element, and so apply the circumstantial-evidence test.

When applying the circumstantial-evidence test, we conduct a heightened two-step inquiry. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). First, we identify the circumstances proved. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). In doing so, "we defer to the jury's acceptance of the proof of these circumstances" and "assume that the jury believed the [s]tate's witnesses and disbelieved the defense witnesses." *Id.* at 598-99 (quotations omitted). Second, we determine if the circumstances proved, viewed "as a whole," are "consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* at 599 (quotation omitted). In this step, we do not defer "to the fact finder's choice between reasonable inferences." *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010) (quotation omitted). "Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted).

Beginning with the first step, the state proved the following circumstances at trial: (1) after entering the booking area, the detective walked past a holding cell and observed

Andersen banging and yelling inside; (2) Andersen appeared agitated and was swinging his belly belt; (3) after the detective walked by the cell, he heard Andersen yell the detective's full name and birth date; (4) the detective walked back to the cell; (5) while standing at the cell door, Andersen said to the detective: "You're number one on my list. When I get out, I'm going to kill you."; (5) Andersen's demeanor when he made this statement was "angry" and "rage[ful]"; (6) Andersen swung his belly belt at the window of the cell door after he made the statement; (7) after the detective walked away from the cell, Andersen continued swinging his belly belt; (8) the detective walked back to the cell and took photos of Andersen through the cell-door window; (9) after the detective took the photos, Andersen rushed from the back of the cell towards the cell door and swung his belly belt at the cell-door window while screaming; (10) the detective felt "high stress" after the interaction, and that reaction "surpris[ed]" him; (11) the detective took the threat seriously because he had "no reason not to believe" that Andersen would attempt to kill him after his release; (12) the detective told his family and his coworkers about the incident; and (13) the detective filed a report.

Moving to the second step, we analyze whether the circumstances proved are consistent with guilt. We conclude that they are. Andersen yelling the detective's full name and birth date, Andersen stating that he would kill the detective upon his release, Andersen's "angry" and "rage[ful]" demeanor, Andersen's aggressive behavior in swinging his belly belt at the cell door, and the detective's fearful response[5] to Andersen's

[5] A "victim's reaction to the threat is circumstantial evidence relevant to the element of intent." *Sykes v. State*, 578 N.W.2d 807, 811 (Minn. App. 1998), *rev. denied* (Minn. July

threat all support the rational hypothesis that Andersen intended to terrorize the detective or, at a minimum, acted in reckless disregard of that risk. *See* Minn. Stat. § 609.713, subd. 1.

Andersen does not disagree that the circumstances proved are consistent with guilt. Instead, he submits that the circumstances proved are also consistent with a rational hypothesis other than guilt; specifically, that Andersen was in a state of transitory anger when he threatened the detective and was not thinking about his actions. We are not persuaded.

Taking the facts in the light most favorable to the verdict, the evidence shows that Andersen was conscious of the effect he had on the detective. Andersen addressed the detective in a way that was likely to cause a reaction—using the detective's full name and birth date. When the detective responded by approaching the cell, Andersen threatened him in a detailed manner. Not only did Andersen say that he would kill the detective, but he also provided a timeframe—first thing upon Andersen's release from custody. This threat evinces a level of forethought that disproves Andersen's argument that he was experiencing transitory anger.

For these reasons, we conclude that the circumstances proved are inconsistent with any rational hypothesis except that of guilt and, on that basis, we conclude the state presented sufficient evidence to support the conviction.

16, 1998). The circumstances proved indicate that the detective experienced a strong reaction to the threat—he was "surprise[ed]" by his "high stress" response, he told his family and coworkers about the threat, and he filed a report.

II.

Andersen next challenges the district court's decision to admit the *Spreigl* evidence. *Spreigl* evidence "is not admissible to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b)(1). But such evidence may be admitted "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.*

Andersen makes two arguments regarding the *Spreigl* evidence: (1) the district court improperly limited the scope of the evidence and (2) the district court erred when it did not give an alternative jury instruction. We review both issues for an abuse of discretion. *See Griffin*, 887 N.W.2d at 261-62 (*Spreigl* evidence); *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996) (jury instruction). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

A. Scope of the Evidence

Andersen first argues that the district court abused its discretion when it denied defense counsel's motion regarding the scope of the *Spreigl* evidence. Before evidence of a prior crime or other bad act may be admitted at trial

> (1) the state must give notice of its intent to admit the evidence; (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

State v. Ness, 707 N.W.2d 676, 686 (Minn. 2006). Here, Andersen's arguments relate to the fifth requirement; he asserts that the way the state presented the *Spreigl* evidence caused undue prejudice. To evaluate this question, "we balance the relevance of the [*Spreigl* evidence], the risk of the evidence being used as propensity evidence, and the [s]tate's need to strengthen weak or inadequate proof in the case." *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009).

Beginning with the probative value, the state needed to prove beyond a reasonable doubt that Andersen's words "create[d] a reasonable apprehension that [he would] follow through with or act on the threat." *Mrozinski*, 971 N.W.2d at 240. And although the detective testified that he took Andersen's threat seriously and experienced a "high stress" reaction to it, the state had a weaker case on this element. The detective had worked as a licensed peace officer for nearly ten years and, before that, as a correctional officer. Absent the *Spreigl* evidence, it was unclear why Andersen's threat would have a particular impact on someone who had likely been the subject of threatening language on other occasions during their career. The *Spreigl* evidence helped the jury understand the context for the detective's response to Andersen's threat. Thus, the evidence had high probative value.

Moving to the potential for undue prejudice, "the overarching concern over the admission of *Spreigl* evidence is that it might be used for an improper purpose, such as suggesting that the defendant has a propensity to commit the crime or that the defendant is a proper candidate for punishment for his or her past acts." *Ness*, 707 N.W.2d. at 685 (quotation omitted). Andersen contends that the district court's narrowing instruction—that the detective could not use the word "stalking"—increased the potential for prejudice.

According to Andersen, this narrowing allowed the jury to speculate that something more sinister occurred, such as "violence or homicide." But this overstates the record. The state asked the detective why the prosecutor called 911. The detective answered that Andersen went to the prosecutor's home "unannounced and uninvited." Nothing in the testimony suggested that violence or homicide was involved in the incident.

Further, the cautionary instructions given by the district court "lessen[ed] the probability of undue weight being given by the jury to the [*Spreigl*] evidence." *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008); *see also State v. Clark*, 755 N.W.2d 241, 261 (Minn. 2008) (holding that district court's cautionary instructions regarding permissible uses of *Spreigl* evidence "minimized" concerns about potential for undue prejudice); *State v. Welle*, 870 N.W.2d 360, 366 (Minn. 2015) (stating that appellate courts presume jury followed cautionary instructions). Here, the district court issued a cautionary instruction before the detective testified about the *Spreigl* incident, informing the jury that they could not "convict [Andersen] solely because of the occurrences or acts other than the alleged incident on November 29th, 2022." The district court also read a standard *Spreigl* instruction prior to deliberation, again reminding the jury that they were "not to convict [Andersen] solely because of the occurrence or act on March 1, 2022." These instructions reduced the prejudicial effect of the *Spreigl* evidence.

For these reasons, we conclude that the district court did not abuse its discretion when it admitted the *Spreigl* evidence, but did not allow the detective to use the word "stalking."

B. Jury Instruction

Andersen separately argues that the district court abused its discretion when it issued its instructions to the jury regarding the *Spreigl* evidence.[6] District courts "are allowed considerable latitude" in choosing the language of jury instructions. *State v. Gray*, 456 N.W.2d 251, 258 (Minn. 1990) (quotation omitted). "[J]ury instructions must be viewed in their entirety to determine whether they fairly and adequately explained the law of the case." *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988).

Andersen first contends that the district court was required to give his defense counsel's requested jury instruction. *See State v. Broulik*, 606 N.W.2d 64, 68-71 (Minn. 2000). We disagree. *Broulik* and its progeny endorse the federal practice that, when a defendant requests a modification to the standard *Spreigl* instruction "to explain the limited purpose for which *Spreigl* evidence was admitted," the district court must modify the instruction. *See State v. DeYoung*, 672 N.W.2d 208, 212 (Minn. App. 2003). But such a "limited purpose" instruction relates to the purposes outlined in the rule: "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *See* Minn. R. Evid. 404(b). Here, Andersen did not ask the district court to specify a rule 404(b) purpose; he instead sought "a very brief instruction" to describe his prior conviction as "stalking." *Broulik* and its progeny do not require the district court to modify the standard *Spreigl* instruction to provide *facts* regarding the offense. *See* 606

[6] The state argues that defense counsel did not request an alternative jury instruction at trial. The record belies this argument. During a bench conference, defense counsel requested "a very brief instruction about the limit . . . that [Andersen] was previously convicted of [stalking]."

N.W.2d at 71 ("[F]ailure to give an instruction on the specific purpose for which [*Spreigl*] evidence may be considered is not error where no request to so instruct is made.").

Andersen argues second that the district court abused its discretion when it did not modify the standard *Spreigl* instruction to describe his prior offense as "stalking." Again, we disagree. The record demonstrates that the district court did not summarily reject Andersen's request. Instead, the district court engaged in a thoughtful analysis before deciding to provide the standard instruction. The district court reasoned that the word "stalking" has "a[n] explosive connotation," and that the defense would be "left to try to figure that out."

For these reasons, we conclude the district court did not abuse its discretion when it issued the standard *Spreigl* instruction.

III.

In the alternative, Andersen raises two challenges to his sentence. First, he argues the district court erroneously applied a three-month sentence enhancement to his permissive-consecutive sentences. Second, he asserts the district court erred when it imposed a fractional sentence. We review both issues de novo and address each in turn below. *See State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009) (whether sentence conforms to sentencing guidelines); *State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018) (interpretation of sentencing guidelines).

A. Sentence Enhancement

Andersen first challenges the district court's decision to impose both permissive-consecutive sentences and a three-month sentence enhancement. Andersen asserts that the

district court cannot impose both because a permissive-consecutive sentence requires the district court to apply a criminal-history score of zero and a three-month sentence enhancement requires the district court to apply a criminal-history score of seven or greater. We agree with Andersen.

Beginning with permissive-consecutive sentences, when, as here, an offender is convicted of multiple current offenses at the same time, concurrent sentencing is presumptive. *State v. Rannow*, 703 N.W.2d 575, 577 (Minn. App. 2005); *see also* Minn. Sent'g Guidelines 2.F (2022) ("Generally, when an offender is convicted of multiple current offenses . . . concurrent sentencing is presumptive."). But the sentencing guidelines allow for permissive-consecutive sentencing in certain instances. *See* Minn. Sent'g Guidelines 2.F.2.a. Here, the parties agree that Andersen's threats-of-violence conviction qualified for permissive-consecutive sentencing. *See* Minn. Sent'g Guidelines 6 (2022). But to impose permissive-consecutive sentencing, the district court must either "use a Criminal History Score of 0 or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration." Minn. Sent'g Guidelines 2.F.2.b. Because there is no mandatory minimum sentence for a threats-of-violence conviction, *see* Minn. Stat. § 609.11, subd. 1 (2022), the district court had to apply a criminal-history score of zero in order to impose permissive-consecutive sentences.

With regard to a three-month sentence enhancement, the Minnesota Sentencing Guidelines prescribe presumptive sentences for felony offenses. Minn. Sent'g Guidelines 2.C (2022). For any particular offense, the presumptive sentence is "presumed to be appropriate for all typical cases sharing criminal history and offense severity

characteristics." Minn. Sent'g Guidelines 1.B.13 (2022). When the cell in the applicable guideline grid is shaded, as it is for Andersen's threats-of-violence conviction, the district court must calculate a sentence range:

> If the duration for a sentence that is a presumptive commitment is found in a shaded area, the standard range – 15 percent lower and 20 percent higher than the fixed duration displayed – is permissible without departure, provided that the minimum sentence is not less than one year and one day, and the maximum sentence is not more than the statutory maximum.

Minn. Sent'g Guidelines 2.C.1. Thereafter, the district court may impose a three-month sentencing enhancement if: "(1) at least one-half custody status point is assigned; and (2) the offender's total Criminal History Score exceeds the maximum score on the applicable Grid (i.e., 7 or more)." Minn. Sent'g Guidelines 2.B.2.c (2022).

Here, to impose permissive-consecutive sentences under the plain language of the rule, the district court had to use a criminal-history score of zero. The district court used this criminal-history score to calculate Andersen's sentencing range at 12 to 14.4 months. The district court, then, applied the three-month enhancement to Andersen's sentencing range, arriving at 15 to 17.4 months. But the district court cannot impose a three-month enhancement when, as here, the defendant has a criminal-history score of zero. *Id.* (requiring criminal-history score to "exceed[] the maximum score on the applicable Grid"). Thus, because the district court needed to use a criminal-history score of zero to impose a permissive-consecutive sentence, its application of the three-month sentence enhancement was an error.

B. Fractional Sentence

Andersen finally argues that the district court erred when it imposed a fractional sentence.[7] Specifically, Andersen asserts that the plain language of the guidelines requires a district court to round down when its guideline calculation results in a fractional number. We disagree.

We use statutory-interpretation principles to interpret the sentencing guidelines. *State v. Woolridge Carter*, 9 N.W.3d 839, 843 (Minn. 2024). Our objective when interpreting the sentencing guidelines is to effectuate the intent of the Minnesota Sentencing Guidelines Commission (the commission).[8] *Id.* When interpreting the guidelines, we "presume that plain and unambiguous language in the Guidelines manifests the intent of the Commission." *Id.* at 844. Only when the language "is subject to more than one reasonable interpretation" may we "consider extrinsic sources and canons." *Id.*

We conclude that the guidelines unambiguously provide the method for the district court to calculate a sentence that is in a shaded cell: "[T]he standard range – 15 percent

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[7] Andersen argues the district court erred when it imposed a fractional sentence of 17.4 months, rather than rounding his sentence down to 17 months. Because we conclude the district court erred when it applied a three-month sentence enhancement and remand for resentencing on that basis, the upper end of Andersen's sentence range will not be 17.4 months on remand. However, because the district court may arrive at a fractional sentence on remand, we address this legal question.

[8] The legislature provides the commission with the authority to "promulgate Sentencing Guidelines for the district court." Minn. Stat. § 244.09, subd. 5 (2024). Accordingly, except for modifications to the sentencing-guidelines grid, the commission may modify the guidelines in accordance with the commission's procedural rules and without legislature approval. *Id.*, subd. 11 (2024). "Therefore, our objective when interpreting the Guidelines is to effectuate the intent of the [commission]." *State v. Woolridge Carter*, 9 N.W.3d 839, 843 (Minn. 2024).

lower and 20 percent higher than the fixed duration displayed – is permissible without departure, provided that the minimum sentence is not less than one year and one day, and the maximum sentence is not more than the statutory maximum." Minn. Sent'g Guidelines 2.C.1. Applying this language, the mathematical calculation may, at times, result in a fractional sentence. Take, for example, the calculation of Andersen's sentence without a three-month enhancement. Assuming a criminal history score of 0, the cell at the intersection of an offense severity level of 4 is 12 months.[9] Minn. Sent'g Guidelines 4.A. The lower range of the sentence cannot be less than one year and one day. *See* Minn. Sent'g Guidelines 2.C.1. The higher range of the sentence may be 20% greater than 12 months, which is 14.4 months ((12 × .2) + 12 = 14.4). Under the plain language, this is the appropriate way to calculate the guideline range, and nothing in Minn. Sent'g Guidelines 2.C.1 requires the district court to modify the resulting durations.[10]

Moreover, even if the sentencing guidelines were ambiguous with respect to the commission's intent, that ambiguity is resolved by reviewing the comments. *See Woolridge Carter*, 9 N.W.3d at 846 (noting that if language of guidelines is ambiguous, we may consider nonbinding comments). Throughout the comments, the commission provides examples that include fractional sentences. *See* Minn. Sent'g Guidelines cmt.

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[9] Twelve months is equivalent to one year and one day. Minn. Sent'g Guidelines 4.A (2022).

[10] We also observe that the commission has discussed the concept of rounding down in the context of calculating felony points and does not include similar language with respect to calculating sentences. *Compare* Minn. Sent'g Guidelines 2.B.1.i (2022) (providing sum of felony weights "must be rounded down to the nearest whole number"), *with* Minn. Sent'g Guidelines 2.C.1 (providing "the standard range" for a sentence is "15 percent lower and 20 percent higher than the fixed duration displayed" in corresponding cell).

2.G.01 (2022) (providing 20.5 months as presumptive-sentence length as example); Minn. Sent'g Guidelines 4.A (providing chart with examples of executed sentences that includes fractional periods of imprisonment). Thus, we discern that it is the commission's intent to allow the district court to calculate fractional sentences.

For these reasons, we conclude the district court did not err when it imposed a fractional sentence, but did err when it applied a three-month sentence enhancement. Accordingly, we reverse and remand for resentencing.

Affirmed in part, reversed in part, and remanded.