STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0838

State of Minnesota,
Respondent,

vs.

Travis Clay Andersen,
Appellant.

Filed May 19, 2025
Affirmed in part, reversed in part, and remanded
Halbrooks, Judge[*]

Carver County District Court
File No. 10-CR-23-152

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Mark Metz, Carver 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 Bond, Presiding Judge; Bjorkman, Judge; and Halbrooks, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

In this direct appeal from his conviction for threats of violence, appellant Travis Clay Andersen argues that (1) the state failed to prove beyond a reasonable doubt that his conduct constituted a threat, (2) the district court erred in failing to instruct the jury that it was required to unanimously agree on which of his statements constituted a threat of violence, (3) the assigned judge was disqualified by creating an appearance of partiality in favor of the state, and (4) the district court erred in calculating a fractional sentence duration and imposing an additional three-month custody-status enhancement to the duration of his consecutive sentence for this offense. Andersen also raises additional claims in a pro se supplemental brief.

Because we conclude that the evidence was sufficient to prove Andersen's guilt beyond a reasonable doubt, that any error in failing to provide a more specific unanimity instruction to the jury was harmless, that the assigned judge was not disqualified from presiding over Andersen's trial, that the district court did not err in imposing a fractional sentence, and that Andersen's pro se arguments are without merit, we affirm in part. But because we conclude that the district court erred in imposing a three-month custody-status enhancement to Andersen's sentence, we reverse in part and remand for resentencing.

FACTS

On the morning of November 30, 2022, Andersen was an inmate at the Carver County Jail, detained in a holding cell near the jail's booking area. Just before 5:00 a.m., A.S.—a detention sergeant for the jail—conducted a welfare check on Andersen in his cell.

According to A.S., Andersen asked for a blanket and, when A.S. refused, became very upset—"running around the room, arms flailing, screaming, banging, kicking. At one point he hit his head on the door."

When A.S. still refused to provide Andersen with a blanket, Andersen reportedly said that he was "going to tell everyone he knew in the Blood gang to get [A.S.]," and then looked directly at A.S. through the window of the cell and told him "I'm going to f***ing kill you." During this exchange, Andersen also called A.S. names, which included racist and homophobic invectives, and stated that he would kill the next person to open the cell door due to A.S.'s refusal to give him a blanket. Following A.S.'s report of this incident, the state charged Andersen with one count of threats of violence, in violation of Minn. Stat. § 609.713, subd. 1 (2022).

At trial, the state presented testimony from A.S. as well as from two other detention deputies who remotely witnessed Andersen's interaction with A.S. through the jail's security-camera system as well as A.S.'s reaction afterwards. The state also presented the testimony of a sheriff's detective who explained an incident that had occurred on March 1, 2022, in which Andersen arrived unannounced at a Carver County prosecutor's home at 10:00 p.m., causing the prosecutor to call 911. The detective also testified that A.S. had been aware of that information. Andersen testified on his own behalf and denied threatening A.S. The jury found Andersen guilty.

Andersen appeared on February 22, 2024, for a sentencing hearing in the current matter as well as in several additional felony cases. The district court sentenced Andersen to an executed term of 17.4 months in prison, to be served consecutive to the sentences in

other matters that the district court had imposed. The duration of this sentence included a three-month enhancement due to appellant's criminal-history score and his custody status at the time of the offense.

This appeal follows.

DECISION

I. The evidence was sufficient to prove beyond a reasonable doubt that Andersen's statements to A.S. constituted a "threat" within the meaning of Minn. Stat. § 609.713, subd. 1.

A person is guilty of threats of violence if he "threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror." Minn. Stat. § 609.713, subd. 1. To constitute a "threat" for purposes of this statute, the words or actions of the defendant must communicate "an intention to injure another or their property" through the commission of "a statutorily defined crime of violence," and must—in context—"create[] reasonable apprehension that [the defendant] will carry through with or act on the threat." *State v. Mrozinski*, 971 N.W.2d 233, 239-40 (Minn. 2022). Andersen challenges the sufficiency of the state's evidence as to this latter element and argues that the state failed to prove beyond a reasonable doubt that the context of his statements created a reasonable apprehension that he would act on this threat to kill A.S. We disagree.

In evaluating the sufficiency of the evidence, this court reviews the evidence presented at trial "to determine whether the facts in the record 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. Al-*

Naseer, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). An appellate court "will not overturn a verdict if, giving due regard to the presumption of innocence and to the prosecution's burden of proving guilt beyond a reasonable doubt, the jury could reasonably have found the defendant guilty of the charged offense." *State v. Cruz*, 997 N.W.2d 537, 551 (Minn. 2023) (quotation omitted).

A conviction for an offense may validly be based on either direct or circumstantial evidence. *State v. Olson*, 982 N.W.2d 491, 495 (Minn. App. 2022). Direct evidence is "based on personal knowledge or observation and that, 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" and "always requires an inferential step to prove a fact that is not required with direct evidence." *State v. Jones*, 4 N.W.3d 495, 501 (Minn. 2024) (quotations omitted).

When a disputed element of an offense was supported by direct evidence at trial, our review is limited to a "painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). When a disputed element was supported by circumstantial evidence, however, we afford heightened scrutiny of its sufficiency through application of a two-step standard of review. *State v. Colgrove*, 996 N.W.2d 145, 150 (Minn. 2023). In the first step of this analysis, "we identify the circumstances proved" by "resolving all questions of fact in favor of the jury's verdict" and "disregard[ing] evidence that is inconsistent with the jury's

verdict." *Id.* (quotations omitted). In the second step, we evaluate the reasonableness of the inferences that may be drawn from the circumstances proved without deference to the jury's choice from among them. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). "To sustain the conviction, the circumstances proved, when viewed as a whole, must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Id.*

As a threshold matter, the parties dispute whether the reasonable-apprehension element of a threats-of-violence offense was supported in this case by direct or circumstantial evidence. We need not resolve this dispute, however, because we conclude that the evidence was sufficient to prove Andersen's guilt beyond a reasonable doubt even under the heightened scrutiny afforded by the circumstantial-evidence standard of review.

As discussed above, we first identify the circumstances proved by the state's evidence. *Colgrove*, 996 N.W.2d at 150. These include: (1) Andersen, while detained in a holding cell at the Carver County Jail, asked A.S. for a blanket when A.S. stopped to conduct a welfare check on Andersen; (2) when A.S. refused, Andersen became upset and began "running around the room, arms flailing, screaming, banging, kicking," including hitting his head against the cell door; (3) during this interaction, Andersen called A.S. a number of derogatory names and slurs, stated that he was "going to tell everyone he knew in the Blood gang to get [A.S.]," and then looked directly at A.S. through the window of the cell and told him "I'm going to f***ing kill you"; (4) Andersen also stated that he would kill the next person to open the cell door due to A.S.'s refusal to give him a blanket;

and (5) A.S. was aware that, in March 2022, Andersen had arrived unannounced at the home of a Carver County prosecutor at 10:00 p.m., causing the prosecutor to call 911.

For the second step of the analysis, we determine whether the circumstances proved are consistent with guilt and inconsistent with any reasonable hypothesis of innocence. *Harris*, 895 N.W.2d at 600. Again, the offense element at issue here is whether Andersen's statements, when examined in their context, created a "reasonable apprehension" that he would "carry through with or act on the threat." *Mrozinski*, 971 N.W.2d at 239. Andersen argues that his statements to A.S. included three distinct threats to commit a crime of violence. Although Andersen does not dispute that the circumstances proved are consistent with his guilt, he asserts that they do not exclude the rational hypothesis that his words and actions "did not reasonably tend to cause apprehension that he would act to kill A.S., over a deprived blanket or otherwise."

Andersen's first threat was that he was "going to tell everyone he knew in the Blood gang to get [A.S.]." Andersen argues that because nothing in the record suggests that he either knew or had access to such gang members or that they would be willing to act on his behalf, this threat had no reasonable capacity to cause apprehension that anyone would commit a violent crime against A.S. Second, Andersen threatened to kill the next person who opened the door to his cell. According to Andersen, this threat was not credible because there was no evidence to support Andersen's ability to overpower and kill corrections personnel "with his bare hands alone." And, finally, Andersen threatened to kill A.S. directly, which Andersen contends would not reasonably have caused apprehension because A.S. testified that he was not planning to open Andersen's cell door,

that he was not concerned about Andersen being able to get out of his cell, and that he "did not actually believe it would happen."

Andersen's arguments do not persuade us. He provides no authority establishing that the context for a threat must include affirmative evidence that the declarant is capable of actually carrying out the threat as communicated in the immediate or near future. Rather, all that is required is a "reasonable apprehension that the defendant will carry through with *or act on* the threat." *Id.* (emphasis added). And given the context of each of Andersen's statements, we have little trouble deeming this element satisfied. Given Andersen's level of agitation, his abusive language towards A.S., and particularly A.S.'s subjective awareness that Andersen had appeared unannounced at the home of a Carver County prosecutor, it would be reasonable for someone in A.S.'s position to be apprehensive that Andersen would act on these threats by either attempting to have someone harm A.S. on his behalf, attempting to assault the next person to enter his cell, or by attempting to assault or kill A.S. himself.

Stated differently, to say that it would be unreasonable for an observer to be apprehensive that Andersen would act on his threats is itself a decidedly unreasonable inference to be drawn from the circumstances proved and the context of his statements. Accordingly, the evidence was sufficient to prove beyond a reasonable doubt that Andersen's statements constituted "threats" for purposes of Minn. Stat. § 609.713, subd. 1.

II. The district court did not plainly err by failing to instruct the jury that it must unanimously decide which of Andersen's statements constituted a threat of violence.

"Jury verdicts in all criminal cases must be unanimous." *State v. Pendleton*, 725 N.W.2d 717, 730 (Minn. 2007) (citing Minn. R. Crim. P. 26.01, subd. 1(5)). Andersen contends that he was deprived of his right to a unanimous verdict due to the district court's failure to instruct the jury that it was required to agree on which of his threats had been proven beyond a reasonable doubt. "We review a district court's jury instructions for an abuse of discretion." *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). We review them in their entirety "to determine whether they fairly and adequately explained the law of the case." *State v. Kuhnau*, 622 N.W.2d 552, 555-56 (Minn. 2001).

Because Andersen did not object to the district court's instructions at trial, we review his claim for plain error. *State v. Wenthe*, 865 N.W.2d 293, 299 (Minn. 2015). To prevail under the plain-error standard of review, an appellant must demonstrate "(1) error; (2) that is plain; and (3) the error must affect substantial rights." *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). An error is considered "plain" if it was "clear or obvious," and this is typically established "if the error contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotations omitted). And an error affects substantial rights "only if there is a reasonable probability that the error actually impacted the verdict." *State v. Jackson*, 773 N.W.2d 111, 121 (Minn. 2009). If these requirements are satisfied, this court "then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *Id.* at 121-22. But if

any element of this test is not met, we need not evaluate the others. *State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017).

Here, the district court instructed the jury that its verdict must be unanimous. Andersen argues, however, that this instruction was inadequate because the evidence established that he made two distinct categories of threats: one against A.S. directly—by stating he was "going to tell everyone he knew in the Blood gang to get [A.S.]," and by telling A.S. that "I'm going to f***ing kill you"—and a second against an unspecified "next person that opened the cell door." Because these threats were directed against different individuals, and involved different acts, locations, and timing, Andersen argues that the district court was obligated to instruct the jury that it was required to unanimously agree on which category of threat had been proven beyond a reasonable doubt. We conclude, however, that any error by the district court in failing to provide a more specific unanimity instruction did not affect Andersen's substantial rights.

Assuming without deciding that the district court's failure to provide the jury with a specific unanimity instruction was error, the relevant inquiry for determining whether it affected Andersen's substantial rights is whether there is "a reasonable likelihood that the giving of the instruction in question would have had a significant effect on the verdict of the jury." *Griller*, 583 N.W.2d at 741 (quotation omitted). Andersen argues that, had such an instruction been given, jurors may have disagreed about which category of threat was proven beyond a reasonable doubt. We are not persuaded.

Although the state presented evidence of three separate remarks by Andersen threatening to commit a crime of violence, the state's theory at trial centered exclusively

around Andersen's direct threat to kill A.S. In both its opening and closing remarks, the state defined Andersen's crime exclusively as his statement to A.S. that "I'm going to f***ing kill you." Moreover, at no point did the state suggest to the jury that it could decide from among Andersen's multiple statements when determining what constituted the charged threat. *See State v. Stempf*, 627 N.W.2d 352, 358 (Minn. App. 2001) (concluding that a specific-unanimity instruction was necessary, in part, because the state told the jury during closing arguments that either of two alleged acts of drug possession could satisfy the possession element of the charged crime). And Andersen did not provide separate defenses with respect to each threat; he instead denied having made any of them *See State v. Rucker*, 752 N.W.2d 538, 548 (Minn. App. 2008) (considering the nature of the appellant's defense at trial in determining whether a specific unanimity instruction was required), *rev. denied* (Minn. Sept. 23, 2008). Based on the state's presentation of its evidence, therefore, we discern no reasonable possibility that the jury was confused or unclear as to which of Andersen's statements it was being asked to determine was a threat of violence.

In addition, there is similarly no reasonable possibility that the jury—had it been instructed as Andersen suggests—would not have found him guilty beyond a reasonable doubt based upon his direct threat to kill A.S. Andersen's threatening statements were made at the same time, in the same location, and under similar circumstances—amid a profanity-laden outburst by Andersen following A.S.'s refusal to provide him with a blanket. In the event that a given juror here had found either that Andersen's threat to have gang members "get" A.S. or to kill the next person to enter his cell satisfied the elements

of the offense beyond a reasonable doubt, there is no rational basis on which to believe that the juror would not also have reached this same conclusion regarding the threat to kill A.S. directly had that specific question been put to them. Accordingly, we conclude that any error in the district court's instruction regarding unanimity did not affect Andersen's substantial rights.

III. The presiding judge was not disqualified due to the alleged appearance of partiality.

The Minnesota Rules of Criminal Procedure provide that a judge "must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct." Minn. R. Crim. P. 26.03, subd. 14(3). The Minnesota Code of Judicial Conduct, in turn, provides in relevant part that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." Minn. Code Jud. Conduct Rule 2.11(A). And "impartiality" is defined in this context as the "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge." *State v. Schlienz*, 774 N.W.2d 361, 366 (Minn. 2009) (quotation omitted).

Whether a judge has violated the code of judicial conduct is a question of law we review de novo. *State v. Dorsey*, 701 N.W.2d 238, 246 (Minn. 2005). In addressing such a claim, "we begin with the presumption that a judge has discharged his or her judicial duties properly." *Schlienz*, 774 N.W.2d at 366. We then evaluate "whether a reasonable examiner, with full knowledge of the facts and circumstances, would question the judge's impartiality." *In re Jacobs*, 802 N.W.2d 748, 753 (Minn. 2011).

Andersen argues that the district court judge disqualified himself under these rules—and so was prohibited from presiding over the trial—for three reasons. First, because the district court prompted the state to call an additional witness after it had already rested. Second, because the court admonished Andersen to refrain from interrupting the testimony of that witness. And third, because the district court repeatedly interrupted Andersen during his own testimony. Andersen, however, did not object to the district court's actions in these regards and did not move for disqualification of the judge. We therefore review for plain error. *See Schlienz*, 774 N.W.2d at 365 ("Here, we need not decide whether there was structural error or whether the error was waived because, even if we assume that the error was waived, the unobjected-to error may be reviewed for plain error.").

Prior to trial, the state moved to introduce testimony—pursuant to rule 404(b) of the Minnesota Rules of Evidence—regarding the March 2022 incident in which Andersen had arrived unannounced and uninvited at the home of a Carver County prosecutor at 10:00 p.m. At trial, however, the state rested without calling its witness to testify regarding this incident. The district court then asked: "Prior to resting, though, I assume you want to call one additional witness?" The state responded "Yes" and then called a detective with the Carver County Sheriff's Office to provide the relevant testimony.

During the state's examination of the detective, Andersen—who was represented by counsel—interrupted and objected to the relevance of the testimony. The district court admonished Andersen to stop talking and, when Andersen persisted, excused the jury from the courtroom, again told Andersen to stop talking, and twice told him that "this is not

helping you one bit." After a brief recess, the detective concluded his testimony and the state rested. Andersen then testified on his own behalf. During direct examination, the district court interjected during Andersen's response to a question, stating that Andersen had answered the question posed and directing questioning to proceed. And during cross-examination, the district court twice admonished Andersen for not answering the questions asked.

Andersen argues that the district court's actions in these regards would have led a reasonable examiner to question whether the district court was exhibiting bias in favor of the state. We disagree. District courts have discretion to manage trial proceedings. *State v. Thomas*, 882 N.W.2d 640, 644 (Minn. App. 2016), *aff'd* 891 N.W.2d 612 (Minn. 2017). This discretion includes the ability to "exercise reasonable control over the mode and order of interrogating witnesses," Minn. R. Evid. 611(a), as well as to deal with disruptive defendants, *State v. Richards*, 495 N.W.2d 187, 197 (Minn. 1992). In addition, the Minnesota Rules of Criminal Procedure afford district courts the express authority to permit any party to reopen its case to offer additional evidence. Minn. R. Crim. P. 26.03, subd. 12(g). Based upon our independent review of the trial record, we cannot conclude that the district court's exercise of its discretion in these regards raises a reasonable question as to its impartiality.

Contrary to Andersen's argument, prompting the state to call a final witness after it had rested would not have led a "reasonable examiner, with full knowledge of the facts and circumstances," to question whether the judge was biased in favor of the state. *Jacobs*, 802 N.W.2d at 753. Considering that the parties and the court were aware that the state intended

to call the detective to testify, and considering that the court had the authority to allow the state to reopen its case to present the detective's testimony in the event that it neglected to do so, we discern nothing plainly improper about the district court preemptively inquiring as to whether the state intended to call its final noticed witness before resting. And its manner of doing so, moreover, would not have led a reasonable observer to suspect that it was being done out of favoritism towards one party as opposed to merely ensuring that each party was permitted a full and fair presentation of its case.

Similarly, we are unpersuaded by Andersen's argument that the district court's admonition that his interruptions of the detective's testimony were "not helping [him] one bit" raised any reasonable specter of bias. To the contrary, after the district court had repeatedly and unsuccessfully tried to stop Andersen from interrupting, telling him that he was not helping himself was most reasonably intended to *preserve* the fairness of Andersen's trial by warning him that he could be prejudicing his own case through his behavior. Under these circumstances, the district court's actions were a reasonable exercise of its discretion to control the trial proceedings, and we see no legitimate basis on which to construe the district court's statements as evidence of partiality either against Andersen or in favor of the state.

Finally, the district court's own interruptions of Andersen's testimony were likewise both reasonable under the circumstances and did not reasonably suggest bias. On the first occasion, during direct examination, Andersen's attorney asked him whether his interactions with A.S. while detained were positive or negative. Once Andersen's response began to deviate from the scope of the question, the district court interjected: "Okay. Mr.

Andersen, you've answered the question. Next question please." On the second and third occasions, the prosecutor asked Andersen questions on cross-examination to which Andersen did not initially provide a responsive answer. In each instance, the district court simply prompted Andersen to answer the question that had been asked, and Andersen complied. We again conclude that this was an entirely reasonable means of controlling the presentation of evidence by the district court and that there is no rational possibility that an outside observer would have interpreted the court's actions as indicative of bias against Andersen.

Because it is not "clear or obvious" that the district court's trial-management decisions in these regards would have led a reasonable examiner to question the judge's impartiality, Andersen has failed to demonstrate any clear or obvious error that would entitle him to relief. *Ramey*, 721 N.W.2d at 302 (quotations omitted).

IV. The district court did not err in calculating a fractional presumptive sentence duration, but did err in adding a three-month custody-status enhancement to Andersen's permissive consecutive sentence for this offense.

The district court sentenced Andersen to an executed term of 17.4 months, to be served consecutively to sentences in other matters that had been imposed in the same proceeding. Andersen now argues that this sentence is erroneous because the district court (1) improperly imposed a fractional sentence duration and (2) improperly added a three-month custody-status enhancement to the duration of this sentence. Questions involving the interpretation of the sentencing guidelines and whether a sentence conforms to those guidelines are reviewed de novo. *State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018);

State v. Williams, 771 N.W.2d 514, 520 (Minn. 2009). We consider Andersen's arguments in turn.

A. Fractional Sentence Duration

When a defendant is convicted of multiple current offenses in the same proceeding, concurrent sentencing is presumptive. Minn. Sent'g Guidelines 2.F (2022). The district court, however, may impose a sentence consecutive to a previously imposed sentence without departing from the sentencing guidelines under certain circumstance, such as when the current sentence and the prior sentence are for offenses on the sentencing guidelines' list of offenses eligible for permissive consecutive sentencing. *Id.* at 2.F.2.a.(1)(ii), 6. The parties do not dispute that Andersen was eligible for consecutive sentencing in this case for that reason.

If a permissive consecutive sentence is to be imposed, the presumptive disposition of the consecutive sentence is a commitment to prison, and the district court must use a criminal history score of zero when determining the presumptive duration of that sentence from the applicable sentencing guidelines grid. *Id.* at 2.F.2.a.(1), 2.F.2.b, 4.A. When, as in Andersen's case, the cell on the guidelines grid corresponding with a criminal-history score of zero and the severity level of the offense being sentenced provides a single sentencing duration and would otherwise prescribe a stayed sentence, the district court is to impose a sentence within a range that is "15 percent lower and 20 percent higher than the fixed duration displayed." Minn. Sent'g Guidelines 2.C.1 (2022).

Here, the presumptive sentence for a threats-of-violence conviction with a criminal-history score of zero is a stayed sentence of 12 months. Minn. Sent'g Guidelines 4.A, 5.A.

(2022). Because a felony sentence may not be shorter than 12 months, the available range for an executed sentence based upon this cell is therefore between 12 months and 14.4 months—20% higher than 12 months. *Id.* at 2.C.1. Andersen argues, however, that a district court is required to round down any fractional sentence duration to the next lowest whole number when computing a sentencing range in this manner. This is so, he asserts, because all other sentencing ranges in the guidelines grids are provided in whole numbers and—in cases where 15% or 20% of the presumptive sentence duration in a given cell would result in a factional month—the maximum and minimum durations appear to have been rounded down to the nearest whole month. But although Andersen's observation appears correct, we do not agree that this thereby requires a district court to round down the maximum or minimum durations of a sentencing range when calculating it for purposes of imposing an executed sentence from a grid cell that ordinarily prescribes a stayed sentence of a single fixed duration.

The text of the guidelines themselves unambiguously prescribe the means of calculating a sentencing range under these circumstances and do not provide any indication that the end points of the resulting range are to be modified when a fractional duration results. And to the extent that there exists any ambiguity on this point, a comment to the guidelines provides a specific example that includes a fractional sentence duration. *See* Minn. Sent'g Guidelines cmt. 2.G.01 (2022) (providing 20.5 months as an example of a presumptive sentence length for an offense that requires the presumptive duration to be reduced by one-half). Although the comments to the guidelines are nonbinding, we may consider them in interpreting the guidelines themselves. *See Scovel*, 916 N.W.2d at 555

("[W]e strive for an interpretation that is consistent with the comments to the Guidelines, but the comments are merely advisory, not binding."). Doing so here, we are satisfied that it was the intent of the Sentencing Guidelines Commission to permit the imposition of a fractional sentencing duration when one results from the calculation provided in guideline 2.C.1. Accordingly, the district court did not err in sentencing Andersen to a fractional sentence duration.

B. Three-Month Custody-Status Enhancement

The sentencing guidelines provide that when sentencing a defendant for an offense and "(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)," the district court must add an additional three months to the duration of any presumptive sentence. Minn. Sent'g Guidelines 2.B.2.c (2022). Because Andersen was assigned a custody-status point—due to his incarceration at the time of this offense—and because his full criminal-history score was greater than 6, this provision presumptively applied to any sentence he received for this offense. And the district court here in fact relied on this provision in sentencing Andersen to a consecutive sentence of 17.4 months—three months longer than the maximum 14.4-month duration otherwise prescribed by the sentencing range calculated pursuant to guideline 2.C.1.

Andersen argues that the addition of this three-month custody-status enhancement to his sentence was error because the duration of his consecutive sentence for this offense was required to be determined using a criminal-history score of zero. We agree, as does the state.

The guidelines unequivocally state that when imposing a permissive consecutive sentence—such as was imposed here—the district court must "use a Criminal History Score of 0 . . . to determine the presumptive duration" of that sentence. Minn. Sent'g Guidelines 2.F.2.b. Because a criminal-history score of zero must be used when sentencing a defendant to a permissive consecutive sentence, it follows that the defendant's criminal-history score must similarly be regarded as being zero for purposes of the three-month custody-status enhancement provision. Moreover, doing so is in keeping with the comments to the guidelines, which explain that the purpose of using a criminal-history score of zero in these circumstances "is to count an offender's criminal-history score only one time in the computation of consecutive sentence durations." Minn. Sent'g Guidelines cmt. 2.F.202 (2022). Accordingly, we hold that the district court erred in applying this enhancement to Andersen's sentence and in imposing a sentence greater than the maximum permissible duration of 14.4 months. We therefore reverse Andersen's sentence and remand for resentencing consistent with this opinion.

V. Andersen's pro se arguments do not merit relief.

In a pro se supplemental brief, Andersen raises multiple additional claims of error. He first asserts that his underlying arrest in March of 2022 was unlawful and based on an invalid warrant, that he was unlawfully transferred to a Minnesota Correctional Facility in September of 2022, that the district court judge engaged in misconduct at a hearing in a separate matter on November 29, 2022, and that he was denied his rights to counsel or self-representation in other matters. These claims, however, relate to events that occurred prior to the date of the charged offense in this case and Andersen fails to provide any authority

establishing that they entitle him to relief in the current matter. Accordingly, we conclude that these claims have been waived on appeal. *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." (quotation omitted)).

Andersen also makes claims regarding the current matter involving judicial bias, an untimely omnibus hearing, ineffective assistance of counsel, discovery violations, sufficiency of the evidence, and prosecutorial misconduct. We have reviewed Andersen's arguments and determine them to be either without record support, without legal support, or without merit.

Affirmed in part, reversed in part, and remanded.