EXHIBIT A

STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1659

State of Minnesota,
Respondent,

vs.

Daquan Ossie Bradley,
Appellant.

Filed July 29, 2019
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-CR-16-17802

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Bratvold, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

Appellant Daquan Ossie Bradley challenges his conviction of second-degree murder for the shooting death of M.M. We slightly reframe the issues in Bradley's appeal.

He raises two issues as independent grounds for reversal; in the second issue, Bradley states an argument in the alternative. First, Bradley argues that the circumstantial evidence fails to sufficiently establish his intent to murder M.M. Second, Bradley argues that the district court erred in convicting him of second-degree murder because it failed to require the state to prove that Bradley did not shoot M.M. in the heat of passion. Bradley argues that (A) the district court committed structural error because it misstated the burden of proof on the heat-of-passion element in its written decision. Bradley alternatively argues that (B) assuming the district court's error was not structural, the error was prejudicial and requires a new trial.

We conclude, first, that there is sufficient record evidence to establish the requisite level of intent for Bradley's conviction of second-degree murder. We conclude, second, that although the district court misstated the burden of proof in its memorandum, the district court correctly applied the law. Therefore, no structural error occurred, and any error was harmless. Thus, we affirm.

FACTS

The relevant facts below are stated in the district court's written decision after Bradley's bench trial.[1]

[1] The district court issued written findings of fact and conclusions of law on June 6, 2017. As explained in more detail below, the district court issued amended written findings of fact and conclusions of law on December 6, 2018. Based on our review of the 2018 order, we discern no material amendments to the factual findings issued in the 2017 order. We nonetheless rely on the factual findings in the 2018 order for our summary of the relevant facts.

A. The shooting

At the time Bradley shot M.M. on June 30, 2016, both men were romantically involved with I.C., who, along with her four-year-old daughter, lived in a one-bedroom apartment on Oakland Avenue South in Minneapolis.

M.M. was I.C.'s "on again, off again boyfriend." M.M. was not the biological father of I.C.'s daughter, but gave I.C. financial support. I.C. and M.M. had been "off" for the two weeks before June 30, during which Bradley had been staying at I.C.'s apartment. Bradley and M.M. had never met before June 30.

On the night of June 29, several people stayed at I.C.'s apartment. In total, four adults, five young children, and Bradley's teenage brother slept over. In addition to I.C. and Bradley, the adults included a woman, C.C., and a man, Georgia.[2] Bradley, I.C., I.C.'s daughter, and Bradley's three-year-old son slept in the bedroom together. Everyone else slept in the living room.

On June 30 at approximately 8:00 a.m., I.C. heard "the sound of rocks being thrown against" her bedroom window. I.C. looked out the closed bedroom window and saw M.M. standing below her bedroom window. I.C. left the apartment and went down the hallway to the secured front door and met M.M. She told him that she "had company" and that it was "not a good idea" for him to come in. But I.C. "let [] M.M. into the building" and into the apartment. M.M. "got upset" when he saw Bradley "in the bed."

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[2] Georgia is a nickname; his first name is Omar, and, during trial testimony, witnesses sometimes referred to him as "Florida." Georgia did not testify at trial.

M.M. and I.C. began to argue and M.M. "made a gesture towards" I.C. "as if he was going to hit her." Bradley then "intervened" and M.M. said "this was his kingdom" and I.C. was "always going to be his b----." Bradley walked over to M.M. "and punched him in the face." M.M. "balled up and hit the floor."

"Immediately," Georgia entered the bedroom with a nine-millimeter gun, which he pointed at M.M., who was still on the floor. I.C. yelled that M.M. did not have a gun and Georgia put down his gun. Together, Bradley and Georgia "began hitting" M.M. and "stomping on his head."

Bradley "hauled" M.M. out of the apartment and into the hallway. The apartment building has three levels; I.C.'s apartment was on the second level. There were four units on each level. In the hallway, Bradley "hit and stomped on" M.M.'s head "several times." Georgia followed and "hit and stomped" on M.M. "as well." Neighbors heard the fighting and later testified that Georgia or Bradley "threatened" M.M. and said, "I'm gonna kill this motherf---er." M.M. responded, "All I want to do is just go home."[3]

Bradley then "let" M.M. leave through the door and "threw" M.M.'s cell phone after him. M.M. walked "60 to 70 yards away" from the building "near some vans parked in the parking lot." M.M. stopped, with his back to the apartment, and stood "holding his cell phone to make a call." Evidence at trial established that M.M. made a call at 8:15 a.m.

[3] One neighbor heard Georgia or Bradley say, "I will pop your ass" or "I will cap your ass." Neighbors who testified said they recognized M.M.'s voice because he had been "a frequent guest" at I.C.'s apartment.

Bradley, Georgia, and I.C. walked back to the apartment. Bradley entered the bedroom, which had one window that was approximately nine feet above the ground and overlooked the parking lot that was adjacent to an intersection outside the apartment.

Bradley "grabbed" Georgia's gun, "walked around the bed to the window, opened the window, aimed and fired a single shot, which hit" M.M. "in the back." M.M. "took off running but fell" at the intersection outside the apartment. I.C. yelled, "Oh my God, you shot him!" Bradley's teenage brother entered the bedroom after he heard the shot and saw Bradley holding the gun. Approximately one-and-a-half to two minutes had elapsed from the time M.M. left the building until he was shot.

B. After the shooting

"Everyone in the [a]partment quickly gathered up the children" and left together in the opposite direction from where M.M. "had been killed." As he left, Bradley "threw" Georgia's gun into bushes "somewhere near" the apartment.

Police arrived shortly after several 911 calls were received. M.M. "died before [paramedics] arrived." Police secured the crime scene outside and found a nine-millimeter shell casing in the window well beneath I.C.'s bedroom window. Georgia's gun was not recovered.

Bradley visited an ex-girlfriend, K.A., on June 30. He told K.A. that "he had hurt somebody . . . that he had murdered someone."

Police arrested Bradley on July 2, 2016. At the time of his arrest, police found a gun on him, but it "was not the gun that fired the bullet that killed" M.M.

C. After the arrest

On July 5, 2016, the state charged Bradley with second-degree murder (intentional, not premeditated) and being a prohibited person in possession of a firearm.

On February 9, 2017, a grand jury indicted Bradley on four counts: first-degree murder (premeditated) under Minn. Stat. § 609.185(a)(1) (2014); second-degree murder (intentional) under Minn. Stat. § 609.19, subd. 1(1) (2014); being a prohibited person in possession of a firearm or ammunition on the day of the shooting under Minn. Stat. § 624.713, subd. 1(2) (2014); and being a prohibited person in possession of a firearm or ammunition on the day of arrest under Minn. Stat. § 624.713, subd. 1(2). Before trial, Bradley moved the court for jury instructions on all lesser-included offenses, including "manslaughter in the first and second degree."

Bradley then waived his right to a jury trial, and the district court conducted a four-day bench trial in May 2017. In total, 12 witnesses for the prosecution testified; these witnesses included I.C., C.C., K.A., three neighbors, several police officers, and the medical examiner who performed M.M.'s autopsy. The autopsy concluded that M.M. died "from a single gunshot wound that entered his back, traveled in a slightly downward fashion through his right and left lung through his aorta and out through his chest." The autopsy also found "blunt force injuries" to M.M.'s face and ear "which could have occurred from a fight or from falling face down in a gutter."

Four witnesses testified for the defense, including Bradley, Bradley's brother who was in I.C.'s apartment at the time of the shooting, Bradley's sister, and a criminal investigator.

Bradley testified that he accidentally shot M.M. and that he was "aiming for one of the vans in the parking lot to scare" M.M. because Bradley "was concerned" that M.M. "would come back" and "harm them." Bradley also testified that "as he was firing the gun," I.C. "hit his hand causing the bullet to hit" M.M. in his back.

On June 6, 2017, the district court issued written findings of fact, conclusions of law, and verdict (2017 order) and found Bradley not guilty of first-degree murder, guilty of second-degree murder, and guilty of two counts of being a prohibited person in possession of a firearm/ammunition. The district court's findings expressly rejected Bradley's testimony.

> Although [Bradley] had placed [I.C.] right next to him in the bedroom, others testified that [I.C.] was in the hallway or just inside the bedroom when the shot was fired. There was no testimony, other than Mr. Bradley's, that put [I.C.] right next to him at the window. Mr. Bradley's testimony that he was aiming at the broadside of a van in the parking lot during day light hours, but accident[ally] hit [M.M.] in the back, whom he had just seriously assaulted, was neither credible nor plausible. Neither was Mr. Bradley's claim that [M.M.] was going to come back to the apartment and harm them, when [I.C] had told him that [M.M.] did not have a gun, no one saw [M.M.] with a gun, and he had only left out the back door less than two minutes earlier.

The district court stated that there was "no need to address the lesser-included crimes" because the state "proved all four elements of second degree murder with intent." In July 2017, the district court amended its verdict to find Bradley not guilty of the lesser-included offenses. The district court sentenced Bradley to 460 months in prison.

Bradley appealed his conviction in October 2017, and also filed a motion to stay the appeal so he could pursue postconviction relief. This court granted the motion in

August 2018. At a postconviction hearing, Bradley argued that the district court erred because it "did not make any findings connected to its first-degree heat-of-passion manslaughter verdict." In response, the district court issued amended findings of fact, conclusions of law, and verdict (2018 order), which included the district court's reasoning on the manslaughter acquittal.[4] Bradley moved to dissolve the stay and reinstate his appeal; this court granted the motion.

ISSUES

I. Is the evidence of Bradley's intent to kill M.M. sufficient to support Bradley's conviction of second-degree murder?

II. Did the district court err in convicting Bradley of second-degree murder by failing to require the state to prove the absence of heat of passion?

ANALYSIS

I. The evidence of Bradley's intent to kill M.M. is sufficient to support Bradley's conviction of second-degree murder.

Bradley does not dispute that he killed M.M. by firing a gun from I.C.'s bedroom window. Bradley argues that the state did not introduce evidence of his intent to kill M.M. sufficient to uphold his conviction of second-degree murder.

Generally, in reviewing the sufficiency of the evidence, we "conduct[] 'a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction,' is sufficient to allow the jurors to reach a verdict of

[4] The 2018 order also found Bradley guilty of second-degree unintentional felony murder while committing assault in the second degree with a dangerous weapon. This verdict is not challenged on appeal.

guilty." *State v. Porte*, 832 N.W.2d 303, 307 (Minn. App. 2013) (quoting *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012)). Because the state offered primarily circumstantial evidence of Bradley's intent, we apply "heightened scrutiny" to review that circumstantial evidence.[5] *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010); *see also State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000) ("A state of mind generally is proved circumstantially . . . .").

Appellate review after either a jury or a bench trial is conducted under the same heightened scrutiny for circumstantial evidence. *See State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018); *State v. Barshaw*, 879 N.W.2d 356, 363 (Minn. 2016); *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) ("We use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence."). One distinction between a jury and a bench trial is that, after a bench trial in felony and gross misdemeanor cases, the district court must "make findings in writing of the essential facts." Minn. R. Crim. P. 26.01, subd. 2(b). The purpose of the written-findings requirement is "to aid the appellate court in its review of [a] conviction resulting from a nonjury trial." *State v. Scarver*,

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[5] Direct evidence of intent includes a person's statements. *See State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (noting defendant's comment to multiple witnesses, "I want him dead" was direct evidence of mens rea because the jury "did not need to draw any inferences about the purpose of her actions"). For example, Bradley's statement to K.A. that he "murdered someone" is direct evidence of his intent. Similarly, Georgia or Bradley's statement, "I'm gonna kill this motherf---er," is also direct evidence of intent. But because Bradley's statement to K.A. did not identify whom he murdered, and the district court did not determine who threatened to kill M.M., Bradley's conviction "necessarily depends on circumstantial evidence," and we proceed to analyze the circumstantial evidence of Bradley's intent. *Porte*, 832 N.W.2d at 309 (stating that where there is both circumstantial and direct evidence, but the conviction must rely on circumstantial evidence, appellate courts apply the circumstantial-evidence standard of review).

458 N.W.2d 167, 168 (Minn. App. 1990). In this case, the district court issued detailed written factual findings in its 2017 order and then issued amended legal analysis after postconviction proceedings in its 2018 order. We scrutinize the circumstantial evidence in Bradley's case by following two steps and with reference to the district court's detailed written factual findings.

In the first step, we "identify the circumstances proved by the State, giving deference to the factfinder's acceptance of the State's evidence and its rejection of any evidence in the record that is inconsistent with the circumstances proved by the State." *Petersen*, 910 N.W.2d at 6-7 (quotation omitted). As we identify the circumstances proved, we do not "re-weigh" the evidence. *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010). Rather, we "winnow down the evidence presented at trial by resolving all questions of fact in favor of the [fact-finder's] verdict, resulting in a subset of facts that constitute the circumstances proved." *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017) (quotation omitted). We also "disregard evidence that is inconsistent with the [fact-finder's] verdict." *Id.* at 601. This winnowing process preserves the fact-finder's "credibility findings." *Id.* at 600. A fact-finder is "in a unique position to determine the credibility of the witnesses and weigh the evidence before it." *Id.*; *see also Barshaw*, 879 N.W.2d at 363 (stating that, after a bench trial, appellate courts defer to district court's assessment of "the credibility of the evidence" in establishing circumstances proved).

In the second step, we determine "whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Petersen*, 910 N.W.2d at 7. In the second step, "[w]e give no deference to the factfinder's choice

between reasonable inferences." *Al-Naseer*, 788 N.W.2d at 474. We only consider the "reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole." *Harris*, 895 N.W.2d at 601. "Where the [fact-finder] has rejected conflicting facts and circumstances, we do not draw competing inferences from those facts on appeal." *Stein*, 776 N.W.2d at 715. Additionally, a "reasonable inference" is not based on "mere conjecture." *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). If we determine that a "reasonable inference other than guilt exists," we must reverse the conviction. *Petersen*, 910 N.W.2d at 7. But "possibilities of innocence do not require reversal of a . . . verdict so long as the evidence taken as a whole makes such theories seem unreasonable." *Stein*, 776 N.W.2d at 719.

At trial, the state's burden was to prove beyond a reasonable doubt that Bradley committed second-degree murder by "caus[ing] the death of a human being with intent to effect the death of that person or another, but without premeditation." Minn. Stat. § 609.19, subd. 1(1). "With intent to" means that "the actor has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2014). Intent to kill may be inferred from several circumstances that are relevant here, such as the nature of the killing, the words or act of the shooter before and after the shooting, and the use of a deadly weapon. *See Stiles v. State*, 664 N.W.2d 315, 320 (Minn. 2003) (words and acts of shooter); *State v. Darris*, 648 N.W.2d 232, 236 (Minn. 2002) (nature of the killing); *State v. Geshick*, 168 N.W.2d 331, 332 (Minn. 1969) (use of a deadly weapon).

We first identify the circumstances proved. Giving deference to the district court's assessment of the evidence in reaching its verdict, the circumstances proved include the following: I.C. was romantically involved with M.M. and Bradley. On the morning of June 30, 2016, M.M. showed up unexpectedly at I.C.'s apartment, where Bradley was sleeping in I.C.'s bed. Bradley and M.M. did not know each other. M.M. came into I.C.'s bedroom and argued with I.C. M.M. said that "this was his kingdom," and that I.C. was "always going to be his b----." Bradley "punched [M.M.] in the face," and M.M. "balled up and hit the floor." Georgia brought his gun into the bedroom then put it down when I.C. pointed out that M.M. was unarmed. Bradley and Georgia then beat M.M. by "hitting" and "stomping" on his head, first in the apartment unit and then in the hallway. M.M. said, "All I want to do is go home." Bradley "let" M.M. leave and "threw" his cell phone after him as he left the apartment building. M.M. walked approximately "60 to 70 yards" from the apartment building, and stopped near some vans in the parking lot to make a call on his cell phone. Bradley, Georgia, and I.C. walked back into I.C.'s apartment. Bradley grabbed Georgia's gun, walked to the bedroom window, opened the window, aimed, and fired one shot, which struck M.M. in the back, travelling "through his right and left lung through his aorta and out through his chest." I.C. screamed, "Oh my God, you shot him!" Bradley's teenage brother heard the shot, entered the bedroom, and saw Bradley holding the gun. Less than two minutes had passed since M.M. left the building. Everyone in I.C.'s apartment immediately left. On his way out, Bradley threw the gun used to shoot M.M. "into bushes somewhere near the [a]partment." He later told K.A., his former girlfriend, that he "murdered someone."

Based on our review of the circumstances proved, we conclude that the district court reasonably inferred that Bradley intended to kill M.M. Bradley used a deadly weapon, which supports an inference that he intended to kill M.M. *See Geshick*, 168 N.W.2d at 332. Intent may also be informed from the nature of the killing—Bradley fired a single shot at an unarmed M.M. who had left the apartment; the shot hit M.M. in the back, hitting his vital organs. *See State v. Chuon*, 596 N.W.2d 267, 271 (Minn. App. 1999) (intent inferred from a "single shot to the victim's torso, an area of the body containing vital organs"), *review denied* (Minn. Aug. 25, 1999). Also, Bradley's acts before and after the killing support an inference of intent. *See Stiles*, 664 N.W.2d at 320. Before the killing, Bradley repeatedly beat, hit, and stomped on M.M After the killing, Bradley did nothing to help M.M., immediately left the apartment building, threw Georgia's gun in the bushes, and later told K.A. he "murdered someone."

This does not end our inquiry, however, because the second step of our analysis requires that the circumstances proved support no reasonable hypothesis inconsistent with guilt. *See Petersen*, 910 N.W.2d at 7. Bradley argues that the circumstances proved support an alternative hypothesis inconsistent with guilt, which is that he intended to shoot a van to "scare" M.M., because he was concerned that M.M. would return to "harm them," and did not intend to kill M.M. Bradley's alternative hypothesis is based primarily on his own trial testimony.[6]

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[6] Bradley also argues that this alternative theory is supported by a state witness's (police officer's) testimony that Bradley may only have been trying to "scare" M.M. At trial, the officer testified that she told C.C. in an interview that the shot was a "miracle shot" because she was trying to calm down C.C. and make the situation not "as bad as it is." On

It is true that "[w]e give no deference to the factfinder's choice between reasonable inferences." *Al-Naseer*, 788 N.W.2d at 474. But on review, we can only draw competing inferences from the *circumstances proved*, which the Minnesota Supreme Court has held do not include "every circumstance as to which there may be some testimony in the case, but *only such circumstances as the* [fact-finder] *finds proved by the evidence*." *Stein*, 776 N.W.2d at 715 (emphasis added) (quoting *State v. Johnson*, 217 N.W. 683, 684 (Minn. 1928)). In other words, the circumstances proved consist of the "subset of facts" that the district court determined were proved by the evidence. *See Harris*, 895 N.W.2d at 600. This limitation ensures that credibility determinations remain the province of the fact-finder. *Id.*; *see also State v. Wiley*, 348 N.W.2d 86, 91 (Minn. App. 1984) (holding that district court findings "which are the product of firsthand observation of the demeanor of the parties and witnesses possess a certain integrity not contained in the written record alone"), *aff'd*, 366 N.W.2d 265 (Minn. 1985).

Here, Bradley's theory of an accidental shooting relies on his own testimony, which was expressly rejected in the district court's written factual findings. The district court found that Bradley's "testimony that he was aiming at the broadside of a van in the parking

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cross-examination, the officer testified that it is a "reasonable possibility" that Bradley did not think he could hit M.M. from the distance he fired.

We reject Bradley's position for two reasons. First, the fact that it was a "miracle shot" does not make his conduct less intentional. Second, the officer's testimony about an accidental killing is speculative and inconsistent with the district court's findings. *See Pratt*, 813 N.W.2d at 874 (providing that "mere conjecture" does not establish grounds for an alternative reasonable inference). Thus, the officer's speculation is not part of the circumstances proved.

lot during day light hours, but accident[ally] hit [] M.M. in the back, whom he had just seriously assaulted, was neither credible nor plausible." The district court also found that Bradley's claim that he was afraid M.M. would come back was not credible because I.C. "had told him" that "M.M. did not have a gun, [and] no one saw [him] with a gun."

We conclude that the district court's written findings, including its determination that Bradley was not credible when he testified that he accidentally shot M.M., "winnow down" the circumstances proved. Because Bradley's testimony that he accidentally shot M.M. was rejected by the district court as not credible, we must disregard Bradley's testimony, along with all other evidence that is inconsistent with the district court's verdict and findings. *See Harris*, 895 N.W.2d at 600; *see also Stein*, 776 N.W.2d at 715. Therefore, Bradley's theory of an accidental shooting lacks support in the circumstances proved and is not a reasonable alternative hypothesis. Because the circumstances proved are inconsistent with any rational hypothesis other than guilt, we conclude that the evidence was sufficient to support Bradley's conviction of second-degree murder.

II. The district court did not err in convicting Bradley of second-degree murder by failing to require the state to prove that Bradley did not shoot M.M. in the heat of passion.

Bradley contends that the district court applied the wrong burden of proof to assess the state's evidence on whether he acted in the heat of passion. Because Bradley submitted to the district court "the lesser mitigating offense of first-degree heat-of-passion manslaughter," Bradley argues that the district court should have required the state to prove beyond a reasonable doubt that he "*did not act* in the heat of passion when he committed

the killing." Bradley contends the court erroneously placed the burden on the state to "prove beyond a reasonable [doubt] that [Bradley] *acted* in the heat of passion."

Due process requires that the state "prove beyond a reasonable doubt the existence of every element of the crime charged." *State v. Robinson*, 539 N.W.2d 231, 238 (Minn. 1995). Once a defendant raises heat of passion as a mitigating factor to a murder charge, the state's burden is to "prove beyond a reasonable doubt the absence of heat of passion." *Id.* at 239. The absence of heat of passion becomes an element that the state is required to prove to convict the defendant of the murder charge. *See id.; see also* 10 *Minnesota Practice*, CRIMJIG 11.36 (2015) (stating absence of heat of passion is an element of second-degree murder when raised by the defense).

For the state to prove the absence of heat of passion, it must prove the absence of two elements: "(1) the killing [was] done in the heat of passion, and (2) the passion [was] provoked by words and acts of another such as would provoke a person of ordinary self-control under like circumstances." *State v. Kelly*, 435 N.W.2d 807, 812 (Minn. 1989) (holding an intentional killing may be mitigated if both elements are present); *see also Robinson*, 539 N.W.2d at 239 (holding proof of the "emotional state alone" will not "mitigate murder to manslaughter").[7] The first element is subjective and considers whether the defendant's emotional state "clouds a defendant's reason and weakens his willpower."

[7] Bradley contends that the state was required to prove the absence of both elements of heat of passion; the state does not disagree. Thus, we consider both elements of heat of passion. We note, however, that Minnesota caselaw holds that, where the state proves the absence of only one element of heat of passion, a defendant is not entitled to mitigation. *See, e.g.*, *State v. Buchanan*, 431 N.W.2d 542, 549 (Minn. 1988) (holding defendant's emotional state alone will not mitigate murder to manslaughter).

State v. Johnson, 719 N.W.2d 619, 626 (Minn. 2006) (quotation omitted). The defendant's behavior "before, during, and after the crime is relevant" to this inquiry and "[a]nger alone is not enough." *Id.* The second element requires an objective analysis of whether the provocation is adequate to trigger a person of ordinary self-control to kill. *Id.* at 627.

Here, Bradley requested consideration of lesser-included offenses, including first-degree heat-of-passion manslaughter, before the attorneys proceeded with closing arguments in the bench trial. The state did not object to the district court "consider[ing] them." The district court stated, "I'll be considering the lesser includeds." In the 2017 order, the district court quoted jury instructions for second-degree murder to structure its analysis of the elements, but failed to discuss whether the state had proved the absence of heat of passion. *See* 10 *Minnesota Practice*, CRIMJIG 11.25 (2015) (second-degree murder). The district court's summary of the law in the 2017 order is erroneous because the state had the burden of proving that Bradley did not act in the heat of passion. *See Robinson*, 539 N.W.2d at 239.[8]

Bradley argued this point in his postconviction motion, stating that the district court's "findings are incomplete" because its finding of intent did not "preclude a finding

[8] We note that the district court did not necessarily have to consider the lesser-included offenses in its 2017 order. The Minnesota Supreme Court has held that in jury trials, it is unnecessary to instruct the jury on lesser-included offenses when "there is no evidence adduced to support acquitting of the greater charge and convicting of the lesser charge." *State v. Prtine*, 784 N.W.2d 303, 317 (Minn. 2010). Here, it may have been unnecessary for the district court to consider the manslaughter charge considering the lack of evidence supporting heat of passion. However, because the district court stated it was considering the lesser-included offenses and issued a follow-up 2018 order addressing them after postconviction proceedings, we address this issue.

that the killing was committed in the heat of passion." Accordingly, the district court issued its 2018 order, in which it analyzed the requirements for first-degree heat-of-passion manslaughter. The 2018 order stated that it "was NOT proven beyond a reasonable doubt" that "Bradley acted in the heat of passion with intent to kill [M.M.]" This is also a misstatement of law because the state had to prove the *absence* of heat of passion beyond a reasonable doubt—not that Bradley acted in the heat of passion. *See id.*

The state does not dispute that it was required to prove the absence of heat of passion beyond a reasonable doubt to sustain Bradley's conviction of second-degree murder and the state's brief to this court does not disagree that the district court misstated the law in the 2017 order and in the 2018 order.

Based on the parties' arguments and the record on appeal, we understand Bradley to raise two alternative arguments for reversal. First, Bradley argues that the district court used the wrong burden of proof in its analysis of the heat-of-passion element for second-degree murder and this amounted to structural error that requires a new trial.[9] Second, assuming that the district court's error was not structural and is subject to harmless-error analysis, Bradley argues that the error was prejudicial because the state

[9] Bradley also argues that this court "should remand to the district court to adjudicate [Bradley] guilty of first-degree heat-of-passion manslaughter, vacate [his] second-degree intentional murder sentence, and sentence [him] on the heat-of-passion manslaughter conviction." Because Bradley was found not guilty of first-degree manslaughter, the remedy he requests is unavailable. The constitution's prohibition against double jeopardy prevents a person from being tried more than once for the same offense. *Sanabria v. United States*, 437 U.S. 54, 64, 98 S. Ct. 2170, 2179 (1978) ("[W]hen a defendant has been acquitted at trial he may not be retried on the same offense, even if the legal rulings underlying the acquittal were erroneous.")

failed to prove that he did not act in the heat of passion. The state argues that there was no structural error, and any error was harmless. We address each of Bradley's arguments in turn.

A. Structural-error analysis

Structural errors "deprive defendants of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence." *State v. Finch*, 865 N.W.2d 696, 703 (Minn. 2015) (quotations omitted). Structural errors have two essential characteristics: "(1) the error affects the framework within which a trial proceeds, and (2) the error's effect on the proceedings is difficult to assess." *State v. Little*, 851 N.W.2d 878, 892 (Minn. 2014). Structural errors, which require automatic reversal, apply in a "very limited class of cases," such as when a defendant is denied the right to counsel or an impartial judge. *Colbert v. State*, 870 N.W.2d 616, 624 (Minn. 2015) (citing circumstances where structural error has applied). A structural error also occurs if a verdict is not based on guilt beyond a reasonable doubt, such as when the jury is instructed on reasonable doubt in a way that diminishes the prosecution's burden of proof. *Sullivan v. Louisiana*, 508 U.S. 275, 280-81, 113 S. Ct. 2078, 2082-83 (1993).

Here, we conclude that there was no structural error. First, the district court's misstatement of law did not affect the "framework within which a trial proceeds." *Little*, 851 N.W.2d at 892. During the four-day bench trial, which had a total of 16 witnesses, the state offered substantial evidence relevant to the heat-of-passion element, such as the nature of the killing, the weapon used, Bradley and M.M.'s conduct before the killing, as well as Bradley's conduct and statements after the killing. Bradley moved for the district court to

consider the lesser-included offenses before final arguments and the district court agreed to do so. On appeal, Bradley challenges what happened *after* the trial when the district court issued its written decisions. Thus, we conclude that the district court's error did not affect the framework of Bradley's trial.

Second, this is not one of the "very limited class of cases" where a defendant is deprived of a basic protection that affected the trial in a way that is "difficult to assess." *See Colbert*, 870 N.W.2d at 624; *Little*, 851 N.W.2d at 892. Initially, we ask whether we can assess the effect of the district court's misstatement of the burden of proof by examining the district court's written decision. The Minnesota Supreme Court answered a similar question when it concluded "that the failure to instruct the jury on an element of the charged offense is subject to review as a trial error, not as a structural error." *State v. Watkins*, 840 N.W.2d 21, 27 (Minn. 2013).

Here, the district court heard the witnesses, considered all of the evidence, and prepared two detailed written memoranda stating its findings of fact and conclusions of law. The district court's two detailed written decisions assist our appellate review of the effect of its misstatement of law. *See Scarver*, 458 N.W.2d at 168 (stating that, in a bench trial, the district court must issue findings of fact "to aid the appellate court in its review of conviction resulting from a nonjury trial"); *see also Colbert*, 870 N.W.2d at 624 (holding that when an error can be "assessed in the context of other evidence" to determine prejudice, it is a trial error and not a structural error). Because the effect of the district court's error is not difficult to assess, we conclude that the district court did not commit structural error when it misstated the burden of proof in its written decisions after a bench

trial. Thus, we reject Bradley's claim that structural error occurred. Next, we evaluate whether the district court's error was prejudicial.

B. Harmless-error analysis

Harmless-error review means that we determine whether the district court's guilty verdict is "surely unattributable" to the error; if so, then the error is harmless and no reversal is required. *See State v. Dorsey*, 701 N.W.2d 238, 252 (Minn. 2005).

While the district court's 2017 and 2018 orders contained misstatements of the state's burden of proof on the heat-of-passion element, both orders repeatedly and consistently discussed and analyzed whether the state had satisfied its burden of proof beyond a reasonable doubt. In total, the district court considered four charges and four lesser-included offenses. Its written analysis, when read as a whole, indicates a correct application of the state's burden of proof.

To determine whether the district court's error on the heat-of-passion element was harmless in this case, we examine whether the district court determined, and the evidence established, the absence of both elements of heat of passion beyond a reasonable doubt. *See Kelly*, 435 N.W.2d at 812. First, the district court found in its 2018 order that "Bradley's state of mind was rational and objectively, he was not acting in the heat of passion." The district court also found that Bradley demonstrated a "rational, calculating and controlled emotional state of mind before, during and after the murder," including the numerous steps he took to kill M.M.—walking back to the apartment, picking up the gun, opening the window, aiming, and shooting M.M. Additionally, the district court found that Bradley left the apartment with all the eyewitnesses and discarded the gun after the killing.

The record supports each of these findings, which are inconsistent with an act in the heat of passion. *See State v. Stewart*, 624 N.W.2d 585, 591 (Minn. 2001) (holding that "attempting to avoid detection" for a crime just committed demonstrates a "rational, calculating, and controlled emotional state of mind").

Second, the district court's findings also rejected Bradley's claim of adequate provocation by M.M. The district court found that Bradley's claim that M.M. was going to "come back to the apartment and harm them was neither credible nor plausible" because "[I.C.] had told [Bradley] that [M.M.] did not have a gun, no one saw [M.M.] with a gun, and [M.M.] had only left out the back door less than two minutes earlier." The record supports these findings. Bradley's use of a deadly weapon to shoot an unarmed man in the back, while the victim was walking away from the scene, eliminates provocation beyond a reasonable doubt. *See Robinson*, 539 N.W.2d at 239 (favorably citing caselaw stating that when a killing is "effected with a deadly weapon, the provocation must be great indeed" (quoting *State v. Shippey*, 10 Minn. 223, 230, 10 Gil. 178, 182 (1865))); *State v. Galvan*, 368 N.W.2d 400, 403 (Minn. App. 1985) (holding that when a victim and friends had walked away from defendant, there was no evidence of provocation), *aff'd*, 374 N.W.2d 269 (Minn. 1985).

Bradley challenges the sufficiency of the state's evidence regarding lack of heat of passion, arguing that the "few minutes between [him] being provoked by M.M. in the apartment and the shooting fails to establish that [he] did not kill M.M. in the heat of passion." Bradley cites to *State v. Shannon* for support. 514 N.W.2d 790, 793 (Minn. 1994). But *Shannon* is inapposite. The supreme court reversed and remanded for a new trial

because a prosecutor's misleading closing argument that the defendant did not kill in the heat of passion may have influenced the jury to return a guilty verdict. *Id.* at 793. The supreme court held that, despite the failure of defendant's counsel to object to the prosecutor's argument, the prosecutor's error constituted plain error of a prejudicial nature. *Id. Shannon* did not state that there was insufficient evidence to support the jury's verdict. Moreover, the defendant in *Shannon* was under the influence of alcohol and crack cocaine and killed the victim during a physical confrontation. *Id.* No evidence establishes that Bradley was intoxicated; also, Bradley was not in a physical confrontation with M.M. when he killed him.

Bradley also argues that he called his sister after the killing and told her that he "f---ed up" by killing M.M., and this shows that he did not "calculate[] the killing or his escape." But this was not a circumstance proved at trial, and was not in the district court's findings of fact. Moreover, even if we consider this fact, the mens rea for second-degree murder does not require "calculation" or a plan of escape. Even premediated murder does not require this. *See State v. Vang*, 774 N.W.2d 566, 583 (Minn. 2009) (noting that premediated murder does not require "proof of extensive planning or preparation to kill"). Bradley's evidence that he regretted killing M.M. does not establish he lacked the intent to kill him.

Because the district court expressly found that Bradley did not act in the heat of passion, and sufficient evidence supports the district court's finding, we conclude that the district court's error in citing the wrong legal standard in its written analysis was harmless.

In conclusion, there was sufficient evidence to convict Bradley of second-degree murder because the circumstances proved do not permit a reasonable inference other than guilt. Additionally, although the district court cited the wrong legal standard for the heat-of-passion element, it applied the correct burden of proof in its analysis when it determined that Bradley did not act in the heat of passion, and there was sufficient evidence to support this finding beyond a reasonable doubt.

Affirmed.

EXHIBIT B

STATE OF MINNESOTA

IN SUPREME COURT

A17-1659

State of Minnesota,

Respondent,

vs.

Daquan Ossie Bradley,

Petitioner.

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Daquan Ossie Bradley for further review be, and the same is, denied.

Dated: October 15, 2019

BY THE COURT:

Lorie S. Gildea
Chief Justice

EXHIBIT C

STATE OF MINNESOTA

COURT OF APPEALS

JUDGMENT

State of Minnesota, Respondent, vs. Daquan Ossie Bradley, Appellant

Appellate Court # A17-1659

Trial Court # 27-CR-16-17802

Pursuant to a decision of the Minnesota Court of Appeals duly made and entered, it is determined and adjudged that the decision of the Hennepin County District Court herein appealed from be and the same hereby is affirmed and judgment is entered accordingly.

Dated and signed: October 16, 2019

FOR THE COURT

Attest: AnnMarie S. O'Neill
Clerk of the Appellate Courts

By: Shelly B
Assistant Clerk

STATE OF MINNESOTA

COURT OF APPEALS
TRANSCRIPT OF JUDGMENT

I, AnnMarie S. O'Neill, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my signature at the Minnesota Judicial Center,

In the City of St. Paul *October 16, 2019*
Dated

Attest: AnnMarie S. O'Neill
Clerk of the Appellate Courts

By: Shelly B
Assistant Clerk