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**STATE OF MINNESOTA
IN COURT OF APPEALS
A15-1542**

State of Minnesota,
Respondent,

vs.

Desean Lamont Thomas,
Appellant.

**Filed April 17, 2017
Affirmed
Kalitowski, Judge***

Ramsey County District Court
File No. 62-CR-14-7891

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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

Considered and decided by Kirk, Presiding Judge; Peterson, Judge; and Kalitowski,
Judge.

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Desean Thomas challenges his convictions of four counts of aiding and abetting second-degree murder, including two counts committed for the benefit of a gang. Thomas argues (1) this court must reverse his convictions because the evidence was insufficient to corroborate the accomplice testimony, and (2) the district court erred in admitting evidence of two prior shootings. Thomas makes additional arguments for reversal in his pro se supplemental brief. We affirm.

FACTS

In the early morning hours on March 30, 2012, 56-year-old L.C. was shot and killed in his Central Avenue home in Saint Paul, Minnesota. Around 3:00 a.m., police responded to two 911 calls and found L.C. lying on the kitchen floor near the back door. A spent 30-caliber bullet was found underneath his body. L.C. bled to death from a gunshot wound to the chest. The medical examiner who performed the autopsy determined that the gunshot wound was caused by a rifle bullet.

Police observed six bullet holes in the back door to the house and four bullet holes in the screen of a side kitchen window. Police also found seven 30.30-caliber rifle shell casings on the ground in the back of the house and near the bullet-ridden side kitchen window. Police performed a trajectory analysis and determined that two different guns were the source of the bullet holes—one smaller-caliber gun and one larger-caliber gun, but police only found shell casings from a 30.30-caliber rifle. Police found no identifiable fingerprints on the casings.

Police connected the Central shooting to two other Saint Paul crime scenes where police had recovered 30.30-caliber shell casings. Accomplice testimony implicated appellant Desean Thomas in both prior incidents.

Thomas's accomplices, Deangelo Wilson and Juan Martinez, testified that Thomas was with them on the night of the murder. According to the accomplices, Martinez drove them in Thomas's mother's minivan to L.C.'s house. Martinez was armed with a .25-caliber gun, and Thomas was armed with a 30.30-caliber rifle. Martinez parked the minivan in an alley behind L.C.'s house, Wilson took a lookout position near a garage, Martinez walked to the side of the house, and Thomas knocked loudly on the back door. Martinez and Thomas then fired shots into the back and side of the house for about 45 seconds. Martinez and Wilson testified they heard Thomas's rifle firing, and Wilson identified a rifle admitted as a trial exhibit as the one Thomas used in the shooting.

Thomas, Martinez, and Wilson were all associated with the "Hustle Made Mafia" gang. In early 2012, Hustle Made Mafia was feuding with another local gang called "Gotta Have It." According to Martinez and Wilson, L.C.'s son, a Gotta Have It member, was the intended target of the shooting. L.C.'s son lived at the Central Avenue house "periodically" with his father, but was not home the night of the murder.

Over Thomas's objection, the state was permitted to introduce the other incidents as motive and identity under Minn. R. Evid. 404(b). The first shooting occurred around 10:00 p.m. on March 28, 2012, at a house on Ashland Avenue in Saint Paul where police recovered five 30.30-caliber shell casings and two unspent .25-caliber rounds. According to Martinez, he went to the Ashland house with Wilson and Thomas because Gotta Have It members

were there. Martinez drove the group to the Ashland house in Thomas's mother's minivan. Martinez carried a .25-caliber gun, and Thomas carried a 30.30-caliber rifle. Martinez testified that he and Thomas fired their guns at people sitting on the porch of the Ashland house. No one was killed. Martinez was charged in connection with the Ashland shooting, but Thomas was not.

W.W. was a victim of the Ashland shooting and testified that he was in his car in the alley behind the Ashland house before the shooting occurred and saw two hooded men standing near the house; one was holding a long weapon that appeared to be a rifle. Later, W.W. saw a "purplish" Dodge Caravan drive down the street and slow down before "shots rang out." L.W., W.W.'s son, was also a victim of the shooting. L.W. testified that he is a former member of the Gotta Have It gang.

The second shooting occurred at approximately 9:30 p.m. on March 29, 2012. Police recovered seven 30.30-caliber casings, three .25-caliber casings, and one spent .25-caliber bullet after responding to a 911 call reporting multiple gunshots fired at a house on Griggs Street in Saint Paul. Martinez and Wilson testified that they went to the Griggs house with Thomas. Martinez was driving Thomas's mother's minivan. Martinez, armed with a .25-caliber gun, and Thomas, armed with a 30.30-caliber rifle, fired shots at T.T., a Gotta Have It member. Martinez was convicted of assault for the Griggs shooting; Thomas was not charged with any crimes.

A.B. witnessed the Griggs shooting. A.B. testified that he saw a man come around the street corner and start shooting at T.T. A.B. described the shooter as wearing a black hoodie and something black around his face. A.B. testified that "a dark Caravan" drove up

next to him, and a “long gun” sticking out of the driver’s side window of the Caravan started shooting at him. In a police interview, A.B. said the van was green. Another eyewitness told police that he saw a green or maroon Dodge Caravan and that the suspects were wearing face masks.

Knowing that Martinez owned a green van, police executed a search warrant, and found packaging and an insert to a black face mask in the van. Police also received information that a maroon minivan registered to Thomas’s mother, L.T., had been towed on March 31, 2012. Witnesses from the Central and Griggs shooting positively identified the Dodge Caravan. On at least two occasions in February and March 2012, Thomas was pulled over by police while driving the Dodge Caravan in Saint Paul.

During execution of a search warrant on the Caravan, police found a receipt from Joe’s Sporting Goods on the floor of the front passenger seat, showing a purchase of .25-caliber ammunition at 3:26 p.m. on March 29, 2012. Police obtained surveillance footage from Joe’s Sporting Goods establishing that Thomas, Martinez, and Wilson were inside the store between 3:22 and 3:27 p.m. on March 29, and Thomas purchased the .25-caliber ammunition. According to the accomplices, they drove to the store in Thomas’s mother’s minivan, and they also stole 30.30-caliber ammunition from the store.

Police collected DNA from the steering wheel and inside right sliding door handles of the Dodge Caravan. Thomas was excluded as a possible contributor to DNA, but Martinez could not be excluded. No identifiable fingerprints were located inside the minivan.

Wilson testified that he was in an apartment belonging to J.C. with Thomas on March 31, 2012, when he saw the Dodge Caravan being towed from a parking lot across the street.

According to Wilson, the rifle used in the Central shooting was still in the Dodge Caravan. J.C. testified that, in February and March 2012, her boyfriend and Hustle Made Mafia member, R.S., brought friends over to her apartment, including Thomas and Wilson. J.C. was in her apartment on March 31 when Wilson and Thomas noticed that the Dodge Caravan had been towed. J.C. testified that she drove Thomas and his mother to the impound lot to retrieve the minivan, but neither Thomas nor L.T. had enough money to pay for the impoundment so they left.

Evidence at trial established that L.T. returned to the impound lot on the morning of April 2, 2012, and towed her Dodge Caravan to a Saint Paul car repair shop. Wilson testified that he and R.S. went with L.T. to the impound lot, and R.S. snuck the rifle out of the minivan without L.T. noticing. Wilson testified that he and R.S. later abandoned the rifle in the Mississippi River. Later that day, two Saint Paul residents discovered the rifle in a stream at a city park near the Mississippi River. Police recovered the rifle, which had a laser sight attached with electrical tape and was loaded with three live rounds of ammunition. No identifiable fingerprints were located on the rifle. The rifle, laser sight, electrical tape, and live ammunition were swabbed for DNA. Thomas was excluded as a possible contributor to the DNA on the electrical tape, and DNA results on the other items were inconclusive. A firearm analyst determined that the 30.30 casings recovered from the Ashland, Griggs, and Central shootings were all fired from the rifle.

In October 2014, a grand jury indicted Thomas and Martinez on ten counts of first- and second-degree murder for L.C.'s murder. During pretrial discovery, the state gave notice of its intent to introduce evidence of the Ashland and Griggs shootings as prior-crimes

evidence, arguing that the prior shootings were relevant to establishing Thomas's motive and identifying Thomas as the shooter. The district court admitted the evidence. The state also moved to exclude evidence of a testifying officer's prior disciplinary incidents for violating department policies, which Thomas sought to use to impeach the officer. The district court ruled that the evidence was inadmissible.

At trial, Wilson testified against Thomas in exchange for "use immunity," meaning the state would not use his testimony against him, and he was permitted to withdraw his guilty plea in an unrelated aggravated robbery and plead guilty to a lesser charge of simple robbery. The state also agreed not to charge Wilson of any crimes in connection with the Central Avenue shooting. In a plea agreement with the state, Martinez agreed to testify in exchange for pleading guilty to second-degree murder and dismissal of charges in connection with the Ashland shooting. After learning of Martinez's guilty plea on the morning of trial, Thomas moved to continue the start of trial. The district court granted Thomas 30 minutes to discuss his options with his attorney and offered Thomas additional time, but Thomas declined and asked to proceed to trial. The jury acquitted Thomas of six charged offenses, including all counts of first-degree murder, and found Thomas guilty of four counts of aiding and abetting second-degree murder. The district court sentenced Thomas to 451 months in prison on one count.

After this court stayed Thomas's direct appeal, Thomas filed a postconviction petition, arguing that he was entitled to a new trial because Martinez recanted his trial testimony. The postconviction court denied relief, finding Martinez's testimony and recantation "not credible." The postconviction court also determined that Thomas was not

entitled to relief because he could not prove that the result of the trial would have been different without Martinez's testimony.

DECISION

I.

Minnesota law requires accomplice testimony to be "corroborated by such other evidence as tends to convict the defendant of the commission of the offense." Minn. Stat. § 634.04 (2016). This rule reflects a distrust of accomplice testimony because accomplices may testify against another for immunity or clemency or for "other self-serving or malicious motives." *State v. Clark*, 755 N.W.2d 241, 251 (Minn. 2008) (quotation omitted). In reviewing the sufficiency of corroborating evidence, this court views the non-accomplice evidence in the light most favorable to the verdict, and resolves all conflicts presented by the evidence in favor of the verdict. *State v. Nelson*, 632 N.W.2d 193, 202 (Minn. 2001).

Accomplice testimony may not be solely corroborated by testimony from another accomplice. *State v. Pederson*, 614 N.W.2d 724, 733 (Minn. 2000). Corroborating evidence may be circumstantial or direct, and is sufficient "when it is weighty enough to restore confidence in the truth of the accomplice's testimony." *Clark*, 755 N.W.2d at 253–54 (quotation omitted). "An accomplice's testimony need not be corroborated on every point." *State v. Henderson*, 394 N.W.2d 561, 563 (Minn. App. 1986), *review denied* (Minn. Dec. 17, 1986). "The precise quantum of corroborative evidence needed necessarily depends on the circumstances of each case." *Clark*, 755 N.W.2d at 253–54 (quotation omitted). The corroborating evidence need not establish a *prima facie* case of guilt, but it must "affirm the truth of the accomplice's testimony and point to the guilt of the defendant in some substantial

degree.” *State v. Chavarria-Cruz*, 839 N.W.2d 515, 519 (Minn. 2013) (quotation omitted). Corroboration is sufficient if the defendant’s involvement in the crime may be “fairly inferred” from the defendant’s entire conduct. *State v. Scruggs*, 421 N.W.2d 707, 713 (Minn. 1988) (quotation omitted). “Where evidence of corroboration appears its weight and credibility is for the jury.” *State v. Harris*, 405 N.W.2d 224, 229 (Minn. 1987) (quotation omitted).

Here, the record indicates that although the accomplices were vigorously cross examined regarding their testimony, the jury found them to be credible. But Thomas argues that his convictions must be reversed because the state “presented no independent evidence linking [him] to the crime or pointing to [his] guilt in any substantial degree.” We disagree. The states points to “three key ways” in which the accomplice testimony was corroborated.

First, the state presented evidence of the receipt and surveillance footage from Joe’s Sporting Goods establishing that Thomas purchased .25-caliber ammunition on March 29, 2012, hours before the murder. This evidence establishes Thomas’s association with the accomplices near the time of the crime, participation in the preparation of the crime, and the opportunity to commit the crime. *Clark*, 755 N.W.2d at 254. Thomas argues that this evidence is insufficient because no .25-caliber shell casings were found at the Central crime scene, and there was no evidence corroborating the accomplices’ assertions that they stole 30.30-caliber ammunition. But state testimony established that two guns were used during the Central shooting, one of which was a smaller caliber gun than the 30.30-caliber casings found at the crime scene. Additionally, .25-caliber casings were found at the Griggs crime

scene, and the Griggs shooting occurred in between the trip to Joe's Sporting Goods and the Central shooting.

Second, the state presented non-accomplice evidence of the Ashland and Griggs shootings, which took place within two days of the Central shooting, and Thomas's mother's Dodge Caravan was identified at all three shootings. *See Henderson*, 394 N.W.2d at 563 (holding *Spreigl* evidence was valid corroborating evidence of accomplice testimony). Moreover, the Joe's Sporting Goods receipt was found in the Dodge Caravan, police saw Thomas driving the Dodge Caravan in February and March 2012, and J.C. testified that Thomas was in her apartment when the Dodge Caravan was towed. Thomas argues that this evidence is insufficient because his mother rented her minivan to other people, and his DNA was not found in the minivan. But the DNA evidence established that Martinez was a possible contributor to the DNA on the steering wheel, which is consistent with the accomplices' testimony that Martinez drove the Dodge Caravan to and from all three shootings. And there is no evidence that Thomas's mother rented her minivan to anyone else during the time period of the three shootings.

Third, J.C. testified that Thomas spent time at her apartment where Hustle Made Mafia members, including Wilson, hung out. J.C. testified that Thomas and Wilson were in her apartment the day after the Central shooting, and they saw the Dodge Caravan being towed from across the street.

We conclude that the non-accomplice evidence, when viewed in its entirety in the light most favorable to the verdict, sufficiently corroborated the accomplice testimony.

II.

“Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b). This evidence, called “*Spreigl* evidence” in Minnesota, is excluded because “it might . . . suggest[] 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.” *State v. Fardan*, 773 N.W.2d 303, 315 (Minn. 2009) (quotations omitted); see *State v. Spreigl*, 272 Minn. 488, 490, 139 N.W.2d 167, 169 (1965). *Spreigl* evidence is admissible, however, to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b).

There are five requirements that must be satisfied to admit *Spreigl* evidence:

- (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); see also Minn. R. Evid. 404(b).

This court reviews a district court’s decision to admit *Spreigl* evidence for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). A district court abuses its discretion when its decision is based “on an erroneous view of the law or is against logic and facts in the record.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). An appellant bears the burden of proving that admission of *Spreigl* evidence was erroneous and that the error caused prejudice. *Griffin*, 887 N.W.2d at 261. Reversal is required only if the appellant

demonstrates that “there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Id.* at 262.

Thomas argues that the district court abused its discretion in admitting evidence of the Griggs and Ashland shootings because it was not material to the state’s case and the potential for unfair prejudice outweighed the probative value. We disagree. The *Spreigl* evidence was relevant, material, and highly probative to the state’s case. The Minnesota Supreme Court has upheld admission of *Spreigl* evidence as “highly probative” of the defendant’s motive where the evidence established a “pattern of shooting incidents” involving gang rivalry and retaliation. *State v. Burrell*, 772 N.W.2d 459, 466 (Minn. 2009). Here, evidence at trial established that Thomas and his accomplices were affiliated with a gang, they were all seen purchasing ammunition within hours of the Central shooting, the target of the shooting was a rival gang member, the *Spreigl* shootings took place within 48 hours of the Central shooting and involved the same accomplices, same van, and same motive. We therefore conclude that the risk for unfair prejudice did not outweigh the highly probative value of the *Spreigl* evidence. *Id.*; see also *State v. Smith*, 749 N.W.2d 88, 95 (Minn. App. 2008) (noting the difference between prejudicial evidence, which is true of almost any evidence the state submits, and *unfairly* prejudicial evidence).

Moreover, Thomas’s arguments fail because he cannot establish that the admission of the *Spreigl* evidence significantly affected the verdict. In conducting this analysis, appellate courts have considered whether the state presented other evidence on the issue for which *Spreigl* evidence was offered, whether the district court gave a cautionary instruction, whether the state “dwelled” on the other crimes evidence during closing argument, and

whether the evidence of the defendant's guilt was overwhelming. *State v. Thao*, 875 N.W.2d 834, 839 (Minn. 2016). This court assumes that the jury followed the district court's cautionary instructions. *State v. Welle*, 870 N.W.2d 360, 366 (Minn. 2015). Thomas asserts the admission of the *Spreigl* evidence significantly affected the verdict because it was discussed extensively at trial and the state relied on it in closing. We disagree.

The evidence of Thomas's guilt was strong. The accomplices directly implicated Thomas in the Central shooting, testifying that Thomas was the 30.30-caliber rifle shooter. State experts testified that there were seven 30.30-caliber shell casings found outside L.C.'s house, the casings matched the rifle recovered from the Mississippi River, the accomplices identified the recovered rifle as the rifle Thomas used in the shooting, and a spent 30.30-caliber bullet was found underneath L.C.'s body. Moreover, testimony established that Thomas was affiliated with Hustle Made Mafia, L.C.'s son was the target of the Central shooting and was a Gotta Have It member, and the Hustle Made Mafia and Gotta Have It gangs were feuding. This evidence, in addition to all of the non-accomplice corroborating evidence discussed above, strongly pointed to Thomas's guilt. *Cf. Thao*, 875 N.W.2d at 840 (upholding admission of *Spreigl* evidence because witnesses identified defendant's car at crime scene, surveillance video showed defendant leaving a bar immediately before the shooting, and testimony established that defendant was a gang member and shooting could have been motivated by gang retaliation).

Moreover, the state's references to the Griggs and Ashland shootings during its closing only amounted to four pages of transcript out of a total of over 30 pages. And the record does not establish that the state "dwelled" on the *Spreigl* evidence during closing;

rather, it summarized the facts of the prior shootings, noting their similarities to the Central shooting, and displayed exhibits of the Griggs and Ashland houses. Notably, the jury acquitted Thomas of six charged offenses, including first-degree murder, indicating that any improper comments during the state's closing were not prejudicial. *State v. Washington*, 521 N.W.2d 35, 40 (Minn. 1994) (“Where the jury has acquitted the appellant of some counts, but convicted the appellant of others, we view the verdicts as an indication that the members of the jury were not unduly inflamed by the prosecutor’s comments.” (quotation omitted)).

Finally, the district court provided a total of four cautionary instructions to the jury. These instructions were given before introduction of any *Spreigl* evidence and in the final jury instructions. *See Welle*, 870 N.W.2d at 366 (finding no prejudice where “at every juncture before evidence of the 2001 incident was admitted and during the final jury instructions, the trial court instructed the jury on how to treat the evidence”). In each instruction, the district court instructed the jury that the “evidence is being offered for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged. The defendant . . . may not be convicted of any offenses other than the charged offenses. You are not to convict the defendant on the basis of any occurrence on March 28th . . . or March 29th.” The final jury instruction also provided that the *Spreigl* “evidence is not to be used as proof of the character of the defendant, or that the defendant acted in conformity with such character.” *See Thao*, 875 N.W.2d at 839–40 (affirming admission of *Spreigl* evidence when district court’s cautionary instruction contained similar language). Because the admission of *Spreigl* evidence was not error and

Thomas had the burden to demonstrate how the admission of the evidence significantly affected the verdict, and did not do so, his *Spreigl* argument fails.

III.

Thomas raises ten issues in his pro se supplemental brief. The first six issues relate to the two issues discussed above. Addressing the remaining four issues, Thomas first argues that he was denied due process of law because the district court did not allow him to impeach a testifying officer with evidence of the officer's prior discipline. We disagree. The district court determined that the impeachment evidence was only marginally relevant because the disciplinary reports were "fairly old," and there was little probative value to impeaching the officer because he was "not going to say anything different than other witnesses are going to say" and "wasn't [an eyewitness] to any crime or the crime alleged." The district court was permitted to limit cross-examination to relevant impeachment evidence. *State v. Richards*, 495 N.W.2d 187, 195 (Minn. 1992) ("The right to confront and to cross-examine is not absolute" and the district court has "wide latitude . . . to impose reasonable limits on such cross-examination."). Moreover, the record establishes that Thomas was able to impeach the officer with other evidence. Thomas was not denied due process of law.

Second, Thomas argues that the district court abused its discretion in denying his request to continue the start of trial because the state informed him on the morning of trial that Martinez had pleaded guilty and would testify against him, and he had inadequate time to prepare for trial. Thomas's argument lacks merit. The district court gave Thomas a 30-minute continuance on the morning of trial to discuss his options with his attorney and asked Thomas whether he needed additional time, but Thomas expressly stated that he was ready

to proceed to trial. *State v. Sanders*, 598 N.W.2d 650, 654 (Minn. 1999) (“An initial consideration in reviewing the denial of a continuance is whether the trial court had granted any previous motions for continuance by appellant.”).

Third, Thomas argues that the state engaged in improper ex parte communications with Wilson by sending him a grand jury subpoena and failing to send a copy of the subpoena to Wilson’s attorney. This argument fails because Thomas did not raise it in the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Even considering the argument, it lacks merit. The state’s service of a grand jury subpoena on Wilson was not an ex parte communication, the state has the power to subpoena grand jury witnesses, Minn. R. Crim. P. 22.01, subd. 1(a), subd. 4, and, to the extent that Thomas is asserting violations of Wilson’s constitutional rights, he has no standing to do so. *State v. Gray*, 413 N.W.2d 107, 112 (Minn. 1987) (“[C]onstitutional rights are personal and may not be asserted vicariously.” (quotation omitted)).

Fourth, Thomas argues that the postconviction court erred in denying relief because it should have believed Martinez’s recantation. We disagree because this court defers to the postconviction court’s credibility determinations. *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997); *see also Ortega v. State*, 856 N.W.2d 98, 103 (Minn. 2014) (stating that a new trial based on false testimony may be granted only if the court is reasonably well satisfied the testimony was false).

After close review of the record, we conclude that Thomas is not entitled to the relief he seeks.

Affirmed.