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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1020**

State of Minnesota,  
Respondent,

vs.

Justin Darrell Reynolds,  
Appellant.

**Filed May 6, 2019  
Affirmed  
Worke, Judge**

Ramsey County District Court  
File No. 62-CR-17-4308

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

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

Michael B. Padden, Padden Law Firm P.L.L.C., Lake Elmo, Minnesota; and

Karlowba R. Adams Powell, Powell Law Office, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Schellhas,  
Judge.

## UNPUBLISHED OPINION

**WORKE**, Judge

Appellant challenges his second-degree murder conviction, arguing that the district court erred by (1) submitting the charge to the jury under an aiding-and-abetting theory, (2) denying his request to offer alternative-perpetrator-defense evidence, (3) admitting *Spreigl* evidence, and (4) permitting the jury to use a magnifying glass. We affirm.

### FACTS

On June 10, 2017, C.R. went to a bar with friends and his fiancée, S.M. Near closing time, C.R. exited the bar. Around the same time, appellant Justin Darrell Reynolds and Charles Frye walked up to the bar. As several people stood outside of the bar, fights broke out and a gun was fired. C.R. was shot and pronounced dead at the scene.

The shooting was captured on surveillance video, although the picture is not clear and activity surrounding the shooting is partially obstructed by an awning. Before C.R. was shot, he was interacting with Reynolds and Frye. Reynolds is taller than Frye and had longer dreadlocks. Following the shooting, Reynolds immediately fled, and Frye followed. Reynolds and Frye were each charged with aiding and abetting second-degree intentional murder.

Police interviewed S.M. hours after the shooting, and she reported that she did not see anything. However, during a follow-up interview months later, S.M. stated that “the bigger guy with the longer dreads had the gun.” The charge against Frye was dismissed. Reynolds filed notice of an alternative-perpetrator defense, claiming that Frye was the

shooter. Reynolds stipulated, however, that he would not seek to admit evidence of “bad blood” or prior incidents between C.R. and Frye.

Before trial, the state moved to admit *Spreigl* evidence. The state asserted that Reynolds’s ex-girlfriend, T.B., would testify that days before the shooting, Reynolds arrived at her apartment with two other men and pointed a gun at her fiancé. The district court ruled that the evidence was admissible.

At Reynolds’s jury trial, S.M. testified that she did not immediately report to police that she saw Reynolds with the gun because she “was in shock” after the shooting. S.M. testified that the “bigger guy” “had the gun and put it in his pants.” S.M. testified that she was sure that she did not see Frye with the gun and that she was sure that she saw Reynolds with the gun.

Sergeant Shanley testified that he has conducted hundreds of interviews and does not always get all of the information immediately because witnesses have experienced a traumatic event and do not remember everything. He stated that it is “very common” to receive additional information during follow-up interviews.

The surveillance video and photographs pulled from the video were admitted into evidence. The state asserted that one photograph shows Reynolds lean forward, extend his arm toward C.R. and over Frye, who was leaning down on the hood of a vehicle, and fire the gun. The state asserted that a bright white spot on the photograph is the muzzle flash. The state claimed that subsequent photographs in the series show C.R. fall, Reynolds move back, and Frye stand up and turn around holding nothing in his hand.

After the state rested, Reynolds moved to dismiss charges pertaining to aiding and abetting. The district court denied Reynolds's motion.

During deliberations, the jury requested a magnifying glass. Reynolds's attorney objected, arguing that it would be unfair because the state had the opportunity to enhance the images on the video, but declined to do so. The district court allowed the jury to have a magnifying glass.

The jury found Reynolds guilty of aiding and abetting second-degree intentional murder, and the district court sentenced him to 386 months in prison. This appeal followed.

## DECISION

### *Aiding-and-abetting instruction*

Reynolds argues that aiding and abetting "should not have been part of this case" because it is not supported with evidence. He claims that a district court is permitted to give an aiding-and-abetting instruction only when "substantial rights are not prejudiced," which is not the case here. A district court has "considerable latitude" in selecting the language for jury instructions. *State v. Gatson*, 801 N.W.2d 134, 147 (Minn. 2011). Jury instructions must fairly and adequately describe the law of the case. *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). If no abuse of discretion is shown, there is no reversible error. *State v. Kuhnau*, 622 N.W.2d 552, 555 (Minn. 2001).

Reynolds relies on *State v. Milton* to support his argument, but in that case the district court failed to properly instruct the jury on the element of "intentionally aiding." 821 N.W.2d 789, 806 (Minn. 2012). And even then, the supreme court decided that the appellant was not entitled to a new trial. *Id.* at 810.

Here, the district court instructed the jury on the elements of second-degree murder: (1) Reynolds caused the death of C.R. (2) with the intent to effect his death. The district court gave the following aiding-and-abetting instruction: “The defendant is guilty of a crime committed by another person when the defendant has played an intentional role in aiding the commission of the crime and made no reasonable effort to prevent the crime before it was committed.” The district court explained that “[i]ntentional role” included “aiding, advising, hiring, counseling, conspiring with, or procuring another to commit the crime,” and stated that Reynolds’s “presence or actions” intentionally aided in the commission of a crime if he knew that another person was going to commit or was committing a crime and if his presence or actions aided the commission of the crime. The court in *Milton* identified this instruction as the one that should have been given to the jury. See 821 N.W.2d at 806. Thus, there is not even error here, much less prejudicial error.

Reynolds also cites *Smith v. Goose*, but in that case the issue was “whether the Due Process Clause forbids a state from using inconsistent, irreconcilable theories to secure convictions against two or more defendants in prosecutions for the same offenses arising out of the same event.” 205 F.3d 1045, 1049 (8th Cir. 2000). In *Smith*, the state claimed one thing to be true in prosecuting Smith, but rejected it in prosecuting a different defendant. *Id.* at 1050. The court determined that the state’s “manipulation of the evidence” to benefit its theory of each case deprived the defendant of due process and rendered his trial fundamentally unfair. *Id.* at 1051.

Here, there is no similar manipulation of evidence by the state in different, but related, proceedings. Reynolds was charged with aiding and abetting second-degree

murder, and the district court continually made reference to the charge as such. For example, when the district court denied Reynolds's motion to dismiss for lack of probable cause, it noted that Reynolds was charged with aiding and abetting second-degree murder. In discussing the admissibility of alternative-perpetrator evidence, the district court noted that the defense might seek to admit such evidence because Reynolds was charged under the aiding-and-abetting statute.

Finally, we note that at oral argument, the state conceded that there was not enough evidence for aiding and abetting to go to the jury, and that it would have been better if the district court had not instructed the jury on aiding and abetting. But we disagree, and are not bound by the state's concession. *See State v. Werner*, 725 N.W.2d 767, 770 n.1 (Minn. App. 2007). Rather, we must "decide cases in accordance with [the] law." *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990).

The record shows sufficient evidence to support the aiding-and-abetting theory. First, the most persuasive evidence that Reynolds shot the gun is the surveillance video and photographs. However, the images are not clear, and Reynolds and Frye are standing so close to each other, making it somewhat difficult to distinguish between their movements. Additionally, S.M. testified that she saw Reynolds with a gun, but she did not testify that she saw him shoot the gun.

Because the record shows that Reynolds was always aware of the aiding-and-abetting charge, the evidence supports the charge, and because the district court properly instructed the jury, the district court did not abuse its discretion in submitting the aiding-and-abetting charge to the jury.

### ***Alternative-perpetrator-defense evidence***

Reynolds next argues that the district court should have admitted evidence “through witnesses, such as the victim’s mother and the victim’s girlfriend” of the history between C.R. and Frye. This court reviews rulings on the admission of evidence for an abuse of discretion. *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). “The burden is on the [appellant] to show that the district court abused its discretion and that the [appellant] was prejudiced thereby.” *State v. Ahmed*, 782 N.W.2d 253, 259 (Minn. App. 2010).

Reynolds fails to support his claim with legal argument or authority, failing to cite even a single case to support his claim. As such, this claim is arguably forfeited for lack of briefing. *See State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (stating that assignment of error based on mere assertion and not supported by argument or authority is “waived unless prejudicial error is obvious on mere inspection”), *aff’d*, 728 N.W.2d 243 (Minn. 2007); *see also State v. Myhre*, 875 N.W.2d 799, 806 (Minn. 2016) (declining to address issues raised in a brief but not adequately argued or explained).

But even if we considered Reynolds’s claim, it would fail because he agreed throughout the proceedings that evidence of C.R. and Frye’s relationship would not be admitted. At a pretrial hearing, Reynolds’s attorney agreed that there would be no extrinsic evidence of an alternative-perpetrator defense. Immediately before Reynolds’s jury trial, the prosecutor sought to confirm that the defense would not seek to admit evidence of C.R. and Frye’s relationship. Reynolds’s attorney stated: “[W]e’re not going to be offering any testimony regarding this [alleged] bad blood.”

In addressing defense motions before trial, the district court reminded Reynolds that the parties stipulated that evidence regarding C.R. and Frye's relationship would not be admitted. The district court explained that the issue was raised "specifically in the discussion about the alternative perpetrator where there was an agreement not to have extrinsic evidence admitted, only evidence of what occurred that night." Thus, Reynolds was aware that extrinsic evidence relevant to the relationship between C.R. and Frye would not be admitted. Further, Reynolds made no offer of proof regarding evidence of the relationship between C.R. and Frye.

Finally, Reynolds cannot show prejudice. S.M. testified that she did not know Reynolds, but was familiar with Frye. C.R.'s friend, who was out with him the night of the shooting, testified that she had known Frye for over ten years, but had never seen Reynolds before. This witness testified that she reported to police that Frye and C.R. were fighting on the night of the shooting. Reynolds was convicted of aiding and abetting second-degree murder. Based on this evidence, the jury could have determined that Reynolds aided Frye in the shooting of C.R., someone Frye likely knew and with whom he fought that night.

### ***Spreigl* hearing**

Reynolds also argues that he was denied a fair trial with the admission of the *Spreigl* evidence. Reynolds claims that T.B. was not credible and that a "record should have been made outside of the presence of the jury to assess the validity of the offer of proof." "A district court's decision to admit *Spreigl* evidence is reviewed for an abuse of discretion. A defendant who claims the [district] court erred in admitting evidence bears the burden of

showing an error occurred and any resulting prejudice.” *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016) (citation omitted). If this court “determines that the district court erroneously admitted *Spreigl* evidence, the court must then determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Id.* at 262.

At a pretrial hearing, the state argued that because Reynolds claimed an alternative-perpetrator defense, the *Spreigl* evidence was important to prove identity and intent. The district court ruled that the *Spreigl* evidence was admissible because the incident was close in time and proximity to the shooting, and both involved Reynolds being accompanied by other people and using a handgun for an assault. The district court stated that the evidence could show *modus operandi*, identity, knowledge, and absence of mistake or accident.

Before admitting the *Spreigl* evidence at Reynolds’s jury trial, the district court allowed the parties to reargue their positions on the admissibility of the evidence. Reynolds argued that there were no charges, arrest, or conviction related to the incident, but the district court ruled that the evidence was admissible. Thus, the district court carefully considered the admissibility of the *Spreigl* evidence on more than one occasion.

Additionally, Reynolds had an opportunity to challenge T.B.’s credibility on cross-examination. T.B. testified that on June 5, 2017, Reynolds and two other men came to her apartment. While in the apartment someone held a gun to T.B.’s fiancé’s head, though T.B. could not recall who held the gun. On cross-examination, T.B. was asked: “[Y]ou had given some false information to the police, correct?” She replied: “I probably did. I don’t remember. It was a long time ago.” T.B. then stated that she did not give false

information to the police, rather, the police “actually wrote wrong things down.” She later admitted that a police officer accused her of misstating the truth. Therefore, Reynolds sufficiently challenged T.B.’s credibility.

Further, any issue with T.B.’s credibility does not make the evidence inadmissible. The jury is tasked with weighing witness credibility. *See State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017) (stating that the jury is in the best position to determine witness credibility and may accept part and reject part of a witness’s testimony). Further, Reynolds claimed an alternative-perpetrator defense. The *Spreigl* evidence showed that Reynolds had access to a gun only days before the shooting and he (or a person with him) held a gun to a man’s head. As the district court determined, this evidence could assist the jury in determining identity.

Finally, before T.B. testified, the district court gave the jury a cautionary instruction. The district court stated, among other things, that Reynolds could not be convicted of any offense other than that charged. We presume that the jury followed the district court’s instructions. *See State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998). Based on the record, Reynolds has failed to show that the admission of the *Spreigl* evidence was an abuse of discretion or prejudicial.

### ***Magnifying glass***

Finally, Reynolds argues that the district court erred by permitting the jury to use a magnifying glass during deliberations. The decision to grant a jury’s request is within the discretion of the district court, and this court will not overturn it absent an abuse of that discretion. *State v. Reed*, 737 N.W.2d 572, 586 (Minn. 2007) (applying abuse-of-discretion

standard to jury request to review evidence); *State v. Larson*, No. A06-1036, 2007 WL 4234246, at \*6 (Minn. App. Dec. 4, 2007) (applying abuse-of-discretion standard to district court's denial of jury request for a dictionary), *review denied* (Minn. Feb. 19, 2008).

Reynolds objected to the jury's request for a magnifying glass, arguing that the state could have enhanced the images on the video, but decided not to. Again, because Reynolds fails to offer legal argument and authority, we could deem this argument forfeited. But even if we consider Reynolds's claim, the record does not support his argument.

On cross-examination, Sergeant Shanley agreed that someone in his position had "the ability to retain an expert to enhance the clarity of images on video." But he testified that, in this particular case, "[t]he quality becomes less and it's not as sharp of an image [when you zoom in]." Further, Reynolds did not object to the stills or video; in fact, in closing argument, Reynolds's attorney stated: "The defense embraces the video." Therefore, if Reynolds embraced the video and believed that it showed Frye shooting C.R., he would have benefitted from the jury having access to a magnifying glass.

Finally, as the district court stated, a district court may allow a jury to use a magnifying glass because it is not "extrinsic or new evidence." *See Evans v. United States*, 883 A.2d 146, 152 (D.C. 2005) (stating that "the use of a magnifying glass by jurors for exhibits properly introduced at trial is within the [district] court's discretion"); *see also State v. Jackson*, 596 N.W.2d 262, 265-66 (Minn. App. 1999) (holding that jury did not commit misconduct by using a magnifying glass and their own fingerprints to analyze accuracy of fingerprint evidence), *review denied* (Minn. Aug. 25, 1999).

**Affirmed.**