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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2034**

State of Minnesota,
Respondent,

vs.

Hassan Farth Muse,
Appellant.

**Filed January 21, 2020
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-17-6607

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

Michael O. Freeman, Hennepin County Attorney, Patrick R. Lofton, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Gary R. Wolf, William J. Coughlin, Wolf Law Office, Eagan, Minnesota (for appellant)

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

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

ROSS, Judge

A jury found Hassan Muse guilty of attempted first-degree murder and other crimes
after a gunshot victim testified that Muse shot him. Muse appeals, asserting a speedy-trial
violation, ineffective assistance of trial counsel, plain errors during his trial, abuses of the

district court's discretion, and a lack of sufficient evidence to support the jury's verdict. None of the assertions warrants reversal, and we therefore affirm.

FACTS

The state accused Hassan Muse of exiting a car, approaching a parked car and shooting one of the occupants repeatedly. It charged Muse with attempted first-degree murder while committing a drive-by shooting, attempted second-degree murder, drive-by shooting, and prohibited possession of a firearm.

Muse made a speedy-trial demand on July 9, 2018, waiving three days of the demand to facilitate a September 10, 2018 trial in Hennepin County District Court. With Muse's agreement, the district court released him to a hold in Scott County for an unrelated charge. Muse was not returned to Hennepin County for trial until September 17, 2018. The prosecutor announced that he had mistakenly believed that a court-issued warrant would secure Muse's return from Scott County. He explained that, once he discovered the mistake, he had an expedited writ processed for Muse's return. Muse's attorney argued that the delay prejudiced Muse's defense because the delay allowed the state to secure additional witnesses. The district court rejected the argument as speculative and concluded that Muse's speedy-trial right was not violated. The case proceeded to a jury trial.

Victim's Testimony

The gunshot victim, A.A. ("Victim"), survived the shooting and testified at the trial. He said that he ran into Muse at a gas station on January 20, 2017, and told Muse to leave Victim's brother alone. The two argued and traded insults. Victim saw Muse the next night at the Karmel Mall in Minneapolis and left, sensing "hostility in the air." Victim later

caught a ride with his friend M.K. (“Friend”). Victim took the rear passenger-side seat, Friend drove, and two other passengers took the other seats. Friend drove the group to a cafe and parked in the alley.

An SUV soon approached and Victim grew suspicious. Friend exited the car to talk to the SUV’s occupants. Victim saw Muse exit the SUV, approach Friend’s vehicle, pull out a handgun, and point it at Victim through the open window. Muse then shot Victim several times. Victim played dead but Muse kept shooting him. Victim was taken to the hospital, where he told police that Muse shot him. Victim initialed Muse’s photograph two days after the shooting, confirming his identification of Muse as the shooter.

On cross-examination, Muse’s attorney asked Victim if he had been shot before. Victim said he had, and Muse’s attorney asked, “How many time[s] have you been shot before?” The prosecutor objected and the district court sustained the objection. Muse’s attorney later explained the testimony’s purported relevance as follows:

[I]t’s clear that there’s more than one person that has . . . shot [Victim] in the past who isn’t my client that could be after him trying to finish the job. It’s an alternative perpetrator theory.

The district court agreed that the examination demonstrated an attempt to elicit alternative-perpetrator evidence, but it reasoned that Muse had not satisfied foundational requirements, having failed to establish that a plausible alternative shooter had been at the scene. The district court explained to Muse’s counsel, “It’s just pure speculation on your part that since he was shot . . . by somebody else, it’s possible somebody else shot him this time. That’s not alternative perpetrator.”

Investigating Officers' Testimony

Minneapolis Police Officer Zach Seraphine spoke with Victim at the hospital two days after the shooting. Victim told Officer Seraphine that “Ali Uraaye,” which means “Stinky Ali,” had shot him. Minneapolis Police Sergeant Abdiwahabi Ali received information that a shooting victim had identified a suspect by the name Ali Uraaye. Sergeant Ali knew that Muse went by that nickname, and he provided a photograph of Muse to Minneapolis Police Sergeant Scott Olson. Sergeant Olson went to the hospital and spoke with Victim, confirming that he knew Muse. He showed Victim the photograph, which Victim initialed as depicting the shooter.

Muse's Waiver of His Confrontation Right and Friend's Statements

Friend did not appear to testify at Muse's trial. The prosecutor said that Friend was fearful about testifying, having received threatening calls from Muse's friends. The state moved to admit Friend's recorded statements made to police and the prosecutor. Muse's lawyer objected, but Muse indicated that he wanted to play portions of Friend's statements. The district court explained to Muse that he would be unable to confront Friend about the substance of the recordings due to his absence from trial, and it explained that the state was seeking to present evidence despite Muse's confrontation right on the theory that Muse had forfeited his confrontation right by wrongdoing.

The state offered the admission of only two statements—an audio recording of Friend's interview the night of the shooting and a video recording of Friend's interview a few days later. Muse's attorney indicated that he would review the recordings with Muse before Muse made a final decision, but he announced the conflict between his preferred

trial strategy and Muse's strategy: "[J]ust for the record, Your Honor, I'm against this . . . [B]ut my client, you know, it's his case, and so I want to go over it with him and if this is what he wants after hearing both of these interviews and talking with me about [it,] then I . . . have to defer to his wishes." After a break in the record, Muse elected to have both statements played to the jury.

The first recording was Friend's January 21, 2017 interview. In it, Friend identified the shooter as Ali Uraaye, or in English, "Stinky Ali." But in the second recording, Friend's January 24, 2017 interview, Friend claimed he could not say that Muse was the man who had exited the vehicle. And he claimed that his previous identification of Muse was based on Victim's conversation with others in the car.

Muse later formalized his confrontation waiver, indicating that he understood his right but chose to waive it because he thought there was information the jury ought to know: that Friend did not identify Muse as the man who exited the vehicle. He waived his right to testify, and the jury heard closing arguments and began deliberating. The jury eventually asked the district court to replay Friend's recorded statements. Muse's attorney objected. The district court overruled the objection, reasoning that the evidence would aid the jury, that it would not be misused, and that it was not unduly prejudicial.

The jury found Muse guilty on all four counts. The district court entered convictions on the attempted first-degree-murder and prohibited-possession charges. It sentenced Muse to 220 months in prison. Muse appeals.

DECISION

Muse argues that the one-week delay violated his speedy-trial right, that he received ineffective assistance of counsel, that the district court plainly erred by failing to intervene throughout trial, that the district court improperly precluded testimony, that the jury should not have been permitted to replay Friend's recorded statements, and that there is insufficient evidence to sustain the guilty verdict. For the following reasons, we affirm his convictions.

I

Muse argues that the seven-day delay violated his right to a speedy trial. The argument is not convincing. The United States and Minnesota Constitutions afford criminal defendants the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. We review a claimed speedy-trial violation de novo. *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015). We consider the delay's length, its reason, whether the defendant asserted his right, and any prejudicial effect. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999).

The first and third factors are not disputed. A delay exceeding 60 days from the defendant's demand creates a presumption that a violation occurred. *Taylor*, 869 N.W.2d at 19; *see also* Minn. R. Crim. P. 11.09(b). The parties agree that the one-week delay necessitates our review of the remaining factors, and that Muse's proper demand is another factor weighing in his favor.

We next consider whether the delay is attributable to the state or to Muse. *See Taylor*, 869 N.W.2d at 19. We assign different weights to different reasons, assigning less weight to mistakes or neglect. *See id.* at 20. The state argues that the delay was a mistake,

citing the prosecutor's writ error and prompt effort to secure Muse's return to Hennepin County from Scott County. Muse asserts that "the [s]tate arranged to have [Muse] moved around," but the assertion overlooks the fact that his counsel agreed to the transfer. The district court concluded that the situation was a mere mistake, and Muse's assertion does not call that conclusion into serious doubt. Because the state had the duty to get Muse to court but the mistake was not a deliberate attempt to delay the trial, the factor weighs in Muse's favor, but only slightly.

The prejudice factor is dispositive here. In considering whether a delay prejudiced a defendant, we consider three interests: "(1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility that the defense will be impaired." *Windish*, 590 N.W.2d at 318. But the first two of these interests are not implicated if the defendant is already in custody for different offenses. *Taylor*, 869 N.W.2d at 20. Muse was in custody in Scott County on another offense. At oral argument on appeal, Muse's attorney speculated that Muse might have made bail on his Scott County charge, but this speculation carries no weight in our analysis. The circumstances did not implicate the first two interests here.

The most serious interest is the potential impairment of a defendant's defense. *Windish*, 590 N.W.2d at 318. "A defendant does not have to affirmatively prove prejudice; rather, prejudice may be suggested by likely harm to a defendant's case." *Id.* The district court rejected the suggestion that the delay afforded the state the opportunity to procure trial witnesses, finding that the state would have gotten those witnesses to trial even if it had begun as scheduled. And in any event, the prejudice interest is primarily concerned

with a defendant's inability to adequately prepare his defense. *See Doggett v. United States*, 505 U.S. 647, 654, 112 S. Ct. 2686, 2692 (1992). Muse's trial attorney acknowledged that the state properly disclosed the witnesses it intended to produce. So even if the state had in fact been able to secure more witnesses for trial, this would not trigger any concerns about an evidentiary impairment harming Muse's opportunity to defend. Muse fails to develop any theory on appeal suggesting prejudice, and although we are not inclined to look beyond his argument to the trial record, we observe that the record offers no apparent support. The delay did not prejudice Muse.

On balance, despite Muse's speedy-trial demand and the one-week delay, he cannot secure reversal on this theory. We turn to his ineffective-assistance argument.

II

Muse argues that he received ineffective assistance of counsel warranting a new trial. The Constitution affords criminal defendants the right to an attorney. U.S. Const. amend. VI. This right includes the right to *effective* assistance of counsel, and we analyze whether this right was violated by applying the two-element test announced in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). Applying the two elements, Muse can prevail only if he demonstrates that his attorney's performance was objectively unreasonable and that there is a reasonable probability that, but for his attorney's deficient performance, the outcome would have been different. *Sanchez-Diaz v. State*, 758 N.W.2d 843, 848 (Minn. 2008). Ineffective-assistance claims involve mixed questions of fact and law, and our review is de novo. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). Muse identifies two theories supporting his claim, maintaining that his

counsel failed to object to leading questions and improperly waived his right to confront Friend. Neither prevails.

A. Leading Questions

An attorney's performance is constitutionally substandard if he does not exercise "the customary skills and diligence that a reasonably competent attorney would [exercise] under the circumstances." *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999) (quotation omitted). An appellant challenging his attorney's performance must overcome a strong presumption that his trial attorney's conduct was reasonable. *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). And we are therefore "highly deferential" in scrutinizing the performance. *Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065.

Muse correctly indicates that the prosecutor's examination of Victim included leading questions. The prosecutor had even foreshadowed the leading nature of his questions, signaling to Victim, "So we're just going to try to do yeses or no[e]s; is that fair?" The signal prompted no objection from Muse's attorney. We assume that many attorneys would have objected either immediately at the signaling or as the leading questions began. But we cannot say that failure to object fell below an objective standard of reasonableness.

This is because whether to object to questions is a matter of trial strategy. *Leake v. State*, 737 N.W.2d 531, 542 (Minn. 2007). And matters of trial strategy are matters of trial counsel's discretion that "will not be second-guessed by appellate courts." *Id.* at 536. Muse's attorney objected to some, but not all leading questions. There are myriad plausible reasons why a defense attorney might not object to the leading form of a question. We are

in a poor position to question the reasons here, given the posture of the appeal. “Generally, an appeal from a conviction is not the most appropriate way to raise issues of trial counsel’s ineffective representation. This is true because we do not have the benefit of all the facts regarding why defense counsel acted as he did.” *State v. Cermak*, 350 N.W.2d 328, 332 n.5 (Minn. 1984). Muse did not move to stay his appeal to pursue postconviction relief to develop a record of his counsel’s actual trial strategies or reasoning. Left to the sparse record here, we cannot accept Muse’s absolute assertion that there could be “no strategy” justifying the decision not to object. We decline to second-guess Muse’s trial counsel and hold that Muse has not met his burden on the first ineffective-assistance element.

B. Confrontation Waiver

We also are not persuaded by Muse’s contention that he received ineffective assistance of counsel based on his attorney allegedly allowing a violation of Muse’s right to confront Friend by agreeing to the admission of Friend’s recorded interviews. The United States and Minnesota Constitutions afford criminal defendants the right to confront the witnesses against them. U.S. Const. amend. VI; Minn. Const. art. I, § 6. We review de novo whether a defendant’s rights under the Confrontation Clause were violated by the admission of evidence. *State v. Holliday*, 745 N.W.2d 556, 565 (Minn. 2008).

The right to confront Friend as a witness belonged to Muse, and, against his attorney’s advice, Muse personally waived it for strategic reasons. A defendant may waive or forfeit the right. *See, e.g., State v. Washington*, 521 N.W.2d 35, 42 (Minn. 1994) (waiver by intimidating witness). Muse’s right to confront Friend was not violated because Muse knowingly and intelligently waived the right. He confirmed that he made the choice to

allow the recordings knowing that he had the confrontation right and knowing that he would not be able to exercise it. And Muse made the decision even after he spoke with his attorney, who had advocated a different strategy, because Muse wanted the jury to hear Friend's statements for exculpatory reasons. Trial counsel performed reasonably by identifying the confrontation-right issue and urging Muse not to waive his right. Muse chose to waive the right anyway, and he fails to identify any ineffective assistance.

III

Muse alternatively blames the district court for the alleged errors of his attorney. He argues that the district court plainly erred by failing to intervene sua sponte to prevent the prosecutor from asking leading questions and to prevent Muse from waiving his right to confront Friend. Because Muse did not object at trial, we review only for plain error. *See State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006). Muse ignores the fact that a district court's sua sponte action might "risk highlighting or enforcing rights that the defendant had, for tactical reasons, decided to waive." *State v. Washington*, 693 N.W.2d 195, 205 (Minn. 2005). District courts are generally not required to intrude into the trial. *See State v. Manthey*, 711 N.W.2d 498, 505 (Minn. 2006) (holding that failure to act sua sponte to objectionable testimony was not plain error).

The district court did not plainly err by failing to intervene, sua sponte, to prevent the prosecutor from directly examining Victim using leading questions. As we have said, strategic reasons might exist for permitting leading questions, and intrusions by the district court could have drawn attention to portions of Victim's testimony. Muse's reliance on *Kugling v. Williamson*, 42 N.W.2d 534 (Minn. 1950), is unconvincing. He claims that its

“ruling was that a new trial was appropriate where the trial court failed to intervene to stop a series of leading questions.” But the supreme court actually *affirmed* the district court, explaining that “[w]hen and under what circumstances” leading questions are permitted are issues “almost wholly in the discretion of the trial court” and holding that the district court did not abuse that discretion. *Id.* at 538. We likewise see no abuse of discretion in the district court’s decision not to interject itself into the questioning.

Muse offers no argument supporting his confrontation-waiver theory. And the theory is facially meritless given Muse’s personal decision to waive his confrontation right. It would not have been proper, let alone obligatory, for the district court to have undermined the strategic course that Muse expressly charted in his own defense. Muse has identified no error.

IV

Muse challenges the district court’s preclusion of testimony about Victim having been shot before, raising the issue in the ineffective-assistance and plain-error contexts. Because the district court’s ruling was made on the state’s objection and defense counsel’s arguments, we instead consider whether the district court’s ruling deprived Muse of a meaningful opportunity to present a complete defense. Due process affords every defendant “a meaningful opportunity to present a complete defense.” *State v. Smith*, 876 N.W.2d 310, 331 (Minn. 2016) (quotations omitted). This right includes the right to present evidence tending to prove that an alternative perpetrator committed the charged crime. *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009). We review the district court’s

evidentiary ruling for an abuse of discretion. *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017).

Muse conflictingly argues both that “[t]he defense theory of the case was that someone other than [Muse] had shot [Victim]” and that his defense was not an alternative-perpetrator theory. He maintains that, because he identified no *specific* third party, his theory was merely intended to cast a reasonable doubt on Victim’s identification of Muse as the shooter. But the alternative-perpetrator defense is indeed intended to raise reasonable doubt. “The reason for allowing alternative perpetrator evidence is not for the purpose of establishing the alternative perpetrator’s guilt, but to create a reasonable doubt as to the defendant’s guilt.” *Atkinson*, 774 N.W.2d at 590. It is in those cases where the identity of the perpetrator is in question that the defendant can offer evidence showing that some other perpetrator committed the crime. *State v. Vance*, 714 N.W.2d 428, 436 (Minn. 2006). Muse need not have identified a *specific* third party to trigger the alternative-perpetrator theory. Muse’s trial counsel understood this, expressly saying that he was attempting to present evidence on an alternative-perpetrator theory. The district court properly characterized the attempt, and we will not accept Muse’s attempt to recast it on appeal.

We have no difficulty concluding that the district court did not abuse its discretion by precluding further testimony after Muse failed to lay proper foundation. Before presenting alternative-perpetrator evidence, a defendant must lay foundation with “evidence that has an inherent tendency to connect the alternative perpetrator to the commission of the charged crime.” *Atkinson*, 774 N.W.2d at 590. Upon proper foundation,

a defendant may offer evidence of motive, threats, or other facts showing that a different person committed the crime. *Id.* Muse’s presentation to the district court only hinted at a link to a different perpetrator, when his counsel argued, “[I]t’s clear that there’s more than one person that has . . . shot him in the past who isn’t [Muse] that could be after him trying to finish the job.” But Muse provided no offer of proof about any details connecting the prior shooter to Muse’s alleged crime, such as when Victim had been shot, who had shot him, or what the motive had been. The district court did not abuse its discretion in excluding evidence that Victim had been shot before.

V

Muse argues that the district court erred by allowing the jury to review Friend’s statements during deliberations. District courts may permit juries to review audio or video evidence in open court after notice to the parties and an opportunity to be heard. Minn. R. Crim. P. 26.03, subd. 20(2)(a)–(b). We review the district court’s decision to grant a jury’s request to review evidence for an abuse of discretion. *State v. Everson*, 749 N.W.2d 340, 345 (Minn. 2008). The district court should consider whether the evidence will aid the jury, unduly prejudice a party, or be subjected to improper use. *Id.* Here the evidence was helpful because it was probative of material facts. Muse cannot reasonably argue otherwise, having originally agreed to the evidence anticipating that the jury would rely on it to find Friend’s identification of him incredible. And the record does not suggest that the jury would subject the evidence to improper use. The district court did not abuse its discretion.

VI

Muse argues that his convictions must be vacated because there is insufficient evidence to support the jury's verdict. When a disputed element is proved by direct evidence, we apply a traditional sufficiency-of-the-evidence standard, reviewing the record to determine whether the evidence favorable to the conviction would permit the jury to find the defendant guilty. *State v. Horst*, 880 N.W.2d 24, 39–40 (Minn. 2016). But when the direct evidence of guilt on an element is not sufficient, we apply a stricter, two-step standard of review to the circumstantial evidence. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Under this standard, we first identify the circumstances proved, deferring to the jury's acceptance of the state's evidence and its rejection of inconsistent evidence. *Id.* Then we consider whether the circumstances proved are consistent only with a defendant's guilt. *Id.* Only if a reasonable inference other than guilt exists will we reverse the conviction. *Id.*

The jury returned guilty verdicts on all four counts. The prohibited-possession verdict means that the state proved that Muse was an ineligible person (which was stipulated to) who knowingly and actually possessed a firearm. *See* Minn. Stat. § 624.713, subd. 1(2) (2016). The drive-by-shooting verdict means that the state proved that Muse had just exited a vehicle when he recklessly discharged a firearm at or toward another motor vehicle and at or toward a person. *See* Minn. Stat. § 609.66, subd. 1e(b) (2016). The attempted-second-degree-murder verdict means that the state proved that Muse attempted to and intended to cause Victim's death. *See* Minn. Stat. § 609.19, subd. 1(1) (2016). And the attempted-first-degree-murder-while-committing-drive-by-shooting verdict means that the state proved that Muse attempted to and intended to cause Victim's death while Muse

was engaged in a drive-by shooting. *See* Minn. Stat. § 609.185(a)(3) (2016). Both attempt crimes required the state to prove that Muse intended to commit the crimes and took a substantial step toward their commission. *See* Minn. Stat. § 609.17, subd. 1 (2016).

There is sufficient direct evidence to establish almost all of the elements. Victim testified that the shooting took place on January 21, 2017, while he was seated in a vehicle. He saw an SUV approach and watched Muse exit. And he described how Muse approached, drew a gun, and shot Victim repeatedly. Muse contends that Victim's testimony was "simply not credible." But we view this evidence in the light most favorable to the jury's verdict, assuming it disbelieved any contradictory evidence. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). The jury, as the trier of fact, is best positioned to decide credibility and weigh evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). The testimony of even a single credible witness can support a conviction. *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). Because Victim's testimony is direct evidence of the shooting and Muse's identity as the shooter, we consider only whether that evidence was sufficient to permit the jurors to find that the state proved most of the charged offenses' elements beyond a reasonable doubt. It was.

The remaining elements concern Muse's intent to commit the attempted crimes, *see* Minn. Stat. § 609.17, subd. 1, and in this case, an intent to kill Victim specifically. The circumstantial evidence of intent to kill overwhelmingly supports the verdict. The phrase "with intent to" simply "means that the actor either 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) (2016). A defendant's intent is typically inferred from circumstantial

evidence, and where it is, we apply heightened scrutiny. *See State v. Boldman*, 813 N.W.2d 102, 107 (Minn. 2012). Intent to kill may be inferred from the manner of a defendant's conduct. *State v. Hall*, 722 N.W.2d 472, 477 (Minn. 2006). And a jury may infer that a person intends the natural and probable consequences of his actions. *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000). Close proximity and purposeful aiming may indicate an intent to kill. *See, e.g., Griffin*, 887 N.W.2d at 265.

The circumstances proved lead to only one reasonable inference, which is that Muse intended to kill Victim. The state proved that Victim and Muse had a heated argument the night before the shooting, that Muse exited a vehicle and approached Victim in another vehicle while focusing his attention specifically on him, that Muse shot at Victim with a deadly weapon from close range, that Victim alone was struck by the bullets, that Victim suffered multiple bullet wounds, and that Muse kept shooting at Victim as Victim attempted to play dead. The jury's finding of Muse's intent to kill Victim was practically inescapable on these facts.

Muse's argument for a different conclusion focuses mistakenly on identification and does not contest that the shooter (which the jury determined was Muse) evidenced an intent to kill by his focused firing at Victim even after Victim feigned death. The state proved circumstances entirely inconsistent with Muse's innocence. Sufficient evidence supports the guilty verdict.

Affirmed.