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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0877**

State of Minnesota,
Respondent,

vs.

Sid Brady Strickland-Green, III,
Appellant.

**Filed June 22, 2020
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-18-9072

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

Michael O. Freeman, Hennepin County Attorney, Jordan W. Rude, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Tracy M. Smith, Presiding Judge; Johnson, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A Hennepin County jury found Sid Brady Strickland-Green, III, guilty of second-degree felony murder. We conclude that the district court did not err by giving the jury an instruction on the law of accomplice liability. Therefore, we affirm.

FACTS

On April 3, 2018, T.W. was shot and killed in the street in front of his mother's home in north Minneapolis. One week later, the state charged Strickland-Green with second-degree intentional murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2016), and second-degree felony murder, with second-degree assault as the predicate offense, in violation of Minn. Stat. § 609.19, subd. 2(1) (2016). Before trial, the state amended the complaint to add allegations that Strickland-Green aided and abetted another person.

The case was tried to a jury over four days in January 2019. The state called 16 witnesses and introduced 62 exhibits. The state's evidence showed that four men—T.W., B.J., H.W., and Strickland-Green—were members of the same social group. B.J. and T.W. shared an apartment until they had a falling-out. After T.W. moved out, B.J. was evicted and moved to Florida. The dispute between T.W. and B.J. reverberated through the group of friends. Strickland-Green confronted T.W. at a private party at a restaurant in Minneapolis. Four days later, T.W. was shot and killed.

Three of the state's witnesses testified about the shooting. First, J.W., who is the mother of T.W.'s children, testified that she and T.W. were at his mother's home, that T.W. went outside, and that she heard two or three gunshots approximately two minutes later.

J.W. testified that T.W.'s sister said that T.W. shouted that he had been shot. J.W. saw two cars drive away, one of which was a yellow Cadillac.

Second, a woman who was walking from a bus stop on the same side of the street testified that she saw three men standing next to two parked cars, one of which was "a yellow four-door." Shortly thereafter, the woman heard two gunshots and saw one of the men fall against the yellow car and then fall to the ground. She saw each of the other two men get into a car and drive away in opposite directions. She approached the fallen man. He asked her for help, and she called 911.

Third, H.W. testified that he was driving on the street where the shooting occurred because he was looking for a marijuana dealer. He recognized Strickland-Green's yellow Cadillac and stopped to talk with him. Strickland-Green got into H.W.'s car, and they smoked cigarettes. Approximately five minutes later, Strickland-Green exited the car and approached T.W. in the street while H.W. stayed in the car. Strickland-Green and T.W. greeted each other, and H.W. got out of his car after they indicated that he should join them. H.W. testified that Strickland-Green seemed upset with T.W. about the incident at the restaurant, ended the conversation, and walked back toward his yellow Cadillac. T.W. told H.W. that he was going to "see what's up with" Strickland-Green, and the men parted ways. H.W. testified that, as T.W. walked toward Strickland-Green's car, he got back into his own car and began to drive away. H.W. testified that, in his rear-view mirror, he saw T.W. "lose his footing." H.W. testified that he did not hear gunshots but continued to drive away because he "was scared." H.W. testified that he called Strickland-Green shortly thereafter and that Strickland-Green told him that he had shot T.W. H.W. did not call 911

or alert the police. Instead, he purchased marijuana, went home, and drank alcoholic beverages.

The state introduced additional evidence, which corroborated H.W.'s testimony that Strickland-Green was present at the scene of the shooting, including video-surveillance footage and evidence that Strickland-Green's DNA was found on a beer can in a nearby snowbank. The state also introduced exhibits showing text messages from Strickland-Green's cellphone to his girlfriend's cellphone after the shooting, including one that stated, "I'm on the f--kin run." In addition, the state introduced evidence that, in the three days before the shooting, Strickland-Green exchanged four telephone calls with H.W. and that H.W. exchanged five telephone calls with B.J. Furthermore, the state introduced evidence that, after the shooting, Strickland-Green exchanged multiple telephone calls with H.W. and B.J.

After the state rested its case, Strickland-Green moved for a judgment of acquittal with respect to the aiding-and-abetting allegations. He argued that there was "no testimony" that Strickland-Green acted in concert with H.W. or B.J. The state opposed the motion and argued that the jury could convict Strickland-Green either as a principal or as an accomplice. The district court denied the motion. The defense did not call any witnesses. The district court gave the jury an instruction on the law of accomplice liability, entitled "Liability for Crimes of Another." The jury found Strickland-Green guilty of second-degree felony murder but not guilty of second-degree intentional murder.

Strickland-Green again moved for a judgment of acquittal. *See* Minn. R. Crim. P 26.03, subd. 18(3). He argued that the state did not prove beyond a reasonable doubt that

T.W.’s death was caused by an assault or that Strickland-Green and H.W. “somehow aided and abetted one another in an attempt to assault” T.W. The district court denied the motion on the ground that the jury was free to convict on any theory presented, not just the state’s primary theory.

The district court sentenced Strickland-Green to 240 months of imprisonment. Strickland-Green appeals.

D E C I S I O N

Strickland-Green argues that the district court erred by instructing the jury on the law of accomplice liability. His argument has two parts. First, he argues that the district court should not have given any instruction on accomplice liability. Second, he argues that the language of the instruction was improper.

A party is entitled to a jury instruction if the evidence introduced at trial supports the instruction. *State v. Yang*, 774 N.W.2d 539, 559 (Minn. 2009); *State v. Nelson*, 806 N.W.2d 558, 564 (Minn. App. 2011), *review denied* (Minn. Feb. 14, 2012). A district court must instruct a jury in a way that “fairly and adequately explain[s] the law of the case” and does not “materially misstate[] the applicable law.” *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011). An appellate court reviews jury instructions “as a whole to determine whether [they] accurately state the law in a manner that can be understood by the jury.” *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014). A district court has “‘considerable latitude’ in selecting language for jury instructions.” *State v. Gatson*, 801 N.W.2d 134, 147 (Minn. 2011) (quoting *State v. Vance*, 734 N.W.2d 650, 656 (Minn. 2007)). Accordingly, this court applies an abuse-of-discretion standard of review to a

district court's jury instructions. *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016); *Koppi*, 798 N.W.2d at 361.

A.

We first consider Strickland-Green's argument that the district court erred by giving an instruction on the law of accomplice liability. He contends that the instruction was improper because the evidence introduced at trial is incapable of proving that Strickland-Green aided and abetted another person in committing felony murder and because the state sought to prove that he is criminally liable for second-degree felony murder as a principal, not as an accomplice. In response, the state acknowledges that its primary theory at trial was that Strickland-Green acted alone in shooting T.W. But the state contends that the evidence also would have allowed the jury to find that Strickland-Green acted as an accomplice to H.W. The state also notes that, in rebuttal closing argument, the prosecutor argued in the alternative that, if the jury were to believe that Strickland-Green did not shoot T.W., then H.W. must have shot him with Strickland-Green's assistance.

A person is guilty of felony murder in the second degree if the person "causes the death of a human being, without intent to effect the death of any person, while committing or attempting to commit" a predicate felony offense. Minn. Stat. § 609.19, subd. 2(1). "A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2016). In the amended complaint, the state alleged alternatively that Strickland-Green caused the death of T.W. while committing or

attempting to commit a second-degree assault, either while acting alone or while aiding and abetting another person.

We note that Strickland-Green's argument appears to be based on the unstated premise that the state may not allege and pursue alternative theories of guilt. Strickland-Green repeatedly asserts that the state sought to prove that he fired the shot that killed T.W., not that he aided and abetted another person who fired the shot. But Strickland-Green does not cite any caselaw for the proposition that the state is limited to only one theory of guilt. The state does not expressly argue that it may present alternative theories of guilt to a jury, but such a premise is implied in its argument. We believe that it is beyond question that the state may do so.

The question presented is whether the district court abused its discretion when it determined that the evidence presented at trial is capable of proving that Strickland-Green aided or abetted another person who committed or attempted to commit a second-degree assault that resulted in T.W.'s death. *See Yang*, 774 N.W.2d at 559; Minn. Stat. §§ 609.05, subd. 1, .19, subd. 2(1). In considering the evidence, we must remember that the jury is the sole authority of the credibility of the witnesses and is free to either accept or reject, in whole or in part, each witness's testimony. *State v. Colbert*, 716 N.W.2d 647, 653 (Minn. 2006) (citing *State v. Mems*, 708 N.W.2d 526, 531-32 (Minn. 2006)). The jury also is free to reconcile conflicting evidence. *State v. Tschau*, 758 N.W.2d 849, 858 (Minn. 2008).

In this case, the state's primary theory at trial was that Strickland-Green shot and killed T.W. That theory was the focus of the prosecutor's closing argument. The prosecutor emphasized the evidence that Strickland-Green drove a distinctive yellow

Cadillac, that Strickland-Green publicly quarreled with T.W. four days before the shooting at a restaurant, and that Strickland-Green mentioned the altercation to T.W. just before the shooting. The state reminded the jury of H.W.'s testimony that T.W. walked toward Strickland-Green's yellow Cadillac and the passerby's testimony that she heard gunshots and then saw T.W. fall against the yellow Cadillac and then to the ground. The state also noted H.W.'s testimony that Strickland-Green later said in a phone call that he shot T.W.

The state's evidence also tended to prove that three of the four men were allied with each other but not with T.W. The state introduced evidence that T.W. had a personal dispute with his former roommate, B.J.; that B.J. and H.W. are cousins; and that Strickland-Green and B.J. are close friends. In addition, the state introduced evidence that Strickland-Green and H.W. exchanged eight telephone calls within a three-day period surrounding the shooting; that H.W. and B.J. exchanged 22 telephone calls during that same period; that H.W. called Strickland-Green by telephone approximately five minutes after the shooting; and that Strickland-Green and B.J. exchanged two telephone calls shortly after the shooting. The jury could have relied on this evidence to conclude that, if H.W. shot and killed T.W., Strickland-Green aided and abetted H.W.

Furthermore, we must consider not only the evidence introduced by the state but also the evidence introduced by Strickland-Green when cross-examining the state's witnesses. The cross-examination of H.W. is most significant because Strickland-Green's trial attorney sought to elicit evidence that might cause jurors to believe that H.W. shot T.W. Strickland-Green's trial attorney began the cross-examination of H.W. by confirming that he was one of three men present at the scene of the shooting, that T.W. is dead, and

that Strickland-Green has been charged with aiding and abetting. Strickland-Green's trial attorney then asked H.W., "So you understand that potentially you are the person the State has charged with pulling the trigger?" Strickland-Green's trial attorney proceeded to ask H.W. about his friendship with B.J. and whether H.W. knew about any interpersonal conflicts between B.J. and T.W. Strickland-Green's trial attorney inquired about H.W.'s decision to drive away after seeing T.W. stumble rather than reporting the incident to law enforcement. Finally, Strickland-Green's trial attorney confronted H.W. about his earlier statement to police that he left the scene 10 to 15 minutes before the shooting.

The jury could have relied on this evidence to find that H.W.'s testimony on direct examination was not credible and that H.W., not Strickland-Green, shot and killed T.W. Strickland-Green's trial attorney attempted to persuade the jury of that theory in closing argument. He argued that the state's evidence indicated that H.W. shot T.W. on behalf of H.W.'s cousin, B.J. He argued that Strickland-Green fled the scene of the shooting as an innocent bystander. And he attempted to cast doubt on H.W.'s trial testimony by arguing that "somebody who really murdered somebody" would do just as H.W. did: "you go home, you put your car in the garage[,], you lock the door, you pull the blinds, [and] you get drunk and you get high." If Strickland-Green's trial attorney had persuaded the jury that H.W., not Strickland-Green, shot and killed T.W., the state's alternative theory would have become relevant.

Considering all the evidence introduced at trial, including the evidence elicited by Strickland-Green during the cross-examination of H.W., there was evidence to support a jury instruction on the question whether Strickland-Green aided or abetted H.W. in

committing the offense of second-degree felony murder. Thus, the district court did not abuse its discretion by giving the jury an instruction on the law of accomplice liability.

B.

We next consider Strickland-Green's argument that the language or form of the aiding-and-abetting instruction was improper on the ground that the introductory paragraph of the instruction was inaccurate or misleading. In its written form, the aiding-and-abetting instruction began as follows:

As alleged by the State, Mr. Strickland-Green is guilty of two counts of Second-Degree Murder. For each count, the State alleges he is guilty because he was acting alone or because he aided or conspired with another person to commit the crime.

But when the district court orally read the instruction to the jury, the first paragraph of the instruction was different: "Now, in this case, as alleged by the State, Mr. Strickland-Green is—the State believes that Mr. Strickland-Green is guilty of both these counts either because was acting alone or because he aided or conspired with another person to commit the crime."

Strickland-Green's argument has three subparts. First, he argues that the oral version of the instruction is erroneous "because . . . the state did not *believe* that" any other person "aided Strickland-Green in murdering" T.W. but, rather, sought "to persuade the jury that Strickland-Green acted alone." (Emphasis added.) Strickland-Green does not cite any caselaw in support of this argument. The word "believe" may not have been the best word choice in light of the fact that the state is a governmental entity and the state's prerogative to plead and pursue alternative theories of guilt. It appears that the district

court may have orally modified the instruction to avoid saying “Mr. Strickland-Green is guilty of . . . ,” which might have been prejudicial for different reasons. In any event, Strickland-Green has not demonstrated that the challenged language is misleading. In addition, the challenged language is merely introductory, transitional language, not language stating the elements of the offense.

Second, Strickland-Green argues that the district court erred by “advis[ing] the jury of the state’s theory of the case.” In support of this argument, Strickland-Green cites *State v. Persitz*, 518 N.W.2d 843 (Minn. 1994), in which the supreme court concluded that the district court did not err by refusing to give the defendant’s requested instruction about his theory of the case. *Id.* at 848-49. The supreme court reasoned, “The lengthy instruction proposed by appellant contained a blend of facts and law that would have, if given, amounted to a court-sponsored closing argument.” *Id.* at 849. In this case, the district court’s introduction to the aiding-and-abetting instruction was not at all akin to a court-sponsored closing argument. The introduction simply oriented the jury to a new subject and, quite naturally, mentioned that the state, as the prosecuting authority, had alleged, among other things, that Strickland-Green aided and abetted another person in committing the offenses charged. The jury likely did not misinterpret the instruction to say that the district court was endorsing the state’s alternative theory.

Third, Strickland-Green argues that the district court erred by using the caption “Liability for Crimes of Another” in the printed version of the aiding-and-abetting instruction. Strickland-Green does not contend that the phrase is an inaccurate description of the instruction that follows. Rather, he contends that it was confusing in light of the

prosecutor's closing argument, which Strickland-Green asserts contained inaccurate statements of the applicable law. But Strickland-Green's trial attorney did not object to the prosecutor's alleged misstatements at trial, and Strickland-Green has not argued on appeal that the prosecutor's statements are an independent ground for reversal. The district court did not abuse its discretion by using the caption "Liability for Crimes of Another" in the printed version of the aiding-and-abetting instruction.

In sum, the district court did not err by instructing the jury on the law of accomplice liability or by selecting the particular language used in the instruction.

Affirmed.