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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1162**

State of Minnesota,
Respondent,

vs.

Xavier Alfred Haywood,
Appellant.

**Filed August 17, 2020
Affirmed
Reilly, Judge**

St. Louis County District Court
File No. 69DU-CR-17-824

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Mark D. Nyvold, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

REILLY, Judge

On appeal from his conviction of aiding an offender after the fact (first-degree murder), appellant argues that the district court (1) erroneously denied his motion to

remove the district court judge; (2) abused its discretion by admitting a codefendant's hearsay statement where the relied-upon exception required the declarant to be unavailable and there was no basis to conclude that the declarant was unavailable; and (3) abused its discretion by ranking appellant's offense at a severity level 10. Appellant also filed a pro se supplemental brief in which he made various arguments. We affirm.

FACTS

On February 14, 2017, W.G. was shot and killed at his residence during an attempted burglary and robbery. Deandre Davenport, Noah Baker, and Noah King were subsequently indicted for their roles in W.G.'s murder. All three cases were assigned to the same district court judge, and all three individuals were convicted after either a trial or a plea of guilty.

Respondent State of Minnesota charged appellant Xavier Haywood with aiding an offender after the fact (first-degree murder) in relation to W.G.'s murder. Shortly before trial, Haywood moved to remove the district court judge who had been assigned Haywood's case because the same judge presided over the cases involving Davenport, Baker, and King. Haywood alleged that statements and rulings made by the district court judge in those cases indicated that the judge lacked impartiality. The chief judge of the district court denied Haywood's motion, concluding the "full facts and circumstances do not support a questioning of [the district court judge's] impartiality nor a finding that [the district court judge] is biased against [Haywood]."

At trial, evidence was presented that about a month or two before W.G. was murdered, E.V. introduced Haywood to W.G. so that W.G. "could buy large amounts of weed" from Haywood, and Haywood "could buy" ecstasy from W.G. E.V. testified that

he and Haywood met W.G. at W.G.'s house, and that the trio went downstairs to W.G.'s basement bedroom where W.G. kept a safe containing money and drugs. E.V. and Haywood then bought ecstasy from W.G., and W.G. discussed purchasing marijuana from Haywood.

Sometime after Haywood met W.G., Haywood told Baker that W.G. had a safe in his house containing money and drugs. Baker and two of his friends, Davenport and King, decided to burglarize W.G.'s residence and take the cash and drugs from W.G.'s safe. Davenport and King are also friends with Haywood, and cellular-phone records showed that beginning at around noon on February 14, 2017, there were a number of contacts between Davenport's cellular phone and one of Haywood's cellular phones. At about 2:00 p.m., Davenport, Baker, and King drove a jeep belonging to Baker's sister to W.G.'s house. The three men then entered W.G.'s house, where they encountered W.G., who was shot and killed by one of the three men.

After W.G. was shot, Baker, Davenport, and King drove the jeep to Baker's garage. The three men changed their clothes and put the clothing they had worn during W.G.'s murder into a garbage bag. Baker's sister then drove King home, while Baker and Davenport hid the garbage bag containing the clothes in a local park.

Cellular-phone records showed that Davenport and Haywood resumed contacting each other beginning at 4:14 p.m. on February 14, and that throughout that afternoon and evening, they texted or called each other about 20 times. Over Haywood's objection, Baker testified that he heard Davenport tell Haywood over the phone that they "did a robbery and it went bad." And in a recorded statement that was played for the jury, Baker told law

enforcement that he and Davenport were advised by Haywood to get a hotel room “[t]o get away.”

At Davenport’s request, Haywood’s girlfriend booked a hotel room for Davenport at a hotel in Superior, Wisconsin. Haywood and his girlfriend picked up Davenport and drove him to the hotel. Haywood’s girlfriend checked into the hotel, gave the room key to Davenport, and then left with Haywood. Davenport later contacted Baker, who arrived at the hotel with his sister and her two children.

Cellular-phone records showed that at various times during the evening of February 14, Haywood ran internet searches on one of his phones for information about “Duluth MN breaking news.” These records also showed that Haywood clicked on an article from the Duluth News Tribune detailing W.G.’s murder, as well as an article from a local TV station’s website about a “Person of Interest Detained in Duluth East Hillside Homicide.” And Haywood ran a search of the St. Louis County jail roster at about 10:20 p.m. Haywood’s internet searches corresponded with the time period that law enforcement investigators were questioning King about W.G.’s murder.

On February 15, 2017, at about 1:20 p.m., Haywood went to the hotel occupied by Davenport and Baker. Haywood left about an hour later, but returned to the hotel at around 7:00 p.m. Haywood and Baker left soon after and drove to Baker’s house to pick up some gasoline. Baker put some gasoline in a bottle, and Haywood and Baker then drove to the park where Baker had hidden the garbage bag of clothing that Baker, King, and Davenport wore during W.G.’s murder.

After Baker retrieved the bag of clothes, Haywood drove Baker to a different park. According to Baker, he borrowed one of Haywood's cellular phones to use as a flashlight, and went into a wooded area of the park to burn the clothing. While Baker was in the wooded section of the park, one of Haywood's cellular phones placed a call to Haywood's other cellular phone that lasted 18 seconds. Cellular-phone records revealed that a second call between Haywood's phones was made moments later, followed by a text message stating, "That's me call." Cellular-phone records also showed that, seconds later, a third call was made between Haywood's phones, followed by a text message stating, "This is [Haywood] man." And a few seconds later, text messages were sent between Haywood's phones stating, "I'm turning the car around," and, "Noah pic up the phone boi."

Baker testified that after lighting the clothes on fire, he returned to Haywood's vehicle and the two drove back to the hotel. Haywood dropped Baker off at the hotel at 8:07 p.m., and then used one of his phones to perform an internet search for "aiding an offender," and "Minnesota state statute of aid an offender." Haywood and Davenport also continued contacting each other via their cellular phones throughout the overnight hours.

On February 21, 2017, law enforcement investigators spoke with Haywood. Haywood told investigators that he asked his girlfriend to rent a hotel room for Davenport because Davenport wanted a hotel room for Valentine's Day. Haywood acknowledged dropping Davenport off at the hotel and later returning to the hotel to drop something off. But Haywood failed to disclose to investigators that he picked up Baker or drove Baker to any local parks.

A jury found Haywood guilty of the charged offense. After assigning a severity level 10 to Haywood's offense, the district court imposed the presumptive 190-month sentence. This appeal follows.

DECISION

I. Haywood's motion to remove the district court judge was not erroneously denied.

Haywood challenges the denial of his motion to remove the district court judge that was assigned to his case. "A motion to remove a judge for cause is procedural and is therefore governed by the rules of criminal procedure." *Hooper v. State*, 680 N.W.2d 89, 93 (Minn. 2004). Under the rules, "[a] judge must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct." Minn. R. Crim. P. 26.03, subd. 14(3). And according to the Minnesota Code of Judicial Conduct, a judge must be disqualified from "any proceeding in which the judge's impartiality might reasonably be questioned." *State v. Mouelle*, 922 N.W.2d 706, 713 (Minn. 2019) (quoting Minn. R. Jud. Conduct 2.11). Whether a judge is disqualified from presiding over a case is a question of law, which we review de novo. *State v. Dorsey*, 701 N.W.2d 238, 246 (Minn. 2005).

"In deciding whether disqualification is required, the relevant question is 'whether a reasonable examiner, with full knowledge of the facts and circumstances, would question the judge's impartiality.'" *Mouelle*, 922 N.W.2d at 713 (quoting *In re Jacobs*, 802 N.W.2d 748, 753 (Minn. 2011)). We perform this analysis from "the perspective of 'an objective, unbiased layperson.'" See *id.* (quoting *Jacobs*, 802 N.W.2d at 753). "Our judicial system presumes that judges are capable of setting aside collateral knowledge they possess and are

able to approach every aspect of each case with a neutral and objective disposition.” *Dorsey*, 701 N.W.2d at 247 (quotation omitted). In fact, “the acquired skill and capacity to disregard extraneous matters is one of the requisites of judicial office, as judges are expected to make decisions based solely on the merits of cases before them.” *Id.* (quotation omitted). “The mere fact that a party declares a judge partial does not in itself generate a reasonable question as to the judge’s impartiality.” *State v. Burrell*, 743 N.W.2d 596, 601-02 (Minn. 2008). “Likewise, the fact that a judge avows he is impartial does not in itself put his impartiality beyond reasonable question.” *Id.* at 602.

Haywood argues that certain findings made by the district court judge in the proceedings against Davenport, Baker, and King, demonstrate the judge’s inability to be unbiased in the proceedings against Haywood. Specifically, Haywood refers to a finding of fact made by the district court following King’s bench trial in which the district court judge found King guilty of aiding and abetting first-degree murder. This finding states:¹

Based upon the trial testimony, evidence, and exhibits,
the Court determines that the following have been proven by
PROOF BEYOND A REASONABLE DOUBT:

. . . .

44. Further investigation by [law enforcement]
indicated (through the surveillance videos of the [hotel] and
through cell phone records of . . . Haywood) that . . . Haywood
and . . . Baker left the [hotel] just before 07:00 p.m. on

¹ Although the records Haywood references pertaining to the proceedings against Davenport, King, and Baker, are not part of the record in this appeal, the state concedes that we can take judicial notice of these records because they are public records of the district court. See *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 530 (Minn. 2010) (stating that appellate courts have inherent power to take judicial notice of public records where the orderly administration of justice commends it).

02/15/17, returning just as [an individual] was leaving for Austin. Time spent by . . . Haywood and . . . Baker away from the [hotel] coincided and [corroborated law enforcement's] hypothesis that [Haywood and Baker] were disposing of evidence by burning it during that timeframe.

(Citation omitted.) Haywood also cites the following statement made by the district court during the sentencing of Davenport after a jury found him guilty of first-degree felony murder:

The third event was . . . Haywood providing that information of what he learned in the basement of . . . [W.G.'s] residence to . . . Davenport. There's absolutely no doubt in my mind in listening to the testimony in two trials now that the only connection between those three individuals, and there were three, . . . Davenport was one of the three, I am utterly convinced of that, and so, I was, with respect to my court trial with . . . King and a jury trial in Brainerd, came to the same conclusion. The only connection between . . . [W.G.] and those three was . . . Haywood.

Haywood argues that these statements² demonstrate that the district court judge was not impartial, which deprived Haywood of his constitutional right to a fair trial. Thus, Haywood contends that he is entitled to a new trial.

The state responds that “any suggestion that a reasonable observer would question the ability of [the district court judge] to impartially preside over the trial” is belied by the fact that “the jury was the fact finder in Haywood’s case.” We agree. In *Mouelle*, the defendant argued that structural error occurred when the district court judge presided over the jury trial after hearing a comment by defense counsel during an ex parte conversation,

² We note that these two statements appear from thousands of pages of documents in the trial records.

which suggested that the defendant might commit perjury. 922 N.W.2d at 712. The supreme court rejected the defendant’s argument, concluding that “an objective, unbiased layperson with full knowledge of the facts and circumstances would not question the district court’s impartiality.” *Id.* at 714. In reaching this conclusion, the supreme court recognized that district court judges typically consider pretrial motions that challenge items of evidence that are “often . . . highly prejudicial” and “even incriminating.” *Id.* at 713. The supreme court stated that despite those circumstances, it did “not doubt the district court judge’s ability to set aside her knowledge of prejudicial information and approach every aspect of each case with a neutral and objective disposition.” *Id.* at 714 (quotation omitted). And the supreme court stated that “[c]ritical[]” to its decision was the fact that the jury, which was the finder of fact, “was never exposed to the concerns about [the defendant’s] testimony that [defense] Counsel raised during the ex parte conversation.” *Id.* (footnote omitted).

Here, like *Mouelle*, the district court judge was not the finder of fact because Haywood’s case was tried to a jury. As a result, the finder of fact was not exposed to the facts of the cases involving King, Davenport, and Baker, which formed the basis for the references from King’s and Davenport’s cases that Haywood relies on to support his argument that he was denied his right to a fair trial. In other words, because the jury was the finder of fact, and the jury was not exposed to the facts of the cases involving the three individuals charged with W.G.’s murder, the references made by the district court judge in the proceedings involving King and Davenport did not affect the fact-finder’s decision to find Haywood guilty. *See id.* (“Critically, the jury—the fact finder here—was never

exposed to the concerns about [the defendant's] testimony that [defense] Counsel raised during the ex parte conversation.” (footnote omitted)). And the record reflects no other behavior by the district court judge that would lead a reasonable examiner, with full knowledge of the facts and circumstances, to question the judge's impartiality. Thus, Haywood failed to establish that the Code of Judicial Conduct required the district court judge to recuse himself.

Haywood also argues that the decision to deny his motion to remove the district court judge was erroneous because the chief judge used the “wrong legal analysis” in denying his motion. To support his position, Haywood refers to the following language in the order denying his removal motion: “As [the district court judge] stated on the record, Mr. Haywood has yet to have his day in court, and he, [the district court judge], works diligently not to play favorites and to be fair. This Court believes he can and will do the same for Mr. Haywood.” Haywood argues that “what the Chief Judge believed [the district court judge] would do has no place in the reasonable-examiner analysis” and, therefore, the chief judge's reliance “on what she believes about [the district court judge] being impartial invalidates her ruling on Haywood's motion.”

We are not persuaded. Although the chief judge specifically stated that she believed the district court judge would be impartial, a review of the order denying Haywood's removal motion reveals that the proper standard was applied. In the attached memorandum denying Haywood's removal motion, the chief judge cited *Jacobs*, for the rule that “[a] judge is disqualified under the Code of Judicial Conduct if, ‘a reasonable examiner, with full knowledge of the facts and circumstances, would question the judge's impartiality.’”

This is the correct standard. The chief judge then concluded her analysis by holding that “a reasonable examiner, with full knowledge of the facts and circumstances, would not question [the district court judge’s] impartiality.” Because the chief judge applied the proper standard in denying Haywood’s removal motion, we conclude that the denial of Haywood’s removal motion was not erroneous.

II. The district court did not abuse its discretion when it admitted Baker’s statement about a phone conversation he overheard between Davenport and Haywood.

Haywood challenges the district court’s decision to allow Baker to testify about a statement he heard Davenport make to Haywood over the phone that they “did a robbery and it went bad.” A district court’s evidentiary ruling on hearsay is reviewed for an abuse of discretion. *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). “A defendant claiming error in the district court’s reception of evidence has the burden of showing both the error and the prejudice resulting from the error.” *Vangrevenhof*, 941 N.W.2d at 736.

Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Generally, hearsay is not admissible unless an exception applies. Minn. R. Evid. 802. One exception allows the admission of hearsay by an unavailable declarant when the statement is against the declarant’s interest. See Minn. R. Evid. 804(b)(3). “Under the statement-against-interest exception, ‘a statement tending to expose the

declarant to criminal liability and offered in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.’’

Jackson v. State, 883 N.W.2d 272, 277 (Minn. 2016) (quoting Minn. R. Evid. 404(b)(3)).

In determining whether the corroborating-circumstances requirement of rule 804(b)(3) has been satisfied, the supreme court has considered these factors:

(1) whether other evidence corroborates the facts in the hearsay statement; (2) the extent to which the hearsay statement is consistent with the declarant’s prior testimony and other statements; (3) the relationship between the declarant and other witnesses and parties, including the defendant; (4) whether the declarant has reason to fabricate the statement; (5) the overall credibility and character of the declarant; and (6) the timing of the statement.

Id. (quoting *Ferguson v. State*, 826 N.W.2d 808, 813 (Minn. 2013)).

Before Baker’s testimony, that state sought to admit, under rule 804(b)(3), the statement Baker heard Davenport make to Haywood over the phone that they “did a robbery and it went bad.” Haywood objected, arguing that Davenport was available and had been subpoenaed by the defense. The district court overruled the objection, stating that Davenport is

practically not available. He has an appeal, a direct appeal, and, in fact, I just got notice that he has requested postconviction relief, so he’s not available. We all know the caselaw that if you know he’s going to assert the fifth, and he takes the stand, you’re not supposed to do that; okay? And that’s what’s going to happen, so he’s not available, we all know that.

Haywood argues that the district court abused its discretion by admitting the statement because the state failed to show that Davenport was unavailable to testify. In

response, the state argues that regardless of whether the statement was inadmissible under rule 804(b)(3), the statement was admissible because it was not hearsay. Although the state concedes that it “did not advance this argument at trial,” the state contends that we may consider the argument under *State v. Grunig*, 660 N.W.2d 134 (Minn. 2003).

Generally, a party may not raise an issue on appeal that was not argued to or considered by the district court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). But the supreme court has held that this court erroneously refused to address a respondent’s previously unraised argument on appeal where the argument supported the district court’s decision, and “there are sufficient facts in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted.” *Grunig*, 660 N.W.2d at 137. Therefore, as explained below, because there are sufficient facts in the record and legal support for the state’s argument, and because crediting the argument would not expand the district court’s decision, we will consider the state’s alternative argument that Baker’s statement was admissible non-hearsay.

The state argues that Baker’s statement was admissible non-hearsay because the “relevancy of the statement was to prove Haywood’s knowledge or belief that Davenport, Baker, and King committed a crime,” not to prove the truth of the matter asserted by the statement. We agree. If an “out of court statement is being offered for some other purpose, such as to prove knowledge, notice, or for impeachment purposes, it is not hearsay.” *State v. Hanley*, 363 N.W.2d 735, 740 (Minn. 1985) (quotation omitted).

Here, Haywood was charged with aiding and abetting a crime after the fact under Minn. Stat. § 609.495, subd. 3 (2016). This statute provides:

Whoever intentionally aids another person whom the actor knows or has reason to know has committed a criminal act, by destroying or concealing evidence of that crime, providing false or misleading information about that crime, receiving the proceeds of that crime, or otherwise obstructing the investigation or prosecution of that crime is an accomplice after the fact.

Minn. Stat. § 609.495, subd. 3.

The record reflects that when Baker testified, evidence had been admitted showing that Davenport, Baker, and King committed an attempted robbery and murder. As a result, the relevancy of Baker's testimony as it related to Davenport's statement was not to show that a robbery went bad. Instead, the testimony was relevant to show Haywood's knowledge of Davenport, King, and Baker's involvement in the robbery that went bad. Because Baker's testimony as it related to Davenport's statement was relevant to show Haywood's knowledge of Davenport, King, and Baker's involvement in W.G.'s murder, it was not hearsay. The district court, therefore, did not abuse its discretion by admitting Baker's testimony as it related to the phone conversation between Davenport and Haywood.

III. The district court did not abuse its discretion by ranking Haywood's offense as a severity-level 10.

Haywood challenges the district court's decision to rank his offense at a severity-level 10. This court reviews a district court's severity-level determination for an abuse of discretion. *State v. Bertsch*, 707 N.W.2d 660, 666 (Minn. 2006).

Before a district court sentences a defendant for a felony-level offense, the district court must calculate a presumptive sentence based on the severity level of the offense and the offender's criminal history. *Id.*; see Minn. Sent. Guidelines 2.C.1 (2016) ("The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable [sentencing guidelines] Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis)."). Although most offenses have an assigned severity level, certain offenses have not been assigned a severity level because "(1) the offense is rarely prosecuted; (2) the offense covers a wide range of underlying conduct; or (3) the offense is new and the severity of a typical offense cannot yet be determined." Minn. Sent. Guidelines cmt. 2.A.04 (2016). Aiding an offender—accomplice after the fact is designated as an unranked offense under the Minnesota Sentencing Guidelines. See Minn. Sent. Guidelines 5.A (2016).

When a district court sentences an offense that is designated as an unranked offense, the court "must assign an appropriate severity level for the offense and specify on the record why that particular level was assigned." Minn. Sent. Guidelines 2.A.4 (2016). In doing so, the district court may consider these factors: (1) "the gravity of the specific conduct underlying the unranked offense," (2) "the severity level assigned to any ranked offense with elements that are similar to the elements of the unranked offense," (3) "the conduct of and severity level assigned to other offenders for the same unranked offense," and (4) "the severity level assigned to other offenders engaged in similar conduct." *Id.*; *State v. Kenard*, 606 N.W.2d 440, 443 (Minn. 2000). No single factor is

controlling and the list of factors is not meant to be exhaustive. *Kenard*, 606 N.W.2d at 443.

Here, in considering Haywood's specific conduct, the district court determined that Haywood "did more than just tell a lie, did more than just try to conceal the truth, he got rid of evidence" related to first-degree murder. The district court also contemplated that Haywood was the "mastermind" behind the circumstances surrounding W.G.'s murder, stating that it could take that "into account in terms of what [Haywood] knew at the time that he was engaging in after-the-fact concealment and burning of evidence." And the district court emphasized that Haywood "darn well knew what had happened at . . . [W.G.'s] residence."

Haywood argues that the district court "could not properly rely on these facts to set a severity level without abusing its discretion because a defendant knowing what happened is an element of aiding an offender." But the supreme court has noted that in considering the gravity of the specific conduct underlying the unranked offense, "specific conduct" means "that conduct underlying proof of the elements of the offense." *Id.* at 443 n.3. The supreme court determined that "[w]hile we have held that such conduct cannot be relied on to justify an upward departure, we conclude that its use is appropriate for setting the severity level for unranked offenses." *Id.* (citation omitted) (stating that "[o]nce the sentencing court has determined the severity level by considering the conduct underlying proof of the elements of the offense, it is not prohibited, in appropriate cases, from considering whether there are also aggravating or mitigating circumstances that would justify departure"). Thus, the district court properly considered Haywood's knowledge of

the circumstances, together with his untruthfulness and concealment of evidence, when assigning a severity level of 10.

Haywood also contends that application of the fourth factor demonstrates that the district court abused its discretion by assigning a severity level of 10 because “cases exist in which the offender . . . committed first-degree murder and the persons who aided them were assigned severity levels below” 10. To support his argument, Haywood cites *State v. Skipintheway*, in which the defendant was convicted of three counts of being an accomplice after the fact under Minn. Stat. § 609.495, subd. 3, in relation to three underlying crimes: first-degree murder, attempted second-degree murder, and first-degree assault for the benefit of a gang.³ 717 N.W.2d 423, 425 (Minn. 2006). In that case, the defendant had been assigned a severity level of 8 with the respect to the aiding-and-abetting first-degree murder offense. *State v. Skipintheway*, 704 N.W.2d 177, 180 (Minn. App. 2005).⁴ But the defendant in *Skipintheway* pleaded guilty to the charged offenses. In contrast, Haywood went to trial on the charged offense and, therefore, did not have the benefit of any plea agreement that may have been available to the defendant in *Skipintheway*. And the conduct

³ Haywood also cites several unpublished decisions in support of his argument that caselaw does not support the district court’s assignment of a severity level of 10 to his offense. But unpublished decisions are not precedential. *Hagerman v. State*, __ N.W.2d __, __, 2020 WL 2828783, at *7 n.1 (Minn. App. June 1, 2020). And there are also unpublished decisions that support the district court’s severity-level-10 assignment to Haywood’s offense. See, e.g., *State v. Solorzano-O’Brien*, No. A10-1514, 2011 WL 1237554, at *2 (Minn. App. Apr. 5, 2011) (affirming the district court’s severity-level-10 assignment to defendant who was convicted of aiding and abetting an offender after the fact to first-degree murder).

⁴ As the state points out, the severity-level assignment was not at issue in the supreme court case cited by Haywood, nor did the supreme court mention the severity-level assignment in its opinion.

exhibited by the defendant in *Skipintheway* consisted of the defendant “admit[ing] that he gave false statements to police with the intent to help [others] ‘get away with the crime.’” 717 N.W.2d at 425. In contrast, Haywood’s conduct was more serious, which included (1) destroying physical evidence, (2) suggesting to Davenport and Baker that they leave the area and facilitating that action by arranging a hotel stay for them, and (3) being untruthful to law enforcement during their investigation. Thus, the circumstances presented in *Skipintheway* are readily distinguishable from the circumstances presented in this case.

Moreover, data from the Minnesota Sentencing Guidelines Commission reveals how defendants that are similarly situated to Haywood were sentenced. The district court referenced this data in assigning a severity level of 10 to Haywood’s offense, determining that

beyond [one] anomaly, the rest of the cases from 2016 and 2017 that involved second-degree murder or homicide, or attempted first-degree murder, which are the ones that were listed, as I could find them, the statistics that I came up with were seven of those offenses were ranked as a 9, five of them were ranked as a 8, and four of them were ranked as a 10.

But the district court also noted that none of the offenses listed in the above referenced data “were listed as aiding and abetting after the fact first-degree felony robbery or burglary murder. They were all most invariably related to second degree, *a far lesser crime* in this Court’s mind, and, in fact, that’s how it’s treated by the guidelines.” (Emphasis added.) The data from the Minnesota Sentencing Guidelines Commissions, along with the fact that

the offense committed by Haywood was more serious than the offenses referenced in the data, supports the district court's assignment of a severity level 10 to Haywood's offense.

The conduct of and severity level assigned to other offenders for the same unranked offense also supports the district court's severity-level assignment. The record reflects that Baker's sister was assigned a severity level of 8 following her conviction of the same offense as Haywood as it related to W.G.'s murder. But as the state pointed out at Haywood's sentencing, Baker's sister "entered into a plea agreement whereby the agreement was for a ranking of level 8, and as a condition in that, she participated with law enforcement, she cooperated with this Court, [and] she cooperated with the State in multiple prosecutions." And as the district court determined, Baker's sister's conduct was far less serious than Haywood's conduct; she "was, at best, passive, indicating and supplying an alibi defense, basically saying that she's the only person that drove the white Jeep, therefore nobody else could have been driving it at the time of [W.G.'s] murder." In contrast, Haywood encouraged Davenport and Baker to get a hotel to "[t]o get away"; he arranged for the hotel and transported Davenport to the hotel; he brought them alcohol at the hotel; and most significantly, he helped Baker destroy evidence. The fact that Haywood's conduct was far more serious than Baker's sister, when combined with the fact that Baker's sister's severity-level assignment was part of a plea agreement, supports the district court's decision to assign a severity level for Haywood's offense that is two levels higher than the severity level assigned for Baker's sister's offense.

In sum, the district court's findings demonstrate that it considered the *Kenard* factors and provided sufficient reasons for its decision that are based on the record and

consistent with the applicable caselaw. The district court's severity-level determination is reviewed for an abuse of discretion, and Haywood is unable to show that the district court abused its discretion in assigning a severity level 10 to Haywood's offense.

IV. The arguments made in Haywood's pro se supplemental brief do not provide a basis for relief.

Haywood filed a pro se supplement, arguing that (A) the district court abused its discretion by denying his request for a continuance, thereby rendering his counsel ineffective; and (B) the evidence was insufficient to support his conviction.

A. Request for a continuance

This court reviews a district court's decision to grant or deny a motion for a continuance for abuse of discretion. *State v. Rainer*, 411 N.W.2d 490, 495 (Minn. 1987). We consider the circumstances that existed in the district court when it made its continuance decision. *State v. Turnipseed*, 297 N.W.2d 308, 311 (Minn. 1980). We will not reverse a conviction unless the appellant shows that the denial of the requested continuance materially affected the trial's outcome. *State v. Barnes*, 713 N.W.2d 325, 333 (Minn. 2006).

The record reflects that at a September 2018 pretrial hearing, the district court recognized that Haywood's initial trial counsel has missed "a number of court appearances either due to illness or other reasons" and has now had "his license suspended for 120 days." As a result, Haywood's initial trial counsel was unable to represent Haywood. On January 2, 2019, approximately two-and-a-half months before the scheduled jury trial, Haywood retained new trial counsel. Almost two months later, on February 27, 2019,

Haywood’s new trial counsel requested a continuance, claiming that after receiving “over two terabytes of information” related to Haywood’s case, he would “not be prepared to adequately prepare a zealous defense in time for the March 19th jury trial,” in light of “the sheer volume of information contained in the state’s discovery.” The district court denied the motion, concluding that Haywood was advised in September that he could hire a private lawyer or ask for a public defender, but he “did nothing until December. That’s on him. Not on me.”

Haywood argues that the district court’s “ruling denying a continuance prejudiced [Haywood] in violation of the constitutional right to a fair trial and effective assistance of counsel.”⁵ But as the district court determined, Haywood was apprised of his options related to his trial counsel in September 2018, more than six months before the scheduled jury trial. And as the district court noted, Haywood did nothing until the end of December, when he retained his new trial counsel. Moreover, Haywood’s new trial counsel did not request a continuance until the end of February, fewer than three weeks before the scheduled trial. The district court’s denial of Haywood’s motion for a continuance fewer than three weeks before trial is similar to the denial of a motion for a continuance made a

⁵ Although Haywood’s pro se supplemental brief cites, somewhat extensively, the law as it relates to the denial of the effective assistance of counsel, the crux of Haywood’s argument appears to be that the district court abused its discretion by denying his motion for a continuance. But to the extent that Haywood is arguing that he was denied the effective assistance of counsel, his argument focuses on issues related to trial strategy. Appellate courts generally “will not review an ineffective-assistance-of-counsel claim that is based on trial strategy.” *State v. Vang*, 847 N.W.2d 248, 267 (Minn. 2014). Thus, to the extent that Haywood is making an ineffective-assistance-of-counsel argument, that argument lacks merit.

few days before trial, which the supreme court determined in *State v. Vance*, was not an abuse of discretion. See 254 N.W.2d 353, 358-59 (Minn. 1977) (holding that there was no abuse of discretion when the defendant made a motion for a continuance a few days before trial where the public defender was competent). Therefore, based on the circumstances presented, we conclude that the district court did not abuse its discretion by denying Haywood's request for a continuance.

B. Sufficiency of the evidence

Haywood also contends that the evidence was insufficient to support his conviction. But Haywood's sufficiency-of-the-evidence argument is unsupported by any citations to legal authority. This court "will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority." *State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008); see *Louden v Louden*, 22 N.W.2d 164, 166 (Minn. 1946) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection."). Because Haywood's sufficiency-of-the-evidence argument is lacking legal authority, and because no prejudicial error is obvious on mere inspection, Haywood's sufficiency-of-the-evidence argument is not properly before us.

Even if considered on the merits, there was sufficient evidence to support Haywood's conviction. When addressing a sufficiency-of-the-evidence challenge, our review "is limited" to a careful "analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We will not reverse a conviction for insufficient evidence “if the jury, acting with due regard for the presumption of innocence” and the need for proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

When the jury considered circumstantial evidence, this court applies a two-step test to determine whether the state presented sufficient evidence. *State v. Griffin*, 887 N.W.2d 257, 264 (Minn. 2016). First, we identify the circumstances proved, “deferring to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proven by the [s]tate.” *Id.* Second, we “examine the reasonable inferences that might be drawn from the circumstances proved, giving no deference to the fact-finder’s choice between reasonable inferences.” *Id.* The “[c]ircumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (citation omitted).

Minnesota law provides:

Whoever intentionally aids another person whom the actor knows or has reason to know has committed a criminal act, by destroying or concealing evidence of that crime, providing false or misleading information about that crime, receiving the proceeds of that crime, or otherwise obstructing the investigation or prosecution of that crime is an accomplice after the fact.

Minn. Stat. § 609.495, subd. 3.

Here, these circumstances were proved at trial: (1) Haywood told Baker that W.G. had a safe in his house that contained money and drugs; (2) after W.G. was killed, Baker overheard Davenport tell Haywood that they “did a robbery and it went bad”; (3) Haywood arranged for Baker and Davenport to get a hotel “to get away”; (4) Haywood helped Baker destroy the clothing that Davenport, Baker, and King wore when W.G. was murdered; and (5) cellular-phone records submitted by the state corroborated Baker’s testimony that Haywood drove Baker to a local park to destroy the clothing. These circumstances proved are consistent with guilt and Haywood offers no reasonable hypothesis that is inconsistent with guilt. Accordingly, the evidence was sufficient to sustain Haywood’s conviction of aiding an offender after the fact.

Affirmed.