

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1231**

State of Minnesota,
Respondent,

vs.

Jason John Gascoigne,
Appellant.

**Filed June 29, 2020
Affirmed
Jesson, Judge**

Goodhue County District Court
File No. 25-CR-17-2711

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

Stephen F. O’Keefe, Goodhue County Attorney, Christopher J. Schrader, Assistant County Attorney, Red Wing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

After appellant Jason John Gascoigne was arrested at a self-service car wash, police discovered two jeweler’s bags containing methamphetamine in his wallet and car.

Gascoigne challenges his subsequent conviction of fifth-degree drug possession, arguing that the district court abused its discretion by admitting photographs of the bags of drugs. Gascoigne also advances several arguments in his pro se supplemental brief. Because the district court did not abuse its discretion by admitting the photos, and Gascoigne's pro se arguments do not merit relief, we affirm.

FACTS

In October 2017, just after 4:00 a.m., a police officer observed a man digging in the trunk of a car parked in a self-service car wash in Zumbrota, Minnesota. The officer discovered that the registered owner of the car, appellant Jason John Gascoigne, had an active warrant. While calling Gascoigne's name, the officer approached him and informed him he was being arrested on the warrant. Two more officers arrived to assist the first officer.

During a search of his pockets, police removed Gascoigne's wallet. After putting Gascoigne in the back seat of a squad vehicle, police looked through Gascoigne's wallet and discovered a clear plastic jeweler's bag containing a white substance. A field-test revealed that the substance tested positive for methamphetamine. Police photographed the bag.

After finding methamphetamine in Gascoigne's wallet, police searched his car. In his car, police found a second clear plastic jeweler's bag containing a white powdery substance and a broken lightbulb with white residue inside. These items also field-tested positive for methamphetamines. Police photographed these items as well. After finding

the drugs, police asked Gascoigne about them, and he admitted that he used methamphetamine.

The state charged Gascoigne with fifth-degree drug possession, a felony, and possession of drug paraphernalia, a petty misdemeanor. During his first appearance, Gascoigne appeared pro se. He had applied for a public defender but did not qualify because he did not meet the income requirement.¹

During a two-day jury trial, Gascoigne represented himself. The parties discussed their planned exhibits outside the presence of the jury. Relevant to this appeal, the state expressed its intention to offer into evidence the photographs police took of the bags of drugs. Gascoigne requested that “the actual physical evidence” be admitted, meaning the actual bags with drugs. The court stated that, “in these types of cases, photographs are sufficient” as long as they are authenticated, and it permitted the state to offer the photographs.²

At trial, a police officer and a forensic scientist from the Bureau of Criminal Apprehension (BCA) testified for the state. The officer testified about his encounter with Gascoigne, including discovering the drugs and Gascoigne admitting that he used methamphetamine. The officer also testified that he took initial weights of the two jeweler’s bags and they weighed 0.71 grams and 1.24 grams, including the weight of the bags.

¹ Gascoigne later qualified for a public defender but declined representation.

² Later, when the state was seeking to admit the photographs, Gascoigne objected and explained, “I would like for them to actually see the actual evidence—physical evidence.” But the court overruled his objection and permitted admission of the photos.

Next, the forensic scientist testified. She explained that she received a substance from the officer to test and it weighed 0.263 plus or minus 0.005 grams. When asked, she stated that it was “not possible” that the scale was “off.” And her testing of the substance revealed that it contained methamphetamine.

Once the state rested, Gascoigne testified. He explained why he relapsed and was using methamphetamine. On cross-examination, he admitted that the bags of drugs were his, that the bags contained methamphetamine, and that he had used the lightbulb police found to ingest the drug. And he agreed that he had a prior conviction for a controlled-substance offense.³

The jury found Gascoigne guilty on both counts. At sentencing, the court stayed execution of a 13-month prison sentence for fifth-degree drug possession, placed Gascoigne on probation for five years, ordered him to serve 31 days in jail (the amount of jail credit he had), and required him to complete 50 hours of community service, among other conditions. Gascoigne appeals.

DECISION

I. The district court did not abuse its discretion by admitting photographs of the drug bags at trial.

Gascoigne challenges the district court’s admission of the photographs of the drug bags at trial. Because evidentiary rulings rest within the sound discretion of the district court, we will not reverse an evidentiary ruling unless the court clearly abused its discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). And even if a court abused

³ The court also received a certified copy of this conviction at trial.

its discretion in admitting certain evidence, reversal is not required unless the appellant proves that he was prejudiced by the ruling. *State v. Moua*, 678 N.W.2d 29, 37 (Minn. 2004). Said another way, we will only reverse when an evidentiary error “substantially influences the jury’s decision.” *Id.* (quotation omitted). This applies to evidentiary rulings on the admissibility of photographs. See *State v. Dame*, 670 N.W.2d 261, 264 (Minn. 2003).

Generally, photographs are admissible if they are accurate and “relevant to a material issue.” *State v. Bjornson*, 378 N.W.2d 4, 9 (Minn. App. 1985), *review denied* (Minn. Jan. 17, 1986). Relevant evidence is that which has any tendency to make a material fact more or less likely. Minn. R. Evid. 401. Photographs are also admissible as a helpful visual aid to a verbal description of evidence by a witness. See *State v. Hummel*, 483 N.W.2d 68, 74 (Minn. 1992); *State v. DeZeler*, 41 N.W.2d 313, 319 (Minn. 1950).

Here, the officer who took the photos testified that they fairly and accurately reflected the bags of drugs he discovered. The officer also described the contents of each photo including where he found the items and how he handled the bags, including his field-testing and weighing. And because a key issue for the jury to decide was whether Gascoigne possessed methamphetamine, photos of the methamphetamine taken from his wallet and car are relevant to that material fact. Thus, the district court did not abuse its discretion in admitting these photographs at trial.

Yet, according to Gascoigne, the district court erred by admitting the photos because the photos may have misled the jury as to the weight of the methamphetamine, which was an element of the crime. But the photos were not the only evidence of the amount of the

drugs: the officer and the BCA scientist testified about the weight of the drugs with and without the bags. And the scientist's report supported her measurements. Consequently, there was additional evidence admitted about the weight of the methamphetamine, which lessened the possibility that the jury was misled about the weight based on the photos alone.

We further observe that even if the district court erred by admitting the photographs, Gascoigne's prior drug conviction is alternatively sufficient to convict him of felony fifth-degree possession. *See* Minn. Stat. § 152.025, subds. 2(1), 4 (2016). To be convicted of felony fifth-degree drug possession, the state had to prove that Gascoigne unlawfully possessed a mixture containing methamphetamine, and that the mixture was either at least 0.25 grams *or* that Gascoigne had been previously convicted of a drug crime. *See id.* Either the weight or a prior conviction is sufficient to classify this offense as a felony. Accordingly, Gascoigne's prior conviction and his possession of any amount of methamphetamine—regardless of the weight—was sufficient to convict him for felony fifth-degree drug possession.

In sum, the district court did not abuse its discretion by admitting photographs of the drug bags at trial. And Gascoigne's admitted prior conviction and his possession of any methamphetamine was sufficient for the jury to determine his guilt for the offense.

II. Gascoigne's pro se arguments do not merit relief.

Gascoigne advances several arguments in his pro se supplemental brief. These include alleged violations of several rights: to counsel, to free speech, to a fair jury of his peers, to an impartial decision-maker, to confront and call witnesses, and to be free from excessive bail. But many of these arguments were not presented to the district court so we

decline to address them here. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (“This court generally will not decide issues which were not raised before the district court.”). And Gascoigne’s arguments generally lacked relevant legal authority. *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (explaining that arguments based merely on assertions and not supported by argument or legal authority are waived “unless prejudicial error is obvious on mere inspection” (quotation omitted))).

In sum, Gascoigne’s pro se supplemental issues do not merit relief. The district court did not abuse its discretion by admitting photographs of the drug bags at trial. And even if there were some error in the admission of the photos, the weight of the drugs was inconsequential in light of Gascoigne’s prior drug conviction.

Affirmed.