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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0822**

State of Minnesota,
Respondent,

vs.

Allison Ann Mastin,
Appellant.

**Filed April 12, 2021
Affirmed
Gaïtas, Judge**

Faribault County District Court
File No. 22-CR-19-31

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

Kathryn Karjala, Faribault County Attorney, Blue Earth, Minnesota (for respondent)

Gary A. Gittus, Gittus Law Offices, Rochester, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Allison Ann Mastin seeks reversal of her conviction for perjury based on insufficient evidence. Alternatively, she requests a new trial, arguing that her trial was unfair because the district court allowed inadmissible evidence and the prosecutor failed to disclose impeaching evidence. Because the evidence was sufficient to establish Mastin's

guilt beyond a reasonable doubt, the district court did not err in its evidentiary ruling, and any failure to disclose impeaching evidence did not prejudice Mastin, we affirm.

FACTS

The Winnebago Party

In October 2017, some high school football players had a party at a house in Winnebago where teens were drinking alcohol (the Winnebago party). During the party, a group assaulted their teammate C.H. by punching him in the face. C.H. was then held down, while one individual put his genitals on C.H.'s face.

One teen at the party was W.T., who was dating A.S., the teenaged daughter of appellant Mastin. Winnebago police officers interviewed W.T. about the assault approximately one month after the Winnebago party. W.T. told officers that he was at the party and witnessed the assault, but he denied participating in the assault. W.T. did not say that he went anywhere else on the night of the Winnebago party.

Mastin's Testimony During W.T.'s Omnibus Hearing

W.T. was charged in connection with the assault at the Winnebago party. His attorney subpoenaed Mastin to testify at his omnibus hearing, which occurred about eight months after the assault. At the hearing, Mastin testified under oath that W.T. had been at her house on the night of the Winnebago party, arriving between 12:30 and 12:45 a.m. and remaining until sometime between 3:00 and 3:30 a.m. She testified that her neighbor, a Blue Earth police officer, "knew" that W.T. was there because he saw W.T.'s car parked outside. When Mastin testified, she was unaware of W.T.'s statement to police admitting that he had been at the Winnebago party and had witnessed the assault.

W.T. ultimately resolved his criminal case by entering an *Alford* plea¹ to third-degree assault.

Mastin's Statement to Winnebago police

Before W.T.'s plea, a Winnebago police officer met with Mastin to discuss the alibi that she had provided for W.T. The meeting occurred approximately three months after Mastin's testimony at W.T.'s omnibus hearing. During the meeting, which was recorded, Mastin provided more details about the night of the Winnebago party. She told the officer that she fell asleep soon after W.T. arrived at her house and did not see him leave. Mastin volunteered that after W.T. left, he sent her daughter, A.S., a message confirming that he was back at his own home.

Mastin's Criminal Case and Trial

Based on Mastin's omnibus-hearing testimony in W.T.'s case, respondent State of Minnesota charged her with one count of perjury, Minn. Stat. § 609.48, subd. 1(1) (2016), and one count of aiding an offender/obstructing investigation, Minn. Stat. § 609.495, subd. 3 (2016). Mastin pleaded not guilty to the charges and had a jury trial.

At the trial, the state called W.T., the Winnebago officer who interviewed W.T., Mastin's daughter A.S., Mastin's neighbor the Blue Earth police officer, the Winnebago officer who interviewed Mastin, and the Winnebago Police Chief. The state also offered multiple exhibits, including transcripts of W.T.'s statement to police, Mastin's testimony

¹ See *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160 (1970) (holding that under certain circumstances, a court can accept a defendant's guilty plea while the defendant maintains his innocence).

at W.T.'s omnibus hearing, and Mastin's police interview; a message from A.S. to the assault victim C.H. inquiring about W.T.'s involvement in the assault; A.S.'s written statement to police; and messages exchanged between Mastin and W.T.'s mother.

During the police chief's testimony, the prosecutor sought permission—outside of the jury's presence—to present limited evidence about the pretrial publicity surrounding the assault at the Winnebago party. He stated that the evidence was necessary to show that community members, including Mastin, were very familiar with the incident. Mastin's attorney objected, arguing that the district court had already excluded information from the press about the incident. The district court ruled that the police chief could testify about the general nature of the publicity surrounding the case, but that he could not testify as to any direct quotes that appeared in news outlets.

The defense did not offer any evidence.

While the jury was deliberating, Mastin learned that W.T. had met with the prosecutor to prepare for her trial and had recorded the meeting with the prosecutor's consent. During that meeting, W.T. told the prosecutor that his brain was "mush" after having nine concussions. The prosecutor responded that he knew because he had seen W.T.'s medical records. Although the prosecutor had previously disclosed the meeting with W.T. to the defense, he had not revealed W.T.'s statements about his brain and the concussions. Because Mastin learned about the statements during jury deliberations, the jury was not made aware of them.

The jury acquitted Mastin of aiding an offender/obstructing an investigation, but found her guilty of perjury.

Mastin's Motion for a New Trial

Mastin moved for a new trial, contending that the prosecutor committed misconduct by failing to disclose W.T.'s statements, among other alleged trial errors. According to Mastin, W.T.'s statements would have impeached his trial testimony and failing to disclose them violated the Minnesota Rules of Criminal Procedure. The prosecutor filed an affidavit explaining his recorded comment about reviewing W.T.'s medical records. He stated that W.T.'s attorney had accidentally provided W.T.'s medical records to the prosecutor and the records had been returned.

The district court observed that W.T.'s statements were not particularly probative of W.T.'s memory. The court concluded that any failure to disclose W.T.'s statements did not prejudice Mastin or affect the fairness of the trial.

After denying Mastin's motion for a new trial, the district court sentenced her to a stayed prison term of one year and one day, placed her on probation for two years, and ordered her to serve 30 days in jail as a condition of probation.

Mastin appeals.

DECISION

I. The trial evidence was sufficient to support Mastin's conviction for perjury.

Mastin first argues that the evidence at trial was insufficient to support her perjury conviction.

An accused may be convicted only "upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which [s]he is charged." *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970). In a criminal trial, the state bears the burden

of proving guilt. *See State v. Peterson*, 673 N.W.2d 482, 486 (Minn. 2004). The state can only overcome the presumption of innocence with proof beyond a reasonable doubt of every element of a charged offense. *Id.*

To convict Mastin of the offense of perjury, the state was required to prove the following elements: (1) Mastin made a statement under oath, (2) the statement was false, (3) the statement was material, (4) Mastin did not believe the statement to be true, (5) Mastin knew she was under oath when she gave the statement, and (6) Mastin's act occurred in July 2018 in Faribault County. *See* Minn. Stat. § 609.48, subd. 1(1); *see also* 10A *Minnesota Practice*, CRIMJIG 22.02 (2019). The state's trial theory was that Mastin knowingly gave false testimony about W.T.'s whereabouts on the night of the Winnebago party. Mastin contends that the evidence was insufficient to establish that she knew her testimony was false.

In considering a claim of insufficient evidence, an appellate court performs “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction,” was sufficient to allow the jury to reach a guilty verdict. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that “the jury believed the state's witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). And the reviewing court “will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

A conviction based on circumstantial evidence receives “heightened scrutiny.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). If the evidence of one or more elements of an offense is entirely circumstantial, the more rigorous circumstantial-evidence standard of review applies to those elements. *See id.* at 473-75. Because the state’s evidence of Mastin’s state of mind was circumstantial, we apply the circumstantial-evidence standard of review in considering her challenge to the sufficiency of the evidence underlying the knowledge element of the offense. *See State v. Griffin*, 887 N.W.2d 257, 264 (Minn. 2016) (applying standard of review for circumstantial evidence in considering sufficiency of evidence of defendant’s intent).

The circumstantial-evidence test requires a two-step process. *See id.* First, the appellate court must “identify the circumstances proved” at trial, deferring “to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010) (quotations omitted). In doing so, the appellate court must “construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). Second, the court must “independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt.” *State v. McAllister*, 862 N.W.2d 49, 54 (Minn. 2015) (quotation omitted). “In the second step, we give no deference to the jury’s choice between reasonable inferences.” *State v. Davenport*, 947 N.W.2d 251, 266 (Minn. 2020).

The circumstances proved are as follows: In October 2017, Mastin and A.S. were at a friend's house when W.T., who was dating A.S., arrived and invited A.S. to a party in Winnebago that night. Mastin told A.S. she could not go to the party. W.T. went to the party and brought alcohol. The assault of C.H. happened around 2:00 a.m. Later that night, after 3:30 a.m., A.S. received a message from W.T. stating that he was at his house.

In November 2017, Winnebago police officers interviewed W.T. He admitted attending the Winnebago party and witnessing C.H.'s assault, but he denied assaulting C.H. W.T. did not tell the police he was at Mastin's house or that he went anywhere else during the Winnebago party. He said that, after the assault, he went straight home from the party. The police arrested W.T. after the interview. On the day of W.T.'s arrest, A.S. gave a statement to police stating that W.T. "stated that before he left [the Winnebago party], he helped [C.H.] and cleaned up his puke."

Shortly after the Winnebago party, Mastin spoke with her neighbor, a Blue Earth police officer, about the assault at the party. She told the neighbor that she thought W.T. was at her house during the assault. The neighbor advised her to inform the Winnebago police. Mastin never went to the police with this information.

In addition to discussing the case with the neighbor, on November 17, 2017, Mastin texted W.T.'s mother. She stated, "[J]ust wanted to let you know I'm thinking about you." Mastin advised W.T.'s mother that she had found a text from the victim of the assault, C.H., on her daughter A.S.'s phone, and offered to share the information.

In July 2018, Mastin testified under oath at W.T.'s omnibus hearing. She testified that she knew W.T. attended the Winnebago party, but he was at her house starting around

“12:30 and 12:45 that night.” Mastin testified that W.T. and her daughter were “in the garage for a little bit, and then probably 20 minutes later they came in, and we watched [television], and we fell asleep, and he left around 3:00, 3:30.” During her testimony, Mastin also testified that her neighbor, the Blue Earth police officer, knew that W.T. had been at her house at the time of the Winnebago party because W.T.’s car was there. She testified that she could not recall whether she had ever spoken with the neighbor about W.T.’s whereabouts during the Winnebago party. On cross-examination, Mastin stated that she knew nothing about the assault until W.T. was arrested. Mastin agreed with the prosecutor that she had not discussed the night of the assault with W.T. When asked whether Mastin would accept W.T.’s word that he was in Winnebago, Mastin responded, “No, he was at my house. . . . [He couldn’t have been in Winnebago] in that timeframe that he was at my house.”

In October 2018, Mastin was interviewed by a Winnebago police officer. Mastin stated that the only time W.T. stayed at her house was the night of the Winnebago party. Mastin told the officer that W.T. came to her house between 12:30 and 12:45 a.m. She said that she fell asleep within 10 minutes to an hour of his arrival. According to Mastin, she slept until she had to work the next day. Mastin told the officer that W.T. left at 3 a.m.; she knew it was 3 a.m. because W.T. messaged A.S. letting A.S. know that he was home.

Next, with these circumstances in mind, we consider whether all reasonable inferences are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Andersen*, 784 N.W.2d at 331. More precisely, we must determine whether the reasonable inferences from the circumstances proved only support the conclusion that

Mastin knew her statement was false when she testified at the omnibus hearing, and are not consistent with some alternative theory of innocence. *See id.* at 329-30.

Mastin presents two alternative hypotheses of innocence. First, she contends that W.T. could have been mistaken when he told police that he was at the Winnebago party, and by extension, not at her house. Second, Mastin argues that the evidence supports a theory that she was simply mistaken when she testified that W.T. was at her house.

The circumstances proved do not support either of these theories. There is no evidentiary support for a theory that W.T. was mistaken about his whereabouts on the night of the incident. W.T. consistently acknowledged that he was at the party at the time of the assault. He immediately confessed to being there during the incident, he was ultimately convicted for committing the assault there, and he told Mastin's jury that he was at the party. Beyond W.T.'s own statements about being at the Winnebago party, there was other evidence indicating he was there. He invited A.S. to come with him, but she was not permitted to go. And in the early morning hours, he sent A.S. a message to let her know he was home. Conversely, there was absolutely no evidence—other than Mastin's testimony at W.T.'s omnibus hearing and her statement to the police—that W.T. was at Mastin's house on the night of the Winnebago party.

The circumstances proved also do not support Mastin's second alternative hypothesis of innocence—that she was mistaken when she testified that W.T. was at her house at the time of the assault. Mastin's sworn testimony about W.T.'s whereabouts was unequivocal: W.T. was at her house and he could not have been anywhere else. And when Mastin met with the Winnebago police officer following her testimony, she again did not

equivocate. She never suggested that she might have been mistaken about W.T.'s presence at her house. Instead, she continued to insist that he was there, but claimed that she fell asleep upon his arrival.

The circumstances proved are instead only consistent with the inference that Mastin intentionally lied about W.T.'s whereabouts on the night of the Winnebago party. Although Mastin told her neighbor that W.T. was at her house, and the neighbor encouraged her to report the information to the Winnebago police, Mastin never approached the police. Then, at W.T.'s omnibus hearing, Mastin testified that the neighbor saw W.T.'s car at her house on the night of the Winnebago party; she could not recall, however, whether she ever spoke with the neighbor about W.T.'s whereabouts. Mastin also discussed the case with W.T.'s mother via text messages and evinced a willingness to help W.T.

Based on our careful review of the record, we determine that the circumstances proved, and the inferences therefrom, are inconsistent with any rational hypothesis of innocence. The circumstances proved are consistent with only one conclusion—Mastin knowingly testified falsely at W.T.'s omnibus hearing when she claimed that W.T. was at her house on the night of the Winnebago party. Because the evidence at trial established beyond a reasonable doubt that Mastin committed perjury, we affirm her conviction.²

² At oral argument, Mastin's counsel stated that he was also challenging the jury's guilty verdict because it was legally and rationally inconsistent with the jury's not-guilty verdict for aiding an offender/obstructing an investigation. But Mastin's counsel did not raise this separate issue in his brief to this court. We accordingly determine that the issue was waived and do not address it. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997); *see also McKenzie v. State*, 583 N.W.2d 744, 746 n.1

II. The district court did not abuse its discretion in allowing the prosecutor to elicit limited testimony about the publicity surrounding the Winnebago party assault.

Mastin next argues that the district court erred in permitting the Winnebago police chief to testify that the assault case received publicity in the community. Over defense objection, the following exchange occurred during the police chief's direct examination:

PROSECUTOR: Okay. And have you ever had a case . . . that generated as much or . . . more publicity than the assault case from October of 2017, arising out of Winnebago?

WITNESS: Never.

PROSECUTOR: Okay. Um, and was there a lot of media attention paid to that case?

WITNESS: Yes.

PROSECUTOR: And what kind of media attention? Television?

WITNESS: Television, um, newspaper.

PROSECUTOR: Newspaper?

WITNESS: Radio.

PROSECUTOR: Okay. And were you called on several times to, uh, give press releases?

WITNESS: Yes.

PROSECUTOR: Okay. And if you stop for coffee in Winnebago or Blue Earth, was it a common, uh, subject of conversation in the communities?

WITNESS: Yes.

“Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). “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*

(Minn. 1998) (applying the rule that arguments not briefed are waived in an appeal in which the appellant “allude[d] to” an issue but “fail[ed] to address [it] in the argument portion of his brief”).

v. Hallmark, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). A new trial will not be ordered unless the challenged evidence was so prejudicial that it substantially influenced the jury’s decision to convict. *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981). The party claiming the error bears the burden of showing both the error and the resulting prejudice. *Id.* When an error is “of no vital consequence,” and does not “materially affect the substantial rights of the accused”—and there is sufficient evidence to support the verdict—we will not disturb the conviction. *State v. Wofford*, 114 N.W.2d 267, 272 (Minn. 1962).

Mastin contends that allowing the evidence was error because it was a “stark reversal” of the district court’s pretrial order concerning the admissibility of media coverage of the case. Additionally, she argues that the testimony was irrelevant to Mastin’s perjury charge.

We disagree. Before the trial, Mastin moved to exclude social media, broadcast media, and local newspaper coverage of the Winnebago party assault. The district court granted Mastin’s motion and excluded from evidence any specific coverage that the case had received in local newspapers or other media platforms. The court deferred ruling on the admissibility of any particular social media posts until the evidence was offered at the trial. Contrary to Mastin’s claim, the district court’s pretrial order did not address the admissibility of testimony about general publicity. We therefore see no inconsistency between the pretrial order and the district court’s ruling that the police chief could testify generally about press coverage but not about specific articles or broadcasts.

Further, the limited testimony that the state elicited was relevant. “Relevant evidence” is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. Here, evidence that the assault had received extensive publicity in the community made it more likely that Mastin knew the details of the incident. In turn, this knowledge made it more likely that she knew her testimony about W.T.’s whereabouts was false. Because the evidence was relevant, the district court did not abuse its discretion in allowing it to be presented to the jury.

But even if the district court did err, the error was harmless. The erroneous admission of evidence is harmless if there is no “reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Ness*, 707 N.W.2d 676, 691 (Minn. 2006). Because the police chief’s testimony was brief and limited, it could not have had a significant impact on the jury’s verdict. *See State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994) (discussing prejudice and considering whether the verdict would have been more favorable to the defendant without the evidence).

III. Mastin is not entitled to a new trial based on the prosecutor’s failure to disclose W.T.’s statements about his medical condition during a meeting with the prosecutor.

Finally, Mastin argues that the prosecutor violated his duty under the Minnesota Rules of Criminal Procedure to disclose evidence when he failed to notify the defense that W.T. claimed, during a meeting to prepare his testimony for Mastin’s trial, that he had nine

prior concussions and that his brain was “mush.”³ Although the prosecutor notified the defense of the meeting with W.T., Mastin contends that W.T.’s specific statements about his medical condition during that meeting also should have been disclosed. According to Mastin, the statements were important impeachment evidence that the defense would have used to undermine W.T.’s credibility at trial.⁴

Whether a prosecutor committed a discovery violation is an issue of law that is reviewed de novo. *State v. Scanlon*, 719 N.W.2d 674, 685 (Minn. 2006). But a trial court’s decision regarding the appropriate remedy for a discovery violation is reviewed for an abuse of discretion. *Id.*

Under the Minnesota Rules of Criminal Procedure, a prosecutor must disclose any statements that relate to a case. Minn. Rule. Crim. P. 9.01, subd. 1(2). This obligation extends to witness statements, whether written or oral. *Id.* In the case of oral statements, a prosecutor must disclose the substance of any statements. *Id.*, subd. 1(2)(c).

³ Although the state’s brief applies the constitutional analysis set forth in *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), in addressing Mastin’s claim, Mastin does not cite *Brady* or similar authority and limits her argument to the prosecutor’s discovery obligations under the Minnesota Rules of Criminal Procedure. Thus, we focus our analysis on the criminal procedure rules. See *McKenzie*, 583 N.W.2d at 746 n.1 (noting that issues not briefed on appeal are waived).

⁴ Mastin also seems to suggest that she was entitled to W.T.’s medical records because they were accidentally provided to the prosecutor by W.T.’s attorney. She does not explain why she was entitled to these records or advance any theory for how they would have been admissible in evidence at her trial. Because Mastin’s assertion regarding W.T.’s medical records is not accompanied by any argument or authority, we do not address it. See *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (“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.”).

A district court is in the best position to consider what remedy, if any, to impose for an alleged discovery violation. *See Scanlon*, 719 N.W.2d at 685. In considering whether to sanction or remedy a discovery violation, a district court should consider the reason for the failure to disclose, any prejudice suffered, whether a continuance can remedy the violation, and any other factors the district court deems relevant. *Woodruff v. State*, 608 N.W.2d 881, 886 (Minn. 2000).

“Generally, without a showing of prejudice to the defendant, the state’s violation of a discovery rule will not result in a new trial.” *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005). A prosecutor’s discovery-related misconduct is harmless beyond a reasonable doubt if the jury’s verdict was “surely unattributable to the error.” *Scanlon*, 719 N.W.2d at 685 (quotation omitted). An appellate court should only reverse a district court’s decision regarding a discovery violation where the prosecutor’s misconduct was inexcusable and so prejudicial that the defendant did not receive a fair trial. *Id.*

Here, in denying Mastin’s motion for a new trial on the basis of the alleged discovery violation, the district court concluded that W.T.’s statements about his medical condition were “likely hyperbole” and that W.T. “appeared able to recall what was asked of him at trial.” The district court also observed that when W.T. ultimately pleaded guilty in his own case, he did not claim to suffer from memory problems. Ultimately, the district court concluded that any failure to disclose W.T.’s statements was not prejudicial because the statements would not have affected the trial or the jury’s determination of Mastin’s guilt.

We agree. Assuming without deciding that the prosecutor had some duty to disclose the statements, Mastin cannot show prejudice. She argues that the statements could have called W.T.'s memory into question, thereby undermining the statement he gave to police where he admitted that he attended the Winnebago party and his later guilty plea. But as the district court noted, there was no dispute that W.T. attended the Winnebago party. Thus, showing the jury that he had a poor memory would not have made it any less likely that he was there. Moreover, there was no credible evidence that W.T. was at Mastin's house on the night of the Winnebago party. Thus, attacking W.T.'s ability to remember would have accomplished little. Even if the prosecution had some duty to disclose the statements, the jury's verdict was surely unattributable to the error. The district court therefore did not abuse its discretion in denying Mastin's motion for a new trial on the basis of the alleged discovery violation.

In sum, the evidence was sufficient to support Mastin's perjury conviction, the district court did not err in allowing limited evidence regarding publicity surrounding the assault at the Winnebago party, and the district court did not abuse its discretion in denying Mastin a new trial based on the alleged discovery violation.

Affirmed.