STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0746

State of Minnesota,
Respondent,

vs.

Lawrence Michael Johnson,
Appellant.

Filed January 17, 2023
Affirmed in part, reversed in part, and remanded
Bratvold, Judge

Stearns County District Court
File No. 73-CR-19-11006

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Bratvold, Judge; and Halbrooks, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant is one of three men who attacked and stabbed another man at a bar; the victim later died. Appellant challenges a final judgment of conviction for aiding and abetting second-degree murder. Appellant argues that his conviction should be reversed for three reasons: (1) the 228-day delay before his jury trial began violated his constitutional right to a speedy trial; (2) the district court abused its discretion when it denied sanctions for the state's discovery violations; and (3) the district court abused its discretion when it denied his postconviction petition for a new trial based on newly discovered evidence. We determine that appellant's constitutional speedy-trial rights were not violated, and the district court acted within its discretion by denying sanctions for discovery violations and rejecting postconviction relief. Thus, we affirm in part. Because we also determine the district court erred by entering convictions for three lesser-included offenses that arose from a single behavioral incident, we reverse in part and remand to amend the warrant of commitment.

FACTS

The following summarizes the evidence received at the jury trial. At about 1:00 a.m. on December 29, 2019, appellant Lawrence Michael Johnson and two codefendants—Johnson's brother and Johnson's friend—were at a bar in St. Cloud. They climbed the stairway to the bar's third level, which had a dance floor. The first-level street entrance was at the bottom of the stairway, which bypassed the second level.

While on the dance floor, Johnson and the two codefendants (the three men) fought with a fourth man, who allegedly stepped on the shoes of Johnson's brother's girlfriend. As the fight went on, the three men assaulted U.M., who fought back. A bouncer intervened and directed the three men to leave the bar. The three men left the bar, went to their car, briefly entered another business, and then returned to the bar about 15 minutes later. The three men returned to the third level and attacked U.M. near the D.J. booth. Cameras installed on the dance floor and around the bar captured both fights, and the district court received the surveillance video into evidence during the trial.

U.M. was stabbed during the second fight. The surveillance video does not show who stabbed U.M. The video shows that immediately following the attack by the three men, U.M. was bloody, and he staggered down the steps to the first floor, exited the door, and collapsed outside the bar. The three men left through the same door moments later—two of them kicked U.M. in the head while he lay bleeding on the ground. Forensic evidence received at trial showed a pool of blood near the D.J. booth on the third level, blood on the wall nearby, and a trail of blood down the stairs. No weapon was recovered.

U.M. was taken to the hospital via ambulance, where he died from his injuries less than two hours later. The medical examiner testified that U.M. had a penetrating wound to the front of his chest and "three stab wounds to his back." His cause of death was "excessive bleeding" because of "sharp-force injuries." Police arrested Johnson four days later in Minneapolis.

Johnson's trial began on October 12, 2020. The state called 18 witnesses, including responding officers, the trauma surgeon, the medical examiner, and witnesses from the bar. Johnson did not testify and did not present evidence.

The jury found Johnson guilty of four charges: aiding and abetting second-degree murder with intent under Minn. Stat. §§ 609.19, subd. 1(1), 609.05, subd. 1 (2018) (count one); aiding and abetting second-degree murder while committing a felony under Minn. Stat. §§ 609.19, subd. 2(1), 609.05, subd. 1 (2018) (count three); and fifth-degree assault under Minn. Stat. § 609.224, subd. 1(2) (2018) (counts two and four). The jury's special verdict also found that Johnson committed this crime as part of a group of three or more offenders who actively participated in the crime. The district court sentenced Johnson to 415 months in prison on count one and entered additional convictions on counts two, three, and four.

Johnson appeals.

DECISION

I. The district court did not violate Johnson's constitutional right to a speedy trial.

Johnson demanded a speedy trial at his omnibus hearing on February 27, 2020. Johnson repeated his speedy-trial demand at several pretrial hearings and in one motion to dismiss. Johnson's trial was first scheduled to take place in April 2020, but the COVID-19 pandemic disrupted judicial proceedings. Around the time of Johnson's scheduled trial, the Minnesota Supreme Court issued several orders that prohibited jury trials from taking place until the district courts could determine how to proceed while protecting the safety of

participants.[1] The district court reset Johnson's trial for August 2020, "the next available jury trial date."

On August 4, 2020, the district court again continued Johnson's trial, this time until October. The district court's order cited concerns about developing appropriate procedures to protect the health of jurors, parties, and court staff for a three-week trial and found good cause for the delay. The district court reasoned that "potential issues . . . with this new felony courtroom may not be evident until the first trial begins," so "it is necessary for the first trial held in that courtroom to be of shorter length than this one is anticipated to last in order to figure out and correct any potential issues."

Johnson remained in custody throughout the pretrial period. The district court denied multiple requests to reduce bail or release Johnson on conditions, reasoning as stated in a May 2020 order that "the charges in this matter are very serious," and Johnson "was apprehended . . . in Minneapolis after a two-day manhunt, making [him] a flight risk." The district court also noted that Johnson had "some recent failures to appear[] in just the fall of 2019," and the district court was "concerned about public safety."

Johnson's trial began on October 12, 2020. Johnson argues on appeal that the 228-day delay between his first speedy-trial demand and the first day of trial violated his constitutional right to a speedy trial. The federal and state constitutions provide a criminal

[1] *See* Emerg. Exec. Order No. 20-33, *Extending Stay at Home Order and Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation* (Apr. 8, 2020); *Continuing Operations of the Courts of the State of Minnesota Under Emergency Executive Order 20-33*, No. ADM20-8001 (Minn. Apr. 9, 2020) ("No jury trials shall commence before May 4, 2020 or until further order of this court, whichever occurs first.").

defendant the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The speedy-trial right is a "safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself." *State v. Mikell*, 960 N.W.2d 230, 244 (Minn. 2021) (quoting *United States v. Ewell*, 383 U.S. 116, 120 (1966)).

No fixed rule defines how long is too long to wait for a trial, and whether the delay "amounts to an unconstitutional deprivation of rights depends upon the circumstances." *Id.* (quotation omitted). "Whether a defendant has been denied a speedy trial is a constitutional question subject to de novo review." *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

To determine "whether the State brought the accused to trial quickly enough to avoid endangering the values that the right to a speedy trial protects," we consider the four factors explained in *Barker v. Wingo*, 407 U.S. 514 (1972). *Mikell*, 960 N.W.2d at 245. The four factors are nonexclusive and include (A) the length of the delay, (B) the reason for the delay, (C) the defendant's assertion of his right to a speedy trial, and (D) the prejudice to the defendant. *State v. Paige*, 977 N.W.2d 829, 837 (Minn. 2022). We consider each *Barker* factor in turn.

A. Length of Delay

The first factor is the "triggering mechanism" that determines whether we must consider the other factors. *Mikell*, 960 N.W.2d at 245 (quotation omitted). A defendant must be tried within 60 days of entering a plea "unless the court finds good cause for a later trial date." Minn. R. Crim. P. 11.09(b). A violation of this rule is presumptively prejudicial

but not necessarily a violation of the constitutional right to a speedy trial. *Paige*, 977 N.W.2d at 838.

Johnson first requested a speedy trial on February 27, 2020, and his trial began on October 12, 2020. Johnson and the state agree that the 228-day delay violates the general rule and gives rise to a presumption of prejudice. As a result, we analyze the remaining three factors.

B. Reasons for the Delays

In analyzing the second factor, we "must determine which party is responsible for the delay and the relative weight that should be assigned to this factor based on the reason for the delay." *Id.* Johnson divides the 228-day delay into two periods and argues that both weigh against the state. He identifies (1) the delay from April 27 to August 10 under the Minnesota Supreme Court order prohibiting criminal jury trials and (2) the delay from August 10 to October 12 after the district court's decision to continue the trial until October 2020.

Johnson's brief to this court argues that "despite the pandemic's status as a public-health crisis, the state is not free to disregard the constitution." Shortly after Johnson's brief was filed, the Minnesota Supreme Court held in *Paige* that "trial delays due to the statewide orders issued in response to the COVID-19 global pandemic do not weigh against the State." *Id.* The supreme court reasoned that "the statewide orders issued in response to the COVID-19 global pandemic reflected a policy decision prompted by an *external* public health crisis" and therefore should not weigh against the state. *Id.* at 840.

We rely on *Paige* to conclude that the trial delay from April 27 to August 10 does not weigh against the state.

Johnson argues the second delay involved scheduling considerations that weigh against the state because it "amounted to another 63 days beyond when the county was authorized to hold felony trials." Johnson contends that his trial should have been held as soon as the county had "a pandemic-approved courtroom constructed and operational," and the district court's decision to begin shorter trials first is a delay that must be attributed to the state. Johnson argues that the second delay is analogous to the delay in *State v. Jones*, which held that a seven-month trial delay resulting from an "overburdened judicial system" cannot "rest with the defendant," and "[t]he reason for this delay must weigh against the state." 392 N.W.2d 224, 235 (Minn. 1986). The state argues we should distinguish *Jones* because the second delay was also caused by the COVID-19 pandemic.

We agree with the state in part. The district court's reason for granting a continuance in August 2020 was based on the COVID-19 pandemic and sought to ensure trial participants' health and safety. The record also shows that the district court judge assigned to Johnson's case diligently sought a firm trial date. Still, we agree with Johnson that the anticipated length of Johnson's trial was a factor, as was the backlog of felony cases awaiting trial; these reasons are somewhat like the "overburdened judicial system" in *Jones*. There, the supreme court attributed the seven-month delay to the state but determined that the delay "weighs less heavily against the government than, for example, a deliberate attempt on the part of a prosecuting attorney to delay a trial." *Id.*

Because the second delay of Johnson's trial was not a "deliberate attempt[] to hamper the defense," *Paige*, 977 N.W.2d at 838, we are persuaded to weigh the delay "less heavily" against the state, *Jones*, 392 N.W.2d at 235. In short, the first delay does not weigh against the state, and the second delay weighs "less heavily" or only somewhat against the state.

C. Assertion of Johnson's Speedy-Trial Right

Under the third factor, we consider the forcefulness of Johnson's speedy-trial demand. *Paige*, 977 N.W.2d at 840. "[T]he frequency and force of a demand must be considered when weighing this factor and the strength of the demand is likely to reflect the seriousness and extent of the prejudice which has resulted." *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989). Johnson argues, and the state agrees, that Johnson adequately asserted his speedy-trial demand. We also agree. Johnson promptly requested a speedy trial in February 2020. He later reasserted his right at hearings and in a motion to dismiss. Thus, Johnson's demand was both frequent and forceful and weighs against the state.

D. Prejudice to Johnson

An appellate court considers three interests when determining whether and how the delay prejudiced the criminal defendant: "(1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility that the defense will be impaired." *State v. Taylor*, 869 N.W.2d 1, 20 (Minn. 2015). The third interest—preventing the impairment of the defense—is the most important. *Id.* Johnson argues that the delays harmed him in all three ways.

First, Johnson argues that his pretrial incarceration "put [him] at increased risk for contracting, and possibly dying from COVID-19." The supreme court rejected a similar argument in *Paige*, where it held that jail hardships suffered because of the pandemic—such as "potential risk of infection"—fall outside the scope of the fourth factor because these hardships were not "suffered due to the trial delay." 977 N.W.2d at 842. Here, we also conclude that Johnson's health risks because of pretrial incarceration were not because of the delay in Johnson's trial. Johnson had outstanding warrants in Blue Earth and Benton Counties. Had he been released before trial, Johnson likely would have been transferred to those counties for processing and may not have been released into the community. *See State v. Windish*, 590 N.W.2d 311, 318 (Minn. 1999) (concluding that the first two factors do not apply when a defendant is in custody for another offense).

Second, Johnson contends he suffered significant anxiety and concern "because [the delay] jeopardized one of his purposes for demanding a speedy trial," which was that Johnson "wanted to go to trial before either of his co-defendants decided to falsely accuse him of stabbing [U.M.] in order to get a reduced sentence." The state argues that Johnson's pretrial anxiety is unrelated to the trial delay because it applies to "anyone awaiting trial where they were charged as an accomplice." We agree that the anxiety Johnson alleges is because of the circumstances of a group offense and cannot be attributed to the trial delay.

Third, Johnson argues that the trial delay prejudiced his defense because it "allowed the state to leisurely assemble its case for trial while slowly disseminating evidence to the defense that should have been disclosed months earlier." We do not find this argument persuasive because Johnson fails to make an affirmative showing that the delay weakened

his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence. The supreme court has emphasized that defense-impairing prejudice is shown by "memory loss by witnesses or witness unavailability." *Taylor*, 869 N.W.2d at 20. Johnson cannot point to one witness or piece of evidence that was lost because of the delay. We have stated that "the state's additional opportunity to prepare for trial as a result of pretrial delay does not constitute prejudice to the defendant sufficient to support a finding of a speedy-trial violation under the fourth *Barker* factor." *State v. Strobel*, 921 N.W.2d 563, 572 (Minn. App. 2018), *aff'd*, 932 N.W.2d 303 (Minn. 2019). If anything, the delay in Johnson's trial also allowed Johnson the opportunity to investigate, strategize, and prepare a defense.

In short, any alleged prejudice "not directly related to the delay at issue" is not "attributable to the delay" in the speedy-trial analysis. *Paige*, 977 N.W.2d at 843. Thus, we determine that the fourth factor weighs against a speedy-trial violation.

E. Balancing

After considering the *Barker* factors individually, we then balance them to determine whether the state brought a criminal defendant to trial "quickly enough so as not to endanger the values that the right to a speedy trial protects." *Id.* While we conclude that Johnson's trial delay was presumptively prejudicial, and his demand for a speedy trial was frequent and forceful, Johnson's constitutional claim ultimately fails. The first delay was because of the COVID-19 pandemic, which does not weigh against the state under *Paige*. The second delay was due mostly to the pandemic and only somewhat weighs against the state, which was overburdened. Finally, Johnson fails to show his defense was prejudiced

because of either delay. Thus, we determine that Johnson's constitutional right to a speedy trial was not violated.

II. The district court did not abuse its discretion when it denied sanctions for the state's untimely disclosure of evidence.

On May 12, 2020, Johnson moved to compel discovery. The state responded to the motion to compel, claiming that its failure to produce the evidence that Johnson requested "can be attributed to the simple explanation: It does not exist." Still, the state disclosed evidence before and during the trial. Johnson moved for discovery sanctions several times. At trial, Johnson asked the district court to dismiss the charges against him, suppress all the untimely disclosed evidence, or grant a continuance because of the state's discovery violations. Johnson argued that he was entitled to a continuance to get a blood-spatter expert to evaluate untimely disclosed Bureau of Criminal Apprehension (BCA) photos because "they would be able to determine where the stabbing actually took place on the dance floor," and "if the stabbing took place while [Johnson] was being detained by a bouncer, it makes it impossible that he took part in it."

On October 13, the district court denied Johnson's request for a trial continuance based on the state's September and October discovery disclosures. The district court reasoned that Johnson had sufficient information to adequately prepare a defense. The district court also determined that Johnson was not prejudiced by discovery that was produced in June or July because he had ample time to investigate before the October trial. The district court did "not find that [Johnson] was prejudiced in a manner that requires the remedies he now requests."

On appeal, Johnson argues that he is entitled to a new trial because the district court abused its discretion when it failed to impose sanctions for the state's discovery violations. "Whether a discovery violation occurred is an issue of law which [an appellate] court reviews de novo." *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005). An appellate court reviews for an abuse of discretion a district court's decision whether to impose sanctions for a discovery violation. *Id.* "The imposition of sanctions for violations of discovery rules and orders is a matter particularly suited to the judgment and discretion of the trial court." *State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979). The district court is "in the best position to determine whether any harm has resulted from the particular violation and the extent to which this harm can be eliminated or otherwise alleviated." *Id.*

A district court considers four factors when determining whether sanctions are appropriate for discovery violations: (1) the reason the disclosure was not made; (2) the extent of prejudice to the opposing party; (3) the feasibility of rectifying any prejudice by a continuance; and (4) any other relevant factors. *Id.* Here, the district court determined that Johnson's motion for discovery sanctions failed under the second *Lindsey* factor—prejudice—because the district court was "ultimately not persuaded that [Johnson] was prejudiced by [the state's] late disclosure."

We start by considering the second factor, the extent of prejudice. Johnson argues in his brief to this court that the "ongoing late disclosures affected the defense's ability to formulate a solid trial strategy because the landscape of the evidence kept changing." Johnson asserts that two pieces of evidence disclosed thirteen and ten days before trial—crime-scene photos and a video from the BCA and the statement of a witness, J.R.,

identifying another bar patron with a knife—"precluded the defense from consulting with a blood-pattern expert" and "precluded the defense from investigating an alternative perpetrator." The state responds for both alleged late disclosures that the evidence of Johnson's guilt as an accomplice is "so overwhelming" that "there is no chance that earlier disclosure of any of the challenged evidence would have changed the result."

We conclude that Johnson fails to show that he was prejudiced by the denial of his request for a continuance. First, with regard to the blood-spatter evidence, the district court correctly noted that Johnson had "not provided any information that he sought a blood-spatter expert" when "other photographs of the blood were previously disclosed." This is convincing because Johnson did not request a blood-spatter analysis from the state and did not contend that he had been seeking this type of expert evidence even though other crime-scene photos were disclosed promptly.

We also are not persuaded by Johnson's theory that the blood-spatter analysis would have helped his defense because it would show Johnson's exact location when U.M. was fatally stabbed. Under a theory of aiding and abetting, the state needed to prove that Johnson "intentionally aids, advises . . . or conspires with . . . other[s] to commit the crime," in this case, second-degree murder. Minn. Stat. § 609.05, subd. 1. The jury could reasonably find that Johnson was guilty under this statute regardless of his exact physical position when U.M. was stabbed.

Second, with regard to the state's disclosure of J.R.'s statement, Johnson fails to show prejudice. As the district court determined, the late disclosure of J.R.'s statement did

not prejudice Johnson because he was "provided with a description of [J.R.'s] statement in a narrative police report" and could have investigated more at that time.

We also reject Johnson's argument that the ongoing discovery violations warranted sanctions because of "the cumulative impact" they had on his "ability to adequately prepare for trial."[2] First, the video recordings showed that Johnson participated in the fatal assault of U.M. and are strong evidence of Johnson's guilt. Second, Johnson's sole defense at trial was reasonable doubt that he knew, or reasonably should have known, that a codefendant planned to stab U.M. Because Johnson does not deny that he participated in the attack, J.R.'s statement and any blood-spatter analysis would have had little evidentiary weight. Third, none of the late-disclosed evidence was exculpatory evidence. The state presented overwhelming evidence of Johnson's participation in the fatal attack on U.M. While we do not condone the late discovery disclosures by the state, the evidence that Johnson identifies was not exculpatory and was summarized in other evidence provided well before trial.

Because Johnson failed to show that the state's discovery violations prejudiced him, we need not analyze the other *Lindsey* factors. Thus, we determine that the district did not abuse its discretion when it denied Johnson's motion for discovery sanctions.

III. The district court did not abuse its discretion when it denied Johnson's petition for a postconviction evidentiary hearing.

In February 2022, Johnson petitioned for postconviction relief, arguing that he was entitled to an evidentiary hearing because newly discovered evidence likely would have

[2] For similar reasons, we reject Johnson's argument that even if he "cannot make the required prejudice showing," he is entitled to a new trial "in the interests of justice."

led to an acquittal or a more favorable result at trial. Along with his petition, Johnson submitted a recorded statement from a jailhouse informant, K.J., who stated that one of the two codefendants confessed to stabbing U.M. and throwing the knife in a sewer on the night of the stabbing. An investigator submitted an affidavit summarizing an interview with K.J. where K.J. stated that he "did not want to be involved and wanted to recant his statement."

On appeal, Johnson argues that the district court erred in denying his postconviction petition without an evidentiary hearing. A postconviction petitioner is entitled to an evidentiary hearing on the petition "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2020); *accord Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018). "In determining whether an evidentiary hearing is required, a postconviction court considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner." *Brown v. State*, 895 N.W.2d 612, 618 (Minn. 2017). An evidentiary hearing is only required when a petitioner alleges facts that, if proved by a preponderance of the evidence, would entitle them to the relief requested. *Id.* Appellate courts "review the ultimate decision by the postconviction court to grant or deny an evidentiary hearing for an abuse of discretion." *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014). "A postconviction 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." *Andersen*, 913 N.W.2d at 422 (quoting *Brown*, 895 N.W.2d at 617).

Johnson is entitled to an evidentiary hearing for newly discovered evidence—K.J.'s jailhouse statement—only if he satisfies the four-factor test set out in *Rainer v. State*, 566 N.W.2d 692 (Minn. 1997). *Bobo v. State*, 820 N.W.2d 511, 517 (Minn. 2012). Under *Rainer*, Johnson must show that the evidence (1) was not known to the defendant at the time of the trial, (2) could not have been discovered through due diligence before trial, (3) was not cumulative, impeaching, or doubtful, and (4) would probably produce an acquittal or a more favorable result. *Id.* (citing *Rainer*, 566 N.W.2d at 695).

On the first factor, the district court determined that the information in K.J.'s statement was "known at the time of [Johnson's] trial" and was "mostly not new" because it was "mainly corroborative of the surveillance videos and other evidence." The district court also determined that K.J. made his statement two months after Johnson's trial, and so the second factor is satisfied. The state does not dispute the district court's analysis of the second factor. The district court reasoned that factors three and four determine whether Johnson is entitled to an evidentiary hearing. We assume without deciding that Johnson satisfies factors one and two and focus on factors three and four.

A. Materiality of Evidence

Johnson argues that K.J.'s statement is "not cumulative, impeaching, or doubtful" because "it definitively identified the principal" and "explained what happened to the murder weapon." In contrast, the district court found that K.J.'s statement was cumulative because it "largely corroborates . . . the video surveillance evidence and other evidence presented at trial." The district court reasoned that the state "produced video surveillance evidence to advance the factual theory that the three codefendants acted together

and . . . never stated who had the knife (or knives) or stabbed [U.M.]"; therefore, "who[] specifically possessed the knife (or knives) is not necessarily determinative."

We agree with the district court's analysis. The state's theory of the case was that the three men left the bar after the first assault, formulated a plan to return and attack U.M., and returned to execute the coordinated attack that led to the fatal stabbing. Although the state did not offer evidence on which of the three men stabbed U.M., it claimed that Johnson aided and abetted the stabber. Thus, K.J.'s statement identifying the principal was cumulative evidence and supported the state's theory that Johnson aided and abetted the commission of second-degree intentional murder.

B. Probability of a More Favorable Result

Johnson argues that K.J.'s statement probably would have led to an acquittal or more favorable result because K.J.'s statement "omits any mention of a plan" and therefore "eliminates the idea that [Johnson] knew the principal [codefendant] was going to commit a murder or that [Johnson] intended to help [codefendant] commit that murder." The district court disagreed and determined that K.J.'s statement would "probably not change the result" because "the State . . . advance[d] the factual theory that the three codefendants acted together and . . . never stated who had the knife (or knives) or who stabbed the victim." The district court also concluded that the "remaining evidence is overwhelming that [Johnson] was guilty of aiding and abetting murder, regardless of who possessed the knife."

We agree with the district court's view of the fourth factor. The state presented video recordings that showed Johnson and the codefendants engaged in two fights with U.M. The

three men left the bar together after the first fight and returned to the bar a short while later, after which they quickly began the second fight, and one of the three men stabbed U.M. The jury could reasonably infer from the video recordings that the behavior of the three men on the dance floor just before the attack—having a discussion, circling U.M., and then attacking U.M. in quick succession—showed a plan. A witness standing outside the bar testified that he overheard three men on the sidewalk state that "they wanted to kill the guy."

Johnson's brief to this court concedes that K.J.'s statement implicates Johnson as a "*possible* aider and abettor." We agree and determine that K.J.'s statement is merely cumulative evidence supporting the state's theory that Johnson aided and abetted the intentional murder of U.M. Because strong evidence supports the jury's findings that Johnson aided and abetted intentional murder and that he was part of a group of three who actively participated in the crime, we conclude that K.J.'s statement probably would not have led to a more favorable result at Johnson's trial. Thus, the district court did not abuse its discretion when it denied Johnson's postconviction petition without an evidentiary hearing.

IV. The district court erred by entering convictions for three lesser-included offenses that arose from a single behavioral incident.

Although Johnson did not raise this issue on appeal, we conclude that the district court erred when it entered judgments of conviction for three lesser-included offenses. "[I]t is the responsibility of appellate courts to decide the cases in accordance with law." *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990). The Minnesota Statutes

specifically provide that a criminal defendant "may be convicted of either the crime charged or an included offense, *but not both*." Minn. Stat. § 609.04, subd. 1 (2018) (emphasis added). Minnesota law defines an included offense as "a lesser degree of the same crime" or "a crime necessarily proved if the crime charged were proved." *Id.*, subd. 1(1), (4). Whether an offense is a lesser-included offense of the charged offense is a legal question that an appellate court reviews de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

The jury found Johnson guilty of aiding and abetting second-degree murder with intent (count one), aiding and abetting second-degree murder while committing a felony offense (count three), and two counts of fifth-degree assault (counts two and four). The unintentional felony-murder offense is a lesser-included offense of the intentional-murder offense because under the state's theory of the case, assault was the underlying felony, and intent is the only other element that distinguishes the second-degree intentional-murder offense and the second-degree felony-murder offense. *See State v. Hannon*, 703 N.W.2d 498, 512 (Minn. 2005) (recognizing unintentional felony murder with assault as the underlying felony as a lesser-included offense of intentional murder).

The jury's guilty verdict found that Johnson "intentionally inflict[ed] or attempt[ed] to inflict bodily harm upon" U.M., the definition of fifth-degree assault. Minn. Stat. § 609.224, subd. 1(2). As a result, the verdict agrees with the state's theory that Johnson's participation in the assault constituted aiding and abetting intentional murder. Under these facts, fifth-degree assault was necessarily proved when the jury found Johnson guilty of aiding and abetting second-degree intentional murder for his participation in the attack. We

therefore conclude that counts two, three, and four are lesser-included offenses of count one.

When a criminal defendant is "convicted on more than one charge for the same act," the proper procedure is for the district court to "adjudicate formally and impose sentence on one count only." *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). The remedy for this error is to remand to the district court to vacate the convictions entered on the lesser-included offenses while leaving the guilty verdicts intact. *State v. Balandin*, 944 N.W.2d 204, 222 (Minn. 2020). "If the adjudicated conviction is later vacated for a reason not relevant to the remaining unadjudicated conviction(s), one of the remaining unadjudicated convictions can then be formally adjudicated and sentence imposed . . . ." *LaTourelle*, 343 N.W.2d at 284.

Thus, we reverse in part and remand to the district court to amend the warrant of commitment and vacate the convictions for the lesser-included offenses of aiding and abetting second-degree felony murder and the two counts of fifth-degree assault, for which Johnson received no sentence.

Affirmed in part, reversed in part, and remanded.