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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1389**

State of Minnesota,
Respondent,

vs.

Deandre Washington Leroy Craig,
Appellant.

**Filed February 2, 2026
Affirmed
Reyes, Judge
Concurring in part, dissenting in part, Larson, Judge**

Hennepin County District Court
File No. 27-CR-21-11259

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

Mary F. Moriarty, Hennepin County Attorney, Elizabeth Scoggin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant raises challenges based on (1) the district court's denial of his requested jury instructions; (2) the district court's evidentiary rulings; (3) the district court's denial

of a hearing about alleged jury misconduct; (4) cumulative error; (5) insufficient evidence; and (6) the postconviction court's denial of his postconviction petition for relief. We affirm.

FACTS

Respondent State of Minnesota charged appellant Deandre Washington Leroy Craig with one count of second-degree murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2020), one count of attempted second-degree murder under the same statute, and one count of prohibited person in possession of a firearm or ammunition in violation of Minn. Stat. § 624.713, subd. 1(2) (2020). These charges arose out of events on June 7, 2021, which were captured on surveillance videos. We lay out the facts as shown in the surveillance videos.

On June 7, 2021, S.T., D.S., and C.F. approached appellant on the sidewalk outside of a liquor store in North Minneapolis.¹ After a short discussion, D.S. brandished a firearm. A physical fight ensued between S.T., D.S., and appellant. During the fight, D.S.'s firearm fell, S.T. retrieved it, and it later went off leading someone to scream. S.T. ended up with the firearm, which she put in her pants pocket. S.T. stepped away while appellant and D.S. continued the fight in an enclave outside the liquor store with D.S. on top of appellant.

Once appellant got out from under D.S., appellant ran away from him and into the parking lot, where S.T. had gone during the fight. Appellant drew his own firearm, pointing

¹ The parties varyingly refer to this community as “North Minneapolis,” the “North,” the “Northside,” the “North Side,” and the “neighborhood.” For consistency, we use “North Minneapolis.”

it at S.T. S.T. also drew her firearm and pointed it towards appellant. D.S. crouched behind and then hid beneath a parked car. Appellant fired two shots at S.T., hitting S.T. once, and both S.T. and her firearm fell to the ground near the parked car. A few seconds later, D.S. stood up. Appellant fired one more shot, hitting D.S., who cried out and fell to the ground. Appellant left the scene. Others carried D.S. and put him into a car to drive him to the hospital. D.S. spent between two and three weeks in the hospital but ultimately survived. S.T. died from her injuries.

Jury Trial

The case proceeded to jury trial in November 2022. Several people testified including two sergeants from the Minneapolis Police Department, D.S.'s grandmother, and appellant.

In addition to the originally charged offenses, both appellant and the state sought to add certain lesser-included offenses to the jury instructions. For the second-degree murder charge, appellant sought an instruction based on first-degree heat-of-passion manslaughter under Minn. Stat. § 609.20(1) (2020), while the state sought an instruction for unintentional felony murder under Minn. Stat. § 609.19, subd. 2(1) (2020). For the attempted second-degree-murder charge, the state requested a lesser-included offense of first-degree assault under Minn. Stat. § 609.221, subd. 1 (2020).

After the close of evidence, the district court issued the final jury instructions based on five counts: (1) second-degree murder of S.T. with intent but without premeditation; (2) unintentional felony murder of S.T.; (3) attempted second-degree murder of D.S.; (4) first-degree assault of D.S.; and (5) ineligible person in possession of a firearm or

ammunition. The district court also included an instruction on self-defense. The jury found appellant guilty of counts 2, 4, and 5 and not guilty of counts 1 and 3.

Posttrial Proceedings

Appellant timely moved for a judgment of acquittal, a new trial, and a *Schwartz* hearing.² The district court denied each of these requests.

The district court convicted and sentenced appellant to prison based on the three guilty verdicts: 252 months for count 2; 103 months for count 4; and 60 months for count 5. The district court ordered the sentences for counts 2 and 5 to run concurrent with each other, but consecutive with the sentence in count 4, for a total sentence of 355 months in prison.

Appellant filed an appeal from the final judgment and moved to stay the appeal for postconviction proceedings. This court granted the stay. Appellant then petitioned for postconviction relief, seeking reversal and a new trial based on an alleged *Brady* violation and newly discovered evidence.³ The state agreed to an evidentiary hearing. After the hearing, the postconviction court denied appellant's petition, determining that appellant could not establish the elements required to support his claims.

Upon appellant's request, we dissolved the stay of this appeal.

² "A *Schwartz* hearing is a procedure which allows a district court to investigate alleged juror misconduct." *Kambon v. State*, 23 N.W.3d 576, 577 n.2 (Minn. 2025) (quotation omitted) (citing *Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301 (Minn. 1960)); see also Minn. R. Crim. P. 26.03, subd. 20(6) (permitting hearing to impeach verdict).

³ "A *Brady* violation occurs when the [s]tate suppresses material evidence favorable to the defendant despite a request for production by the defense." *Griffin v. State*, 941 N.W.2d 404, 410 n.2 (Minn. 2020) (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)).

DECISION

Appellant raises challenges based on (1) the district court's denial of his requested jury instructions; (2) the district court's evidentiary decisions; (3) the district court's *Schwartz*-hearing denial; (4) cumulative error; (5) insufficient evidence; and (6) the postconviction court's denial of his postconviction petition for relief. We address each argument in turn.

I. The district court did not abuse its discretion by denying appellant's request for a jury instruction on heat-of-passion manslaughter.

Appellant first argues that the district court abused its discretion when it denied his request to include heat-of-passion manslaughter as a lesser-included offense in the jury instructions. We are not persuaded.

“Determining whether to give a jury instruction lies within the discretion of the district court and will not be reversed but for an abuse of that discretion.” *State v. Baker*, 13 N.W.3d 401, 408 (Minn. 2024) (quotation omitted). A district court abuses its discretion when it “refuse[s] to give an instruction on the defendant’s theory of the case [when] there is evidence to support it.” *Id.* (quoting *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006)). The district court “must look at the evidence in the light most favorable to the party requesting the instruction” and may not “weigh the evidence or discredit witnesses and thereby deny an instruction.” *Johnson*, 719 N.W.2d at 626 (quotation omitted); *State v. Dahlin*, 695 N.W.2d 588, 598 (Minn. 2005).

First-degree heat-of-passion manslaughter requires a defendant to “intentionally cause[] the death of another person in the heat of passion provoked by such words or acts

of another as would provoke a person of ordinary self-control under like circumstances.” Minn. Stat. § 609.20(1). There are two elements of this conviction: a subjective element of heat of passion and an objective element of provocation. *Eason v. State*, 950 N.W.2d 258, 264 (Minn. 2020). We need not consider the heat-of-passion element if the provocation element is not met. *See id.* at 264-65.

Caselaw provides guidance on what may constitute sufficient provocation in the context of heat-of-passion manslaughter. For example, a victim shooting a defendant in the head can be sufficient provocation. *See Johnson*, 719 N.W.2d at 628. But many acts have not amounted to sufficient provocation, including: a victim “reaching for a gun,” *Stiles v. State*, 664 N.W.2d 315, 322 (Minn. 2003); a victim “grabb[ing] a knife” after a defendant “smacked” her, *State v. Hale*, 453 N.W.2d 704, 706-07 (Minn. 1990); a victim “reach[ing] for a weapon after [a defendant] assaulted him,” *Eason*, 950 N.W.2d at 262, 265; and a victim’s physical gesture “challenging [a defendant] to a fight,” *State v. Nystrom*, 596 N.W.2d 256, 258 (Minn. 1999).

In *Johnson*, the state and the appellant disagreed about whether the victim shot the appellant. 719 N.W.2d at 622. The appellant further argued “that he [did] not remember what happened after [the victim] shot him.” *Id.* The appellant requested a jury instruction on a lesser-included offense of first-degree heat-of-passion manslaughter as well as a self-defense instruction, but the district court denied both requests. *Id.* at 624. A jury convicted the appellant of second-degree intentional murder. *Id.* at 622. On appeal, the supreme court held that the district court abused its discretion by denying the appellant’s requested lesser-included-offense instruction for heat-of-passion manslaughter. *Id.* at 628. On the

provocation prong, the supreme court concluded that “a jury viewing all of the evidence in the record could determine that [the appellant] engaged in an increasingly heated argument with [the victim] that escalated to a physical altercation in which [the victim] shot [the appellant]—provoking [the appellant] to shoot her back just seconds later.” *Id.*

Key facts differentiate this case from *Johnson*. Perhaps most importantly, there is video evidence of the incidents here, providing direct evidence of the circumstances surrounding the shooting. *See State v. Blevins*, 10 N.W.3d 29, 40 (Minn. 2024) (holding that video may be direct evidence of what it shows). Appellant also received two jury instructions: a self-defense jury instruction, which the jury rejected, and a lesser-included-offense instruction for second-degree intentional felony murder, for which the jury found him guilty. Unlike in *Johnson*, there is no speculation here as to whether S.T. injured appellant. *See* 719 N.W.2d at 622. Viewing all the evidence, the district court determined that there was no rational basis on which a jury could find that appellant committed heat-of-passion manslaughter. Because we agree that appellant cannot satisfy the provocation prong, we conclude that the district court did not abuse its discretion by denying appellant’s request for a heat-of-passion jury instruction.

II. The district court’s evidentiary decisions did not constitute an abuse of discretion.

Appellant claims that the district court prevented him from (1) cross-examining police witnesses about “the violent nature of [North Minneapolis]” as well as “[t]he gas station video evidence” and (2) “explaining how he felt when he was attacked.” We address each argument in turn.

Appellate courts “review a district court’s evidentiary rulings for an abuse of discretion, even when, as here, the defendant claims that the exclusion of evidence deprived him of his constitutional right to a meaningful opportunity to present a complete defense.” *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). “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). The appellant has the burden of establishing that the district court committed an abuse of discretion that prejudiced appellant. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

A. Cross-Examination Decisions

The district court “shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence” to make them “effective for the ascertainment of the truth” and “avoid needless consumption of time.” Minn. R. Evid. 611(a)(1)-(2).

The record shows that appellant requested, and the district court permitted, questioning the police witnesses “about their experiences in that neighborhood.” In this discussion outside the presence of the jury, the district court conceded “it’s a rough neighborhood,” but explained that it did not know “whether that excuses [appellant] from his duty to flee . . . [as] a legal matter.”

During cross-examination, the district court sustained two relevance-based objections to appellant’s questioning of the police witnesses about North Minneapolis. These questions were, “Would you say the area has changed at all since 2007?” and “You’d agree that drug sales are prevalent in that area?” By contrast, the district court overruled

an objection to the question, “And you’ve had to go out to the scene quite a few times, right?”

The record also shows that appellant played in open court several minutes of a surveillance video from a gas station across the street from the liquor store. The video included no audio and showed only a few individuals gathering at the gas station and pointing at the liquor-store parking lot at issue. After the jury adjourned for the day, the district court questioned the relevance of the video. The district court explained: “I want your client to get a full defense, but I don’t for the life of me understand how this is at all relevant.” Although appellant argued that the video supported his claim of self-defense because it showed that people were gathering and planning in front of a nearby gas station before the incident, the district court explained that it did not think the video was “at all relevant.” The district court elaborated that appellant “didn’t know those folks were over there” and that “[t]here’s no evidence that there was some concerted action against [appellant] beyond what we’ve already seen in the video.” It asked appellant to “move forward to the actual incident” for the following day of trial.

The district court based each of its evidentiary rulings on the importance of relevant, effective, and timely presentation of evidence. *See* Minn. R. Evid. 402, 611(a). Appellant was able to make his points about North Minneapolis effectively. We conclude that the district court did not abuse its discretion.

B. Testimony Decisions

As a preliminary matter, appellant’s second argument rests in part on claims that the district court limited his testimony about how he felt during the encounter with S.T. and

D.S. This is contrary to the facts in the record, in which the district court first sustained but then overruled the state's objection, allowing the testimony. To the extent that appellant asserts that he could not testify about his feelings on this matter, the record does not support that assertion.

Appellant also argues that the district court "sustained numerous relevance and speculation objections when [appellant] testified about [S.T.] and [D.S.] going through his pockets." There is only one related objection in the record:

APPELLANT'S COUNSEL: Did anything—was anything said that you—what do you think [S.T.] was grabbing for?

RESPONDENT'S COUNSEL: Objection. Speculation.

THE COURT: Sustained.

APPELLANT'S COUNSEL: Your Honor, I would ask that [appellant] be able to say what he thought at the time as to what she was going for, and the jury, of course, will have the video to hear what she says.

THE COURT: That's the definition of speculation, it's not a permissible question or answer. Next question, please.

The rules of evidence limit opinion or inference testimony from lay witnesses to what is "(a) rationally based on the perception of the witness; (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge." Minn. R. Evid. 701. "[T]he key inquiries in determining the admissibility of lay opinion are personal knowledge and helpfulness to the jury." *Muehlhauser v. Erickson*, 621 N.W.2d 24, 29 (Minn. App. 2000).

Appellant does not claim that he had personal knowledge of S.T.’s intentions. Further, any potential inference he did have would not have helped the jury. This is particularly true for his self-defense claim, which requires the jury to inquire into the objective reasonableness of his actions. *See State v. Prtine*, 784 N.W.2d 303, 313 (Minn. 2010) (“Whether one is justified in using deadly force is an objective inquiry . . . not an evaluation of the defendant’s subjective state of mind.”). The jury had access to several videos, from multiple angles, documenting the events as they unfolded. Nothing in the record shows that appellant was any more qualified than the jurors to draw an inference from the events or that appellant needed to give his opinion to help the jury understand his testimony. *See, e.g., Muehlhauser*, 621 N.W.2d at 29. We conclude that the district court did not abuse its discretion by sustaining this objection.

III. The district court did not abuse its discretion by denying appellant’s motion for a *Schwartz* hearing.

Appellant claims that he established a prima facie case of juror misconduct based on extraneous prejudicial information during jury deliberations, specifically race-based pressure, requiring a *Schwartz* hearing. We are not persuaded.

Appellate courts review a district court’s denial of a request for a *Schwartz* hearing for an abuse of discretion. *State v. Chauvin*, 989 N.W.2d 1, 22 (Minn. App. 2023), *rev. denied* (Minn. July 18, 2023). “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. Fernandez Sorto*, 12 N.W.3d 207, 212 (Minn. App. 2024) (quotation omitted), *rev. denied* (Minn. Dec. 17, 2024).

A district court need not hold a *Schwartz* hearing “unless the party seeking review first establishes a prima facie case of juror misconduct or bias.” *Pulczynski v. State*, 972 N.W.2d 347, 361 (Minn. 2022). The requesting party establishes a prima facie case of juror misconduct by “submit[ting] sufficient evidence which, standing alone and unchallenged, would warrant the conclusion of jury misconduct.” *State v. Pederson*, 614 N.W.2d 724, 730 (Minn. 2000). The prima facie case may be established through “oral assertion by counsel or hearsay affidavit.” *Zimmerman v. Witte Transp. Co.*, 259 N.W.2d 260, 263 (Minn. 1977). If the requesting party establishes a prima facie case of jury misconduct, a *Schwartz* hearing should be “liberally granted.” *Pulczynski*, 972 N.W.2d at 361.

A district court may deny a motion for a *Schwartz* hearing if the allegation would require juror testimony prohibited under Minnesota Rule of Evidence 606(b), such as statements made during deliberations or what influenced a juror to reach a certain verdict. *State v. Martin*, 614 N.W.2d 214, 226 (Minn. 2000). However, rule 606(b) includes an exception that allows jurors to testify about “whether extraneous prejudicial information was improperly brought to the jury’s attention,” including race-based pressure. *See also State v. Bowles*, 530 N.W.2d 521, 536 (Minn. 1995).

To support his *Schwartz*-hearing request, appellant submitted an affidavit by a juror. The juror made two relevant allegations. The first allegation stated: “I did feel like I was reprimanded when I said I don’t think all of us are trying to put ourselves in [appellant’s] shoes. Some jury members said I would never live in that area.” The second allegation explained: “I recall one jury member talking about how they took someone out of the

neighborhood. . . . [Their] daughter has a classmate that lives over North. They let this person move [in] with them to escape the problems in North.”

When denying appellant’s motion for a *Schwartz* hearing, the district court described the juror’s allegations as “largely conclusory in nature.” The district court disputed the relevance of *State v. Varner*, 643 N.W.2d 298 (Minn. 2002), which appellant relied on, stating that “the allegation [there] was that a juror had made a specific reference to race and the risk of a white person being beaten up or robbed in a particular neighborhood.” Here, instead, the district court analyzed the juror’s second allegation and noted that the “problems” in North Minneapolis were “unspecified”: “There is no mention of race, racial animus, or racial pressure. Such an ambiguous statement is insufficient to trigger the *Schwartz* process.”

Appellant’s defense rested in part on the concept of neighborhood violence, which he argued was crucial to his case because the state claimed that “he should have fled” in a particular direction while appellant asserted “that [was] not a viable option.” At most, the juror’s statements are ambiguous as to race. There is no evidence that these statements included race-based pressure that qualifies for the “extraneous prejudicial information” exception to Minnesota Rule of Evidence 606(b). We conclude that the district court did not abuse its discretion by denying appellant’s request for a *Schwartz* hearing.

IV. The cumulative effect of any errors did not deny appellant a fair trial.

Appellant next argues that the cumulative effect of the district court’s alleged errors, discussed above, denied him a fair trial. His argument is unavailing.

“An appellant may be entitled to a new trial in rare cases where the errors, when taken cumulatively, have the effect of denying the appellant a fair trial.” *State v. Fraga*, 898 N.W.2d 263, 278 (Minn. 2017) (quotation omitted). Appellate courts “are more inclined to order a new trial for cumulative errors in very close factual cases.” *Id.* at 279.

We conclude that the district court committed no errors. Moreover, none of the factual issues are close. The surveillance videos create a strong factual record to support appellant’s guilt. *Cf. id.* (denying cumulative-error claim, despite presence of errors, because “evidence of [appellant’s] guilt was strong”). We therefore deny appellant’s cumulative-error claim.

V. The state presented sufficient evidence to support the charge of first-degree assault.

Appellant claims that the state presented insufficient evidence to support the charge of first-degree assault because “[t]he state failed to produce any evidence of the extent of [D.S.’s] gunshot injury.” We are not convinced.

Appellate review of the sufficiency of the evidence underlying a defendant’s conviction differs “depend[ing] on whether the [s]tate relied on direct or circumstantial evidence at trial.” *State v. Segura*, 2 N.W.3d 142, 155 (Minn. 2024). “[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Witness testimony “is direct evidence when it reflects a witness’s personal observations and allows the jury to find the defendant guilty without having to draw any inferences.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). A video

may also be direct evidence of what it shows. *Blevins*, 10 N.W.3d at 40. Because we conclude that direct evidence presented here sufficiently supports appellant’s conviction, we need not consider the circumstantial evidence or the standard of review for circumstantial evidence. *Cf. State v. Flowers*, 788 N.W.2d 120, 133 n.2 (Minn. 2010) (declining to apply circumstantial-evidence standard of review when direct evidence existed).

“In reviewing the sufficiency of evidence for a conviction, we painstakingly review the record to determine whether that evidence, viewed in the light most favorable to the verdict, was sufficient to permit the jurors to reach the verdict that they did.” *State v. Hassan*, 977 N.W.2d 633, 639-40 (Minn. 2022). Appellate courts “will not overturn a verdict if, giving due regard to the presumption of innocence and to the [state’s] burden of proving guilt beyond a reasonable doubt, the jury could reasonably have found the defendant guilty of the charged offense.” *State v. Cruz*, 997 N.W.2d 537, 551 (Minn. 2023) (quotation omitted).

To convict a defendant of first-degree assault in violation of Minn. Stat. § 609.221, subd. 1, the state must prove that the defendant “assault[ed] another and inflict[ed] great bodily harm.” *See also* 10A *Minnesota Practice*, CRIMJIG 8.01 (2024) (using similar language). Minnesota law defines “great bodily harm” as “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” Minn. Stat. § 609.02, subd. 8 (2020). The district court here included nearly identical language in its jury instructions.

The state argues that it presented sufficient evidence to prove that D.S. incurred “other serious bodily harm.” This term “is not defined by statute and it should be taken in the context of the . . . alternative definitions.” *State v. Dye*, 871 N.W.2d 916, 922 (Minn. App. 2015) (quotation omitted). “To determine whether a victim’s injuries constitute ‘other serious bodily harm,’ courts must consider the totality of the victim’s injuries.” *Id.*

Appellant relies on *Dye* to argue that the state failed to prove “other serious bodily harm.” But *Dye* is factually distinct. There, the victim was shot in the abdomen and the bullet traveled through “eight inches of tissue.” *Id.* at 920. A doctor testified that “if the bullet had traveled the same distance in other directions,” it *could* have hit vital organs which “would have been life-threatening.” *Id.* The state argued alternative theories that the victim suffered “great bodily harm” under either the “high-probability of death” or “other serious bodily harm” statutory prongs. *Id.* at 921-22. This court held that the evidence presented did not support a finding of great bodily harm under either prong. *See id.* at 922. We noted that: the bullet “did not hit any critical body parts”; the victim “was able to talk, breathe, and walk to the ambulance with some help”; she was released from the hospital the day after the shooting; and the victim “did not testify, [so] the extent of her pain . . . [is] unknown.” *Id.*

Both here and in *Dye*, the victims did not testify. *See id.* But the remaining facts of this case diverge from those in *Dye*. Appellant shot D.S. in the upper chest or shoulder. After being shot, D.S. yelled out in pain, fell to the ground, and continued screaming. He could not stand up on his own. Two people grabbed D.S. under his arms, carried him to a car, and put him inside to drive him to the hospital. Police witnesses testified that, on his

first day in the hospital, D.S. was listed in “critical condition” and underwent surgery. D.S. spent between two and three weeks in the hospital. At trial, D.S.’s grandmother testified that these injuries were significant, and appellant testified that they were significant “as of now.” We conclude this is sufficient to prove other serious bodily harm.

The facts of this case also diverge from *Ibrahim v. State*, 14 N.W.3d 294 (Minn. App. 2024), cited by appellant. That case concerned, in relevant part, the accuracy of a defendant’s guilty plea for first-degree assault. *Ibrahim*, 14 N.W.3d at 299. We reversed, concluding that “the factual basis was insufficient to satisfy the accuracy requirement of a valid plea.” *Id.* at 303. But in determining plea accuracy, “an adequate factual basis is usually established by questioning the defendant.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). We held the factual basis to support “other bodily harm” to be insufficient in *Ibrahim* because the defendant “did not admit to causing ‘other serious bodily harm’ or expressly acknowledge medical evidence in the record pertaining to the type and severity of the victim’s injuries.” *Ibrahim*, 14 N.W.3d at 303. We declined to consider other allegations that the defendant did not expressly confirm. *Id.*

For sufficiency-of-the-evidence claims, by contrast, we need not rely on a defendant’s admission or confirmation. Instead, as discussed above, we have a record that we “painstakingly review . . . in the light most favorable to the verdict.” *Hassan*, 977 N.W.2d at 639-40. We can rely on videos and witness testimony as direct evidence. *See Horst*, 880 N.W.2d at 40; *Blevins*, 10 N.W.3d at 40. In this case, the video evidence as well as testimony from appellant, D.S.’s grandmother, and two police witnesses support the jury’s determination that D.S. suffered other serious bodily harm. We therefore

conclude that the state presented sufficient evidence to support appellant's conviction of first-degree assault.

VI. The postconviction court did not abuse its discretion by denying appellant's postconviction petition.

Appellant next argues that the postconviction court abused its discretion by denying his postconviction petition for relief, which he contends sufficiently established claims based on *Brady* and newly discovered evidence. We discuss and analyze appellant's claims only regarding the alleged *Brady* violation “[b]ecause the ultimate standard of materiality applicable to a *Brady* violation should be more lenient to the defense than the standard applied to newly discovered evidence.” *Gorman v. State*, 619 N.W.2d 802, 805 (Minn. App. 2000), *rev. denied* (Minn. Feb. 21, 2001).

A *Brady* claim involves the state's failure to disclose material, exculpatory evidence. *See Brady*, 373 U.S. at 87-88. Minnesota courts employ a three-prong test to determine whether a *Brady* violation has occurred:

(1) the evidence must be favorable to the defendant because it would have been either exculpatory or impeaching; (2) the evidence must have been suppressed by the prosecution, intentionally or otherwise; and (3) the evidence must be material—in other words, the absence of the evidence must have caused prejudice to the defendant.

Walen v. State, 777 N.W.2d 213, 216 (Minn. 2010). “The facts alleged . . . , if proven at an evidentiary hearing, must meet all three requirements to establish a *Brady* violation.” *Zornes v. State*, 903 N.W.2d 411, 417 (Minn. 2017).

Appellant claims that the state failed to disclose: (1) “evidence that [D.S.], [C.F.], and [S.T.] were members of or associated with” certain gangs; (2) “evidence that [these]

gangs have a reputation for violence” in North Minneapolis; and (3) “evidence that [D.S.] and [C.F.] had a reputation for violence” in North Minneapolis.

Appellant concedes that the state disclosed several police reports with checked boxes identifying D.S., C.F., and appellant as gang members.⁴ Appellant argues that these checkboxes are notoriously unreliable, so it did not trust them as evidence of gang membership. But the postconviction court correctly stated that, through these police reports, “the defense was put on notice that the victims were gang members.” Distrust of provided information is not the same as suppression of evidence, and it does not support a *Brady* claim. We conclude that the postconviction court did not abuse its discretion by denying appellant’s postconviction petition.

Affirmed.

⁴ To the extent that appellant claims that two of the police reports listed conflicting information, this concern was dispelled at the evidentiary hearing: both parties had access to only one of the reports before trial because the other report was printed after trial.

LARSON, Judge (concurring in part, dissenting in part)

I concur with the opinion of the court with respect to Parts I-IV and VI. But I respectfully dissent from the majority’s decision that the state presented sufficient evidence to prove D.S. suffered “great bodily harm” to sustain Craig’s first-degree-assault conviction under Minn. Stat. § 609.221, subd. 1 (2020).

Under section 609.221, subdivision 1, “[w]hoever assaults another and inflicts great bodily harm” is guilty of first-degree assault. The legislature defined the phrase “great bodily harm” to mean “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or *other serious bodily harm*.” Minn. Stat. § 609.02, subd. 8 (2020) (emphasis added).

Here, the majority concludes that the evidence presented at trial was sufficient to prove Craig inflicted “other serious bodily harm” to D.S. “Other serious bodily harm” is not defined by statute but must “be taken in the context of the other three alternative definitions.” *State v. Moore*, 699 N.W.2d 733, 739 (Minn. 2005). “Accordingly, courts must consider the totality of the injuries to determine whether the injuries constitute ‘other serious bodily harm.’” *Ibrahim v. State*, 14 N.W.3d 294, 302 (Minn. App. 2024).

We have issued three precedential decisions describing the evidentiary requirements to prove “other serious bodily harm.” In *State v. Gerald*, Gerald held a knife against the victim’s neck, and the victim chased Gerald following the altercation. 486 N.W.2d 799, 800 (Minn. App. 1992). The state charged Gerald with first-degree assault. *See id.* A physician testified at trial that the victim “was not medically unstable” at the emergency

room. *Id.* at 801. The victim had “a half-inch long cut on the back of [his] neck and a wound of approximately the same size in his right ear.” *Id.* The neck injury was closed with stitches. *Id.* The victim was admitted to the hospital for observation for the ear injury, but—after testing—the physician determined the victim had no serious damage. *See id.* A jury convicted Gerald of first-degree assault. *Id.* We reversed on the ground that the state presented insufficient evidence to prove “great bodily harm.” *Id.* at 802-03. Analyzing whether the victim’s injuries constituted “other serious bodily harm,” we concluded that because the victim only suffered two cuts requiring minimal intervention, and the victim was able to chase Gerald following the injury, the evidence did “not support a finding that [the victim] suffered other serious bodily injury within the meaning of the statute.” *Id.* at 801-02. We lamented this result, noting that “we find it anomalous that an individual who commits a grievous assault on another may escape a first degree assault conviction because the victim is fortunate enough to escape serious injury.” *Id.* at 802-03. Nonetheless, we concluded that the “legislature mandates that we focus on the injury to the victim rather than the actions of the assailant.” *Id.* at 802.

Over two decades later, we applied this precedent in *State v. Dye*. 871 N.W.2d 916, 921-22 (Minn. App. 2015). There, the victim called 911 after Dye shot her in the lower back. *Id.* at 919. The state called law enforcement, paramedics, and a physician to testify at trial. *Id.* at 919-20. Law enforcement testified that when they arrived on the scene the victim was “hunched over” and “appeared to be in a lot of pain.” *Id.* at 919. The victim was “trying to position herself to breathe comfortably and was having trouble communicating and speaking.” *Id.* One paramedic testified that, when they arrived at the

scene, the victim was able to “walk, talk, and breathe,” but the paramedics treated the “injury as life-threatening.” *Id.* at 920. The emergency-room physician also testified that the victim’s injury was treated “as life-threatening.” *Id.* After testing, the physician determined the bullet did not hit any vital organs and removed the bullet “with a small incision.” *Id.* at 920-21. The victim spent one night in the hospital. *Id.* at 920. The state did not present any evidence regarding follow-up treatment, but the physician testified that this injury *could* cause “a permanent lump due to scar tissue” and pain “for an extended period of time.” *Id.* A jury convicted Dye of first-degree assault. *Id.* We reversed on the ground that the state presented insufficient evidence to prove “great bodily harm.” *Id.* at 922. Analyzing whether this injury constituted “other serious bodily harm,” we noted that the bullet “did not hit any critical body parts,” the victim could “talk, breathe, and walk” when paramedics arrived, she had a short hospitalization, a small incision to remove the bullet, and—because the victim did not testify—there was no evidence regarding the extent of the victim’s pain or scarring. *Id.* Accordingly, we concluded the state presented insufficient evidence to prove the victim suffered “other serious bodily harm” within the meaning of the statute. *Id.*

Most recently, in *Ibrahim*, we considered a first-degree-assault conviction in the context of a guilty plea. 14 N.W.3d at 299. There, during the plea hearing, Ibrahim admitted that he fought with the victim, he stabbed the victim in the chest with a knife, the stab wound caused the victim’s lung to collapse, the injury was “serious,” and this was “the kind of injury that *could* cause a person to die.” *Id.* at 299-300 (emphasis added). Ibrahim filed a petition for postconviction relief, arguing that his plea was inaccurate because the

factual basis did not establish that he caused “great bodily harm” to the victim. *Id.* at 298. Specifically, Ibrahim argued his plea colloquy did not meet the “great bodily harm” standard because “the only evidence in the record [was] that the victim suffered a single collapsed lung, for which there [was] no evidence pertaining to any lasting impact on the victim.” *Id.* at 300. The district court denied the postconviction petition. *Id.* at 298. We reversed. *Id.* at 305. We concluded that “Ibrahim did not admit to causing ‘other serious bodily harm’” because “the only evidence in the record [was] that the victim suffered a single collapsed lung, for which there [was] no evidence pertaining to any lasting impact on the victim.” *Id.* at 303. We further noted that “[t]he record [did] not contain evidence that this injury created a high probability of death, that it permanently disfigured the victim, or had any long-term effects on the victim’s breathing.” *Id.* We therefore concluded that the record lacked sufficient facts to support a conclusion that Ibrahim’s conduct fell within the charges to which he desired to plead guilty. *Id.* at 299, 303.

Here, the state presented the following evidence to prove that D.S.’s injuries met the “other serious bodily harm” standard: (1) law-enforcement testimony that D.S. was shot in the “shoulder, upper chest area”; (2) video footage depicting D.S. yelling and falling to the ground after being shot; (3) video footage of D.S. being dragged to a car; (4) law-enforcement testimony that bystanders brought D.S. to the hospital; (5) law-enforcement testimony that, upon their arrival at the hospital, D.S. was not able to talk because he was in surgery; (6) law-enforcement testimony that, at some point, D.S. was listed in “critical

condition”; (7) general testimony from D.S.’s grandmother and Craig¹ that the wound inflicted was “significant”; and (8) testimony that D.S. spent two-and-a-half weeks in the hospital. Notably absent from the record is any specific evidence regarding the severity of D.S.’s injury or any lasting impact from the injury.

Applying the caselaw above to these facts, I would conclude the state did not present sufficient evidence to prove Craig caused D.S. to suffer “other serious bodily harm.” Like in *Dye* and *Ibrahim*, the record is devoid of any evidence that D.S. suffered a lasting physical impact from the assault. *See Ibrahim*, 14 N.W.3d at 303 (noting “the only evidence in the record [was] that the victim suffered a single collapsed lung, for which there is no evidence pertaining to any lasting impact on the victim”); *Dye*, 871 N.W.2d at 922 (stating that, despite physician testimony that “this type of injury could leave a permanent lump and cause[] persistent pain,” lack of testimony on realized scarring and pain rendered evidence insufficient to prove “other serious bodily injury”). And upon thorough review of appellate precedential and nonprecedential² decisions, I could not find a case where we affirmed a first-degree-assault conviction based on “other serious bodily harm” without specific evidence—such as medical records or testimony from the victim or

¹ During cross examination, the prosecutor asked Craig, “[a]nd you are aware that he suffered significant injury and spent weeks in the hospital after being shot in the chest by you?” Craig answered, “[a]s of now, yes.” I view this exchange as relating to Craig’s knowledge of the seriousness of D.S.’s injuries, not D.S.’s condition at the time of trial.

² I cite nonprecedential opinions as persuasive authority only. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

medical personnel—demonstrating the severity of the harm to the victim or the lasting effect on the victim.³

³ See, e.g., *State v. Jones*, 266 N.W.2d 706, 708, 710 (Minn. 1978) (concluding “other serious bodily harm” occurred when victim testified she had ongoing numbness in teeth and treating physicians testified about injuries); *State v. Anderson*, 370 N.W.2d 703, 705-06 (Minn. App. 1985) (concluding “other serious bodily harm” occurred where “surgical scar remain[ed] a permanent reminder to the victim which extend[ed] from her lower [abdomen] to her upper chest”), *rev. denied* (Minn. Sept. 19, 1985); *State v. Neal*, No. A23-0409, 2024 WL 912627, at *4-5 (Minn. App. Mar. 4, 2024) (concluding “other serious bodily harm” occurred when state presented photographs of injuries and medical testimony about injuries sufficient to prove both other bodily injury and disfigurement), *rev. denied* (Minn. May 29, 2024); *State v. Abikar*, No. A17-1119, 2018 WL 3213030, at *4-5 (Minn. App. July 2, 2018) (concluding “other serious bodily harm” occurred when a premature infant with “severe breathing problems” suffered nine broken ribs and state presented medical testimony and medical records concerning injury), *rev. denied* (Minn. Sept. 26, 2018); *State v. Kramer*, No. A15-1646, 2018 WL 1247424, at *7 (Minn. App. Mar. 12, 2018) (concluding, in sentencing context, “other serious bodily harm” occurred when victim suffered, among other things, ongoing pain), *rev. denied* (Minn. May 29, 2018); *State v. Aleman*, No. A15-1453, 2016 WL 4723340, at *3 n.2, *4 (Minn. App. Sept. 12, 2016) (concluding “other serious bodily harm” occurred when victim suffered, among other things, scarring, a broken tooth, and ongoing rib pain and state presented photographs of and testimony about injuries and scars), *rev. denied* (Minn. Nov. 23, 2016); *State v. Merritt*, No. A12-0189, 2013 WL 141637, at *3-4 (Minn. App. Jan. 14, 2013) (concluding “other serious bodily harm” occurred when victim suffered several lacerations, bruising, fractures, and ongoing numbness and state presented victim and medical testimony about injuries), *rev. denied* (Minn. Mar. 27, 2013); *State v. Nelson*, No. A12-1037, 2013 WL 3155409, at *4 (Minn. App. June 24, 2013) (concluding “other serious bodily harm” occurred when victim suffered “numerous severe injuries” and required hospitalization and state presented medical testimony about injuries), *rev. denied* (Minn. Sept. 17, 2013); *State v. Nelson*, No. A08-1038, 2009 WL 1515494, at *2-3 (Minn. App. June 2, 2009) (concluding “other serious bodily harm” occurred when state presented law-enforcement and medical testimony, as well as medical records, about victim’s facial gunshot injury, medical treatment, and recovery), *rev. denied* (Minn. Aug. 11, 2009); *State v. Walls*, No. C4-96-498, 1997 WL 20346, at *2 (Minn. App. Jan. 21, 1997) (concluding “other serious bodily harm” occurred when victim suffered, among other things, permanent scarring and nerve damage), *rev. denied* (Minn. Mar. 18, 1997); *State v. Blumke*, No. C8-93-1042, 1994 WL 85799, at *1 (Minn. App. Mar. 15, 1994) (concluding “serious permanent disfigurement or other serious bodily harm” occurred when at least one-third of victim’s ear was bitten off); *Dopkins v. State*, No. A23-1355, 2024 WL 2813952, at *5 (Minn. App. June 3, 2024) (concluding, in plea-withdrawal context, state did not prove “other serious

The majority disagrees that the absence of *any* specific evidence regarding the severity of D.S.’s injury or lasting impact on D.S. is dispositive, relying on six facts. I address each in turn.

First, D.S. suffered a gunshot wound to the shoulder or chest. But we determined in *Dye* that the mere fact that an individual was shot in the back was not sufficient. 871 N.W.2d at 922. And in *Ibrahim* the mere fact that the victim was stabbed in the chest was not sufficient. 14 N.W.3d at 299-300, 302-03. Thus, the fact that D.S. suffered a gunshot wound to the shoulder or chest, by itself, is not sufficient to demonstrate “other serious bodily harm.”

Second, D.S. was in severe pain at the time he was shot and could not stand on his own. But again, in *Dye*, evidence that the victim was “hunched over,” “appeared to be in a lot of pain,” tried “to position herself to breathe comfortably,” and had “trouble communicating and speaking” was not sufficient. *See* 871 N.W.2d at 919, 922; *see also Dopkins*, 2024 WL 2813952, at *4 (noting absence of precedential authority holding that temporary loss of consciousness constitutes great bodily harm for the purpose of first-degree assault). Here, the only evidence we have in the record is that, *at the time he was*

bodily harm” when record contained no evidence showing more than “temporary, unmeasured periods of unconsciousness” and “significant bruising”), *rev. denied* (Minn. Sept. 17, 2024); *State v. Galle*, No. A19-0126, 2020 WL 1845966, at *5 (Minn. App. Apr. 13, 2020) (concluding state did not prove “other serious bodily harm” when victim’s injuries—“a tibia fracture, a concussion, and symptoms stemming from the concussion”—“resolve[d] within a normal time frame for recovery” and were not “severe” or “long-lasting”).

shot, D.S. was in severe pain, which says nothing about the severity of the injury or long-term consequences of the injury to D.S.

Third, *law-enforcement testimony* that D.S. was in “critical condition.” But “the record contains no medical explanation of what ‘critical condition’ means, or how it is determined.” *United States v. Alexander*, No. 20-6154, 2022 WL 2763689, at *9 (10th Cir. July 15, 2022) (Ebel, J., concurring in part and dissenting in part).⁴ In fact, unlike *Gerald* or *Dye*, the state did not present any medical evidence. *See Gerald*, 486 N.W.2d at 801 (recounting treating physician’s testimony); *Dye*, 871 N.W.2d at 920 (recounting paramedics’ and treating physician’s testimony). And for all we know, this case is like *Dye*, and “critical condition” was a term the hospital automatically applied because D.S. suffered a gunshot wound to a particular part of the body. *See* 871 N.W.2d at 921 (“Based on the location of the bullet’s entry, both the paramedic and the doctor treated [the victim’s] injury as if it were life-threatening.”); *see also Alexander*, 2022 WL 2763689, at *9 (“[F]or all we know, [‘critical condition’] could be an automatic term applied to gunshot wounds by 911 dispatchers.”). Thus, in my view, law-enforcement testimony on this issue is not akin to medical evidence regarding the severity of D.S.’s injury.

Fourth, D.S. needed surgery. But the victim in *Dye* needed minor surgery to remove the bullet. *See* 871 N.W.2d at 922. And, even if we assume D.S. had a more severe wound, we concluded in *Ibrahim* that damaging a vital organ, “without any evidence pertaining to

⁴ Although we are bound only by U.S. Supreme Court and Minnesota Supreme Court decisions, we may use other federal court decisions as persuasive authority. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003).

the lasting impact,” is not sufficient to prove “other serious bodily harm.” *See* 14 N.W.3d at 303. Again, this case similarly lacks any evidence pertaining to lasting impact on D.S.

Fifth, grandmother’s and Craig’s testimony that the injury was “significant.” But in *Ibrahim*, the defendant testified that the wound was “very serious,” and “could cause” death, yet we determined the factual basis was insufficient to show “other serious bodily harm.” *Id.* Thus, under our caselaw, a generalized statement that an injury was “serious” or “significant,” without more, is not sufficient to prove “other serious bodily harm.”

Sixth, the length of D.S.’s hospital stay. But we do not know the reason for D.S.’s two-and-a-half-week hospital stay because the state did not present any evidence on that point.

In sum, because the state failed to prove either the severity of D.S.’s injury or that the injury had a lasting impact on D.S., I would conclude the state presented insufficient evidence to prove “other serious bodily harm.” Accordingly, I would reverse Craig’s first-degree-assault conviction.