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

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0401

State of Minnesota,
Respondent,

vs.

Karl Evald Auleciems,
Appellant.

Filed April 7, 2025
Affirmed
Bratvold, Judge

Washington County District Court
File No. 82-CR-21-2951

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

Kevin M. Magnuson, Washington County Attorney, Andrew T. Jackola, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Robert H. Ambrose, Benjamin W. Koll, Ambrose Law Firm, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Smith, Tracy M., Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from 14 final judgments of conviction entered after a jury trial that resulted in guilty verdicts for theft by swindle, failing to remit sales tax, and filing false tax returns, appellant argues that he is entitled to relief.[1] Appellant contends that the district court (1) erred by denying his motion to dismiss all counts for lack of probable cause and, alternatively, the record evidence was insufficient to sustain his convictions; (2) erred by denying his pretrial motion to sever two counts of theft by swindle from the tax counts; (3) violated his due-process rights by allowing the criminal charges to proceed before a tax case was completed; (4) erred by denying his motion to suppress evidence obtained through a warrant; and (5) denied his right to a fair trial in four ways that also led to cumulative error. We conclude that (1) we need not consider the probable-cause challenge because the record evidence sustains each of appellant's convictions; (2) appellant was not prejudiced by joinder of all counts in a single trial; (3) appellant's due-process rights were not violated; (4) the district court did not err by denying appellant's motion to suppress evidence; and (5) appellant fails to establish that his right to a fair trial was abridged. Thus, we affirm.

FACTS

On August 25, 2021, respondent State of Minnesota served and filed a criminal complaint with 75 counts against appellant Karl Evald Auleciems, alleging, among other things, theft by swindle under Minn. Stat. § 609.52, subd. 2(a)(4) (2018), filing false or fraudulent tax returns under Minn. Stat. § 289A.63, subd 2(a) (2014), and failing to pay or remit sales tax under Minn. Stat. § 289A.63, subd. 1(b) (2016). The state amended the complaint on October 26, 2023, dismissing several counts and adding two counts of theft by swindle and six counts of filing false or fraudulent tax returns. The amended complaint

[1] Appellant's brief to this court raises ten issues; we reorganize the issues for ease of discussion.

also included 13 counts of failing to pay or remit sales tax. Thus, the state proceeded with 21 counts against Auleciems.

The district court held a jury trial. The evidence at trial disclosed the state's investigation of Auleciems and KEASons Enterprises LLC, for which Auleciems was the member holding a majority interest. In July 2019, the criminal-investigation division of the Minnesota Department of Revenue "received a tip from a concerned citizen" regarding the rental of the property at "Neal Avenue Court in Lake Elmo" (the Neal property). The department of revenue investigated and discovered that KEASons owned the Neal property, Auleciems filed tax documents for KEASons, and KEASons was not registered with the department of revenue. As part of its investigation, the department of revenue obtained bank and other financial information by subpoena, contacted renters of the Neal property, and obtained and executed a search warrant for "[c]ontracts, books and records, financial records, tax returns, [and] all documents pertaining to the rental of" the Neal property.

Auleciems testified that KEASons was a construction company and that Auleciems personally completed all tax documents for the company. KEASons bought, repaired, and sold several properties and purchased the Neal property in 2011. Auleciems intended to build a house on the Neal property and sell it. After he failed to sell the Neal property, Auleciems resided there and used it for short-term rentals. Auleciems listed the Neal property on vacation-home rental websites including Vrbo.com (Vacation Rentals by Owner) and Airbnb.com.

The state called eight individuals who rented the Neal property in 2018 and 2019. Seven of the eight renters testified that they found the Neal property on Vrbo.com and made a rental inquiry on the website. In response, Auleciems arranged for each of them to rent the Neal property directly from KEASons. In his communications about the Neal property, Auleciems introduced himself as "Ethan," "Ethan Williams," or "Larry Anderson" and did not use his actual name.

Each renter signed a rental agreement with KEASons, copies of which were entered into evidence. The rental agreements required that the renters pay a "security deposit" of an amount between $1,900 and $2,000. The agreements stated that KEASons would return the deposits in full within 90 days unless deductions were made due to (1) "damage to the property or furnishings," (2) "dirt or other mess requiring excessive cleaning," (3) "any other cost incurred by Homeowner due to Guest's stay," or (4) "violation of any of the house rental rules."

All eight renters testified that Auleciems did not return their security deposit. Two renters testified that, even though Auleciems told them the home was in good condition, he never returned their deposits. Auleciems asked a third renter to where he should mail a check to return the deposit, but the renter never received a check. Four renters brought civil suits against Auleciems. One renter testified that, during civil litigation, Auleciems stated that he did not return their deposit because "business was down, and he just didn't have the money to do it."

Together with alleging that Auleciems swindled security deposits from renters, the state contended that Auleciems failed to remit or pay sales tax for rentals of the Neal property in February, March, June, July, September, and October 2018 as well as January and February 2019. The state offered evidence that KEASons was not registered with the department of revenue and did not pay or remit any sales tax for the months alleged in the relevant counts. The rental agreements included, and Auleciems later collected, a fee labeled "7.125% ST." An investigator for the department of revenue testified that the sales tax rate in 2018 for Washington County, where the Neal property was located, was 7.125%. Auleciems told the investigator that he did not collect a sales tax for his rentals of the Neal property but agreed that he knew that Airbnb collected a sales tax for property rentals. Auleciems testified that the charge for "7.125% ST" was a "stay fee," not a sales tax.

The state also claimed that Auleciems filed false tax statements or returns for 2014, 2015, 2016, and 2018. A tax specialist principal at the department of revenue (tax specialist) testified to these deficiencies:

- In 2014, Auleciems failed to report income from KEASons and from the sale of a second property; he also underreported income from "rental real estate and royalties," made an improper deduction, and overstated his home mortgage deduction and itemized deductions.
- In 2015, Auleciems failed to report capital gains based on the sale of a third property and underreported rental income.
- In 2016, Auleciems incorrectly reported capital gains and claimed a "carryover loss" from a 2013 settlement, writing in his return: "It's a net operating loss carry forward. Paid a judgment in the lawsuit of $550,000 plus interest and fees."
- In 2018, Auleciems incorrectly reported capital gains and improperly deducted real-estate taxes twice for the Neal property; he also underreported rental income.

Before the case was submitted to the jury, the state dismissed five counts of failure to pay or remit sales tax, and the jury considered the remaining 16 counts. The jury found

Auleciems guilty of six counts of filing a false tax return, eight counts of failure to pay or remit sales tax, and two counts of theft by swindle. The district court requested posttrial briefing related to the false-tax-return counts and, after briefing and argument, acquitted Auleciems of two counts for filing false tax returns for the years 2017 and 2019. The district court convicted and sentenced Auleciems on 14 counts, imposing and staying all sentences for five years on the condition that he serve 97 days in jail and comply with conditions.

This appeal follows.

DECISION

I. The record evidence is sufficient to sustain each of Auleciems's 14 convictions.

Auleciems argues that the district court erred by failing to dismiss all counts for lack of probable cause. He also contends that the evidence is insufficient to sustain his convictions. We need examine only the sufficiency of the evidence. An argument that the district court "erred in failing to dismiss the complaint for lack of probable cause" is "irrelevant" in an appeal after trial. *State v. Holmberg*, 527 N.W.2d 100, 103 (Minn. App. 1995), *rev. denied* (Minn. Mar. 21, 1995). First, "[t]he standard for the sufficiency of the evidence to support a conviction is much higher than probable cause." *Id.* Second, even if we assume that an appellant "could show on appeal that probable cause is lacking, he would necessarily prevail on a claim of insufficiency of the evidence." *Id.* Therefore, we consider Auleciems's arguments under the sufficiency-of-the-evidence standard.

When evaluating the sufficiency of evidence sustaining a criminal conviction, appellate courts "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). Appellate courts must view the evidence "in the light most favorable to the verdict" and assume "that the fact-finder disbelieved any evidence that conflicted with the verdict." *Id.* When a disputed element of an offense is sufficiently proved through direct evidence alone, this standard of review applies. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016).

We address each of Auleciems's arguments in turn.

A. Theft by Swindle

The state alleged that Auleciems committed two counts of theft "by swindling, whether by artifice, trick, device, or any other means" and "obtain[ed] property or services from another person." Minn. Stat. § 609.52, subd. 2(a)(4). To prove that Auleciems committed theft by swindle, the state had to show he (1) obtained another's property (2) through "affirmative fraudulent or deceitful behavior" and that (3) he had "the intent to defraud." *State v. Flicek*, 657 N.W.2d 592, 598 (Minn. App. 2003). As discussed above, Auleciems was convicted of theft by swindle for collecting security deposits from renters and failing to return them in 2018 and 2019. We consider whether the record includes sufficient evidence to support Auleciems's convictions by discussing each element in turn.

1. Obtained the Property of Another Person

Auleciems argues, first, that the record evidence does not show that he obtained another person's property under Minn. Stat. § 609.52, subd. 2(a)(4), because security deposits collected for rentals are not the property of another person. The state argues that "[t]he applicable version of the theft statute defines 'property of another' to include 'property possessed pursuant to a short-term rental contract.'"

Auleciems cites *State v. Larson* to support his argument that security deposits collected for rentals are not the property of another person. 605 N.W.2d 706, 712 (Minn. 2000). In *Larson*, the Minnesota Supreme Court reversed Larson's theft convictions for failing to return security deposits for automobile and equipment leasing. *Id.* at 708, 713. The supreme court noted that "the legislature [had] not spoken directly on the question of commercial property lease security deposits in this context" and, "[a]bsent more specific legislative guidance on commercial lease security deposits," turned "to landlord-tenant law to help define the legal interest maintained by a lessor-lessee in security deposits." *Id.* at 711-12. The supreme court concluded that "in the commercial leasing context . . . a trust-like limitation or fiduciary relationship must be proven for voluntarily transferred funds to qualify as the 'property of another' under the theft-temporary taking statute." *Id.* at 713.

Larson does not control our analysis, however, because the legislature amended the theft statute, and the amended statute is materially different from the statute that the supreme court considered in *Larson*. In *Larson*, the supreme court applied the 1998 version of Minn. Stat. § 609.52, subd. 2. *Id.* at 711. The legislature amended the theft statute in 1999 to say that "'[p]roperty of another' includes . . . property possessed pursuant to a short-term rental contract." Minn. Stat. § 609.52, subd. 1(8) (Supp. 1999). The 1999 amendment of the property-of-another language was in effect at the time of Auleciems's offenses. *Id.* (2018). Because Auleciems possessed the security deposits "pursuant to a short-term rental contract," we conclude that the security deposits that Auleciems retained were "property of another" as defined in Minn. Stat. § 609.52, subd. 1(8).[2]

Second, Auleciems argues that civil statutes govern "what should happen regarding returning security deposits, damages, bad faith retention and actions to recover deposits" and that, therefore, the proper action against him would be a civil action, not a criminal charge. Auleciems is correct that civil statutes address security deposits in property-rental agreements. *See* Minn. Stat. § 504B.178 (2024) (including provisions for, among other things, withholding of security deposits and damages for property rentals). It does not follow, as Auleciems argues, that an individual cannot face criminal charges for obtaining a security deposit by swindle. Caselaw instructs us that the same conduct can lead to both criminal charges and civil claims. *See State v. McKinney*, 575 N.W.2d 841, 843-45 (Minn. App. 1998) (determining that double-jeopardy principles do not prevent both a civil punishment and a criminal conviction for assault).

Finally, we consider Auleciems's claim that the record evidence is insufficient to support a determination that he obtained the property of another. The record includes direct evidence from the eight renters who testified that they paid Auleciems a security deposit as part of their rental agreement based on the express representation that he would return

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[2] Auleciems argues that this court should apply the law in *Larson* rather than the current version of the theft statute because "[t]he justices could have addressed this law change" in the opinion "but it did not." While Auleciems is correct that the relevant statute was amended before *Larson* was issued, Auleciems's argument is not persuasive. This court must apply the theft-by-swindle statute in effect at the time Auleciems committed his offense. *Townsend v. State*, 834 N.W.2d 736, 739 n.2 (Minn. 2013) (stating that appellate courts "apply the law in effect on the date of [the] offense").

it if the property was not damaged during their stay and that the renters complied with the rental rules. The renters also testified that Auleciems did not return the deposits. We conclude that the record evidence is sufficient to sustain the jury's determinations that Auleciems obtained the property of another person for the two theft-by-swindle counts.

2. Obtained by Swindle

Auleciems argues that the state failed to prove that he obtained the security deposits by swindle because he "did not use any tricks to get renters to pay a security deposit" and instead obtained the funds through valid contracts. The state argues that the circumstances proved at trial "lead to the inescapable conclusion that Auleciems perpetrated a scheme to swindle money from renters by charging a 'refundable security deposit' that he never intended to return."

A swindle requires some "showing of affirmative fraudulent or deceitful behavior." *Flicek*, 657 N.W.2d at 598. Obtaining another's property by artifice, scheme, or false representation is evidence of a swindle. *State v. Lone*, 361 N.W.2d 854, 857-58, 861 (Minn. 1985) (affirming appellants' theft-by-swindle convictions for using false representations to persuade customers to buy a water-removal system for their homes). The definition of swindle is broad because "[n]o single definition can cover the range of possibilities for the offense," given that "[t]he statute was intended to reach cheats and swindlers of all kinds and descriptions." *State v. Ruffin*, 158 N.W.2d 202, 204-205 (Minn. 1968) (quotation omitted) (affirming appellant's theft-by-swindle conviction for obtaining money from two 17-year-old victims by persuading them to withdraw cash from a bank account, play cards, and later hide cash in a trash can).

Direct evidence shows that Auleciems first obtained the security deposits through the rental agreements, which represented that he would return the deposit if there was no damage to the rental property or violation of the rental rules. Auleciems persuaded renters to use his rental agreement instead of the vacation-home rental website he used to advertise the Neal property. Auleciems also used false names in communications with renters. Auleciems received the security deposits, never claimed any damage to the rental property or violation of the rules, and failed to return the deposits as promised in the rental agreements. We conclude that record evidence was sufficient to sustain the jury's determinations that Auleciems swindled because he used artifice and trickery—including false names—to persuade renters to rent directly with KEASons and falsely represented that he would return the deposits if there was no property damage or violation of the rental rules, but then did not return deposits, even when he admitted no grounds existed to keep them. He also falsely stated that he was returning security deposits and did not do so.

3. Intent to Defraud

Auleciems argues that the state failed to offer sufficient evidence of his intent to defraud. The state counters that "Auleciems used deceit and dishonor to deprive his customers of the full bargain" of their rental agreements. A swindle requires an "intent to defraud." *Flicek*, 657 N.W.2d at 598. Intent generally is proved by circumstantial evidence. *State v. Ferrier*, 792 N.W.2d 98, 101 (Minn. App. 2010) ("[I]ntent generally must be proved by drawing inferences from the defendant's words and actions in light of the totality of the circumstances." (quotation omitted)), *rev. denied* (Minn. Mar. 15, 2011).

An appellate court's analysis of the sufficiency of the evidence alters somewhat if the evidence is circumstantial. Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist," while direct evidence is "based on personal knowledge or observation and . . . if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotations omitted). "Circumstantial evidence is entitled to the same weight as direct evidence; however, if a conviction is based on circumstantial evidence, a higher level of scrutiny is warranted." *Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004). Therefore, "[w]hen the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict," appellate courts apply the circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

Appellate courts apply "heightened scrutiny" and a two-step analysis when determining whether circumstantial evidence is sufficient to affirm a conviction. *State v. Al-Naseer*, 788 N.W.2d 469, 473-74 (Minn. 2010). First, an appellate court must "identify the circumstances proved" and, in doing so, "defer to the factfinder" and their "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. Palmer*, 803 N.W 2d 727, 733 (Minn. 2011) (quotations omitted). Accordingly, appellate courts determine the circumstances proved based on the "evidence presented at trial by resolving all questions of fact in favor of the jury's verdict." *Harris*, 895 N.W.2d at 600.

Second, the appellate court must "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt."

State v. Silvernail, 831 N.W.2d 594, 599 (Minn. 2013) (quotations omitted). In doing so, appellate courts "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with rational hypotheses other than guilt," and "give no deference to the fact finder's choice between reasonable inferences." *Al-Naseer*, 788 N.W.2d at 473-74 (quotations omitted).

Beginning with the first step of the circumstantial-evidence test, the state proved the following circumstances at trial. Auleciems, acting through KEASons, listed the Neal property for short-term rental on Airbnb and Vrbo in 2018 and 2019. When renters contacted him through Vrbo, Auleciems told at least eight renters that his name was "Ethan Williams" or "Larry Anderson" and did not use his real name. Auleciems asked renters to enter into a private agreement through KEASons rather than renting through Vrbo. The rental agreements stated that renters must pay a security deposit, which would be returned within 90 days unless there was (1) "damage to the property or furnishings," (2) "dirt or other mess requiring excessive cleaning," (3) "any other cost incurred by Homeowner due to Guest's stay," or (4) "violation of any of the house rental rules." The eight renters testified that Auleciems did not return their deposits, even when they asked him to do so and he acknowledged that the property was in good condition. Auleciems did not notify any of the eight renters that he was not returning their deposit because of the property's condition or because the rules were violated.

The circumstances proved are consistent with the inference that Auleciems intended to defraud the renters. Auleciems diverted the renters from Vrbo and persuaded them to sign a rental agreement with KEASons rather than Vrbo. Auleciems used false names when communicating and contracting with the renters, which showed an intent to mislead them. Auleciems obtained security deposits from the eight renters on the promise that he would return them if the property was in good condition, and then he kept the deposits without notifying the renters of any contractual reason to do so. In some cases, Auleciems told the renter that the property was in good condition and that their deposit would be returned but never returned it.

Auleciems contends that a reasonable alternative hypothesis inconsistent with his guilt is that he retained the deposits because he "had a contract dispute over whether some of the deposits should be returned." This is not a reasonable alternative hypothesis because it is inconsistent with the circumstances proved at trial. Auleciems did not inform any of the testifying renters that he retained the security deposits because of the property's condition or a violation of the rules. Therefore, the circumstances proved are inconsistent with any reasonable hypothesis other than that of Auleciems's intent to defraud.

Because the evidence is sufficient to support the jury's determinations that Auleciems obtained others' property through swindle or "affirmative fraudulent or deceitful behavior" and that Auleciems had the "intent to defraud," it supports Auleciems's convictions on the two counts of theft by swindle.

B. Failure to Remit Sales Tax

The state alleged that Auleciems committed eight counts of failing to remit or pay sales tax related to the rental of the Neal property. "A person required to pay or to collect and remit a tax, who willfully attempts to evade or defeat a tax law by failing to do so when required, is guilty of a felony." Minn. Stat. § 289A.63, subd. 1(b). There is a presumption that "all gross receipts are subject to [sales] tax." Minn. Stat. § 297A.665(a)(1) (2024). "The burden of proving that a sale is not a taxable retail sale is on the seller." Minn. Stat. § 297A.665(b) (2024). Under Minnesota law, "[a] sale and a purchase includes the furnishing for a consideration of . . . lodging and related services." Minn. Stat. § 297A.61, subd. 3(g)(2) (2016).

"Isolated and occasional sales in Minnesota not made in the normal course of business of selling that kind of property or service are exempt" from collecting and remitting sales tax. Minn. Stat. § 297A.67, subd. 23 (2016). Activities in the normal course of business "demonstrate a commercial continuity or consistency of making sales or performing services for purposes of attaining profit or producing income." Minn. Stat. § 297A.61, subd. 21 (2016).

Auleciems concedes that he did not remit sales tax for renting the Neal property. He argues that the record does not include sufficient evidence to show that he "willfully attempted to evade or defeat a tax law by failing to . . . collect/pay and remit the tax as required" because an individual making occasional sales (or rentals) outside the normal course of business need not pay or remit sales tax. In other words, Auleciems does not dispute that property-rental receipts may be subject to sales tax. But he argues that the Neal-property rentals were not subject to sales tax because "the time periods are exempt from failing to remit sales tax" and the "rentals were not conducted in a normal course of routine business." Auleciems cites Minn. R. 8130.5800, subp. 1 (2017), which states that sales tax "does not apply to isolated or occasional sales of tangible personal property or service made by a person who is not engaged in selling such property or service in the normal course of business."

Because direct evidence alone does not prove this element, and an inferential step is required, we apply the circumstantial-evidence standard of review. The circumstances proved have been set out above, for the most part. The circumstances proved also include rental agreements for the Neal property for 20 rentals in 2018 and 8 rentals in 2019. Many of the rental agreements included an "ST" fee of the same percentage as the sales tax applicable to the Neal-property rental.

First, we conclude that the record includes evidence from which it is reasonable to infer that Auleciems's short-term rentals of the Neal property occurred in the ordinary course of business. Auleciems used Vrbo and Airbnb websites to advertise the Neal property. Auleciems rented the Neal property 28 times over two years, which "demonstrates a commercial continuity or consistency of making sales or performing services for the purposes of attaining profit or producing income." Minn. Stat. § 297A.61, subd. 21. While Auleciems claims that the reasonable alternative hypothesis is that he occasionally rented the Neal property to others outside the ordinary course of business, we disagree. Auleciems's use of advertising and a standard rental agreement, plus his regular charge and collection of a fee for "ST" that is equivalent to the amount of sales tax owed, support only one inference—that these rentals were in the ordinary course of business.

Second, the record includes sufficient evidence that Auleciems willfully failed to pay or remit sales tax. Auleciems argues that his failure to collect and remit sales tax was not willful because he reasonably thought the Neal property rentals were occasional. The state argues that "the only rational hypothesis is that Auleciems knew he had an obligation to pay sales tax on his rent transactions and he willfully evaded that obligation."

The circumstances proved for the first step of the circumstantial-evidence test have been set out above. Under the second step, these circumstances are consistent with Auleciems's guilt for willfully failing to pay or remit sales tax. We also conclude that the circumstances proved do not support Auleciems's alternative hypothesis that he did not know that he was supposed to pay and remit sales tax. Auleciems used deceit to steer renters into a private agreement that charged an "ST" fee; he then collected the "ST" fee in the exact amount of sales tax owed, yet he failed to remit the sales tax. The record evidence is thus sufficient to sustain Auleciems's convictions for eight counts of failure to collect and remit or pay sales taxes.

C. Filing False Tax Returns

The state alleged that Auleciems committed six counts of filing false tax returns, and the jury found him guilty on all six counts. Following trial, the district court acquitted Auleciems of two counts of filing false tax returns for 2017 and 2019 based on reasoning that we discuss later in this opinion. Accordingly, we consider Auleciems's claim that the record evidence was insufficient to support Auleciems's four convictions for falsely filing the 2014, 2015, 2016, and 2018 tax returns.

"A person who files with the commissioner a return, report, or other document, known by the person to be fraudulent or false concerning a material matter, is guilty of a felony." Minn. Stat. § 289A.63, subd. 2(a). Accordingly, the state needed to prove that

(1) Auleciems filed a fraudulent or false tax return and (2) Auleciems knew the tax return was fraudulent or false.

Auleciems challenges the second element and argues that the state "presented evidence that Mr. Auleciems underreported his income, but not that he knew his returns were false or fraudulent." Accordingly, our analysis focuses on whether the record includes sufficient evidence that Auleciems knew his tax returns were false. This element relates to Auleciems's intent, which the state proved with circumstantial evidence. *See Ferrier*, 792 N.W.2d at 101.

The circumstances proved are that Auleciems prepared and filed his own tax returns in 2014, 2015, 2016, and 2018. These returns underreported capital gains in 2014, 2015, 2016, and 2018 and underreported rental income in 2015 and 2018. On his 2016 tax return, Auleciems claimed a "carryover" loss from a 2013 settlement.

Under the second step, the circumstances proved are consistent with Auleciems's guilt because preparing and filing inaccurate tax documents is consistent with knowing that the returns were false for failing to report documented capital gains and rental income. Auleciems argues that the circumstances proved are also consistent with the alternative hypothesis that he made inadvertent mistakes on his tax returns and misunderstood the tax laws. The state argues that the circumstances proved are inconsistent with this hypothesis, given that he repeatedly made the same errors on his tax returns over four years and that Auleciems's "purported confusion over the complexity of tax laws always benefited him, and never the state."

The circumstances proved show that Auleciems underreported rental income for two years and capital gains for four years and that he filed inaccurate tax returns that benefitted him for each year at issue. We are not persuaded of a reasonable hypothesis other than Auleciems's guilt. While Auleciems claims that he believed that carrying over the 2013 settlement as a loss in his 2016 tax return was permissible, the department of revenue disallowed this claim before trial. Auleciems also provided no evidence that he paid a settlement in 2013. And, more fundamentally, his carryover claim for the 2013 settlement is, at best, an offset and did not explain his failure to report income from capital gains and his rental property. Neither Auleciems nor his attorneys explained the "mistake" he made that led to these false tax documents.[3] Thus, the circumstances proved are inconsistent with Auleciems mistakenly or accidentally filing false tax documents. We therefore conclude that the record evidence was sufficient to support the jury's guilty verdicts for knowingly filing false tax returns in 2014, 2015, 2016, and 2018.

II. The district court's denial of Auleciems's motion to sever the theft-by-swindle charges for a separate trial did not prejudice Auleciems.

Before trial, Auleciems moved to sever his theft-by-swindle charges from the other charges, arguing that the theft-by-swindle charges were not related and that joinder of all

[3] Auleciems points out that the tax specialist for the department of revenue "admitted a mistake she made on her 2014 report" and argues that "[m]istakes happen by the [department of revenue], just like mistakes happen by citizens self-preparing their tax returns." The tax specialist, however, admitted to and explained the errors she made when reviewing Auleciems's tax return, while Auleciems did not to admit to or explain the errors he made in underreporting his capital gains and rental income.

charges would confuse the jury. The district court denied the motion, and Auleciems raises the same argument on appeal.

Appellate courts "review a district court's decision regarding whether to sever charges or offenses de novo." *State v. Fitch*, 884 N.W.2d 367, 378 (Minn. 2016). "When the defendant's conduct constitutes more than one offense, each offense may be charged in the same charging document in a separate count." Minn. R. Crim. P. 17.03, subd. 1. Upon motion by the defendant or prosecuting attorney, the district court "must sever offenses or charges if . . . the offenses or charges are not related." *Id.*, subd. 3(1)(a). A district court also must sever offenses if it "determines severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense." *Id.*, subd. 3(1)(b). "[T]he ultimate question in a severance claim is one of prejudice." *Fitch*, 884 N.W.2d at 379 (quotation omitted). Therefore, when faced with a motion to sever offenses for trial, a district court must first decide whether the offenses are related, and if they are related, it must then determine whether joinder of the charge in a single trial prejudices the defendant. *State v. Kendell*, 723 N.W.2d 597, 607 (Minn. 2006).

Auleciems argues that the theft-by-swindle charges are not related to the sales-tax and tax-return charges and that joining all charges for trial prejudiced him. Auleciems argues that joinder prejudiced him because the tax-return charges did not involve the rental victims and "[t]here was a substantial risk the jury would confuse the issues on the separate alleged conduct and not give him a fair determination of guilt or innocence on each charge." The state urges that the charges are related and that no prejudice occurred.

We first consider whether Auleciems was prejudiced by the district court joining all the charges in a single trial. The district court determined that Auleciems was not prejudiced by having a single trial on all charges because evidence of Auleciems's theft of the security deposits by swindle would have been admissible at a trial for the tax-return and sales-tax charges under Minn. R. Evid. 404(b). "Joinder is not unfairly prejudicial if evidence of each offense would have been admissible at a trial of the other offenses had the offenses been tried separately." *Kendell*, 723 N.W.2d 597 at 608.

Here, evidence about Auleciems's theft of security deposits by swindle would have been admissible as other "bad acts" that were relevant to prove Auleciems's intent—specifically, the lack of mistake or accident. *See* Minn. R. Evid. 404(b)(1) ("Evidence of another crime, wrong, or act is not admissible . . . in order to show action in conformity therewith [but] may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."). Therefore, we need not determine whether all charges were related because Auleciems was not prejudiced by joinder of all charges in a single trial. Thus, the district court did not err by denying Auleciems's motion to sever the theft-by-swindle charges.[4]

[4] The district court cited a nonprecedential opinion, *State v. Edwards*, No. A03-780, 2004 WL 1488527, at *2-3 (Minn. App. July 6, 2004), in which this court determined that, in a case involving multiple tax offenses, "multiple trials . . . would have been duplicative, time consuming, and the same evidence would have been presented repeatedly in each separate trial" because "[t]he offenses were so factually intertwined and dependent on each other." Here, separate trials would have involved some similar facts, but some facts are distinct to the tax-return and sales-tax charges. In any event, the joinder of all charges for trial was not prejudicial, as discussed above.

III. The district court did not violate Auleciems's due-process rights.

Auleciems argues that he is entitled to a new trial because the district court violated his due-process rights and erred by denying his motion to dismiss the state's case. "Whether the government has violated a person's procedural due process rights is a question of law that [appellate courts] review de novo." *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012).

Appellate courts "conduct a two-step analysis to determine whether the government has violated an individual's procedural due process rights." *Id.* First, appellate courts "identify whether the government has deprived the individual of a protected life, liberty, or property interest." *Id.* If there is no deprivation of such an interest, "then no process is due." *Id.* "[I]f the government's action deprives an individual of a protected interest, then the second step requires [the appellate court] to determine whether the procedures followed by the government were constitutionally sufficient." *Id.* (quotation omitted).

We need consider only the first step of the analysis. Auleciems argues that the state deprived him of "a property interest by claiming he owes income tax and sales tax without ever conducting an audit or pursuing the matter in tax court." The state argues that Auleciems fails "to prove that he has any protected interest" because his purported interest is based on his own "unilateral expectation."

Property interests "are not created by the Constitution" and are instead "defined by existing rules or understandings that stem from an independent source, such as state law" that "secure[s] certain benefits and that support[s] claims of entitlement to those benefits." *Hale v. Viking Trucking Co.*, 654 N.W.2d 119, 125 (Minn. 2002) (quoting *Bd. of Regents* *of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)). Property interests do not arise from a party's "unilateral expectation." *Id.* (quotation omitted).

Auleciems cites no authority to support his assertion that he was deprived of a protected property interest when the state claimed that he owed taxes without first conducting an audit or bringing a case in tax court. We conclude that this purported property interest is based on Auleciems's "unilateral expectation" and is not a property interest established by statute or contract. *Id.* Therefore, Auleciems had no protected property interest in the state's decision to pursue criminal charges without a tax audit. Thus, "no process is due," and the district court did not violate Auleciems's due-process rights. *Sawh*, 823 N.W.2d at 632.

IV. The district court did not err by denying Auleciems's motion to suppress evidence obtained through a warrant.

Auleciems argues that the district court should have suppressed evidence obtained through a search warrant because the warrant was not supported by probable cause. "When reviewing a district court's pretrial order on a motion to suppress evidence," appellate courts "review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). A district court's probable-cause determination "should be paid great deference by reviewing courts." *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quotation omitted). "[T]he resolution of doubtful or marginal cases should be largely determined by the preference to be accorded warrants." *Id.* (quotation omitted).

Individuals are protected from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution and article I, section 10 of the Minnesota Constitution. "A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property or thing to be seized, and particularly describing the place to be searched." Minn. Stat. § 626.08 (2024). The purpose of the particularity requirement for searches is to prohibit "general or exploratory searches." *State v. Bradford*, 618 N.W.2d 782, 795 (Minn. 2000). "Administrative search warrants must be supported by probable cause; not individualized suspicion but reasonable legislative or administrative standards for conducting an area inspection." *City of Golden Valley v. Wiebesick (In re Application for Admin. Search Warrant)*, 899 N.W.2d 152, 162 (Minn. 2017) (quotation omitted).

"When the request of the court is for the issuance of a warrant to search a particular location, there must be specific facts to establish a direct connection between the alleged criminal activity and the site to be searched." *State v. Souto*, 578 N.W.2d 744, 749 (Minn. 1998). When reviewing a warrant application to determine "whether there is probable cause to believe that the evidence sought will be found at a particular place," appellate courts consider "the type of crime, the nature of the items sought, the extent of the defendant's opportunity for concealment, and the normal inferences as to where the defendant would usually keep the items." *State v. Yarbrough*, 841 N.W.2d 619, 623 (Minn. 2014).

The department of revenue obtained a search warrant to search the Neal property. The warrant identified Auleciems's and KEASons's tax records and sought to search Auleciems's home and several motor vehicles, along with documents and data related to

"Castle Construction Advisors, Inc." Before trial, Auleciems moved to exclude all evidence obtained through the search warrant, arguing that the warrant was defective because (1) the tax documents described were already in the department of revenue's possession, (2) the warrant application did not establish a "nexus that the evidence sought [would] be found in the vehicles," and (3) the warrant application did not "mention Castle Construction Advisors, Inc. or how it [was] connected to [Auleciems] or KEASons."

In denying Auleciems's motion, the district court noted that, in the application for the search warrant, the investigator's affidavit stated that, based on her "training and experience, she kn[ew] that individuals keep business related [records], computers, and other items in their home and also use their vehicles to transport these items." The affidavit also stated that Auleciems resides in a recreational vehicle when he is leasing the Neal property to others. The district court determined that "[t]hese facts are sufficient to establish a nexus between the vehicles and the alleged crimes." The district court also determined that, "[a]lthough the search warrant application does not mention Castle Construction Advisors, Inc. directly, it does state that the investigator examined bank records for [Auleciems], KEASons, and Castle Advocacy Group," and concluded that "a sufficient nexus exists between Castle Construction Advisors, Inc. and the alleged crimes."

Auleciems raises the same arguments on appeal, and we address each in turn.

A. The Tax Documents Already in the Department of Revenue's Possession

Auleciems argues that the evidence obtained through the warrant should have been suppressed because the warrant affidavit listed "documents and information the investigator already [had] as part of their investigation" and, "[t]herefore, a search for those tax items at the Auleciems' residence [was] duplicative and would not [have led] to any further evidence." The state counters that "Auleciems fails to cite any caselaw, constitutional provision, rule, or statute that prohibits a warranted search for items or property 'already in possession of the investigating party in general.'" The state also argues that, even if the department of revenue had copies of the documents sought by the warrant, "the copies that Auleciems kept at his home or in his vehicles could very well contain annotations, unedited drafts, or cover materials that could be relevant and incriminating."

Indeed, Auleciems does not provide any legal authority for his argument. We may reject his argument on that basis alone. *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) ("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." (quotation omitted)).

Additionally, the warrant application includes specific facts to establish a connection between the crimes alleged and the search of Auleciems's home and vehicles. The investigator's affidavit attests that the documents "stored at the owner's business locations, residences, in their vehicles they use, on their computers, and on their phones . . . are likely to reveal further activity about the known entities and its use in an effort to avoid paying the total amount of the trust tax collected for these sales." Therefore, the district court did not err by denying Auleciems's motion to suppress on the grounds that the department of revenue had his tax records.

B. The Vehicles

The warrant identified six vehicles to be searched, including a recreational vehicle. Auleciems argues that the warrant is defective because it allowed the search of several vehicles but does not "establish a nexus between the people listed and the vehicles listed." The state notes, as the district court did, that the affidavit submitted with the warrant application stated that individuals often transport documents in their vehicles.

The investigator's affidavit averred that the investigator knew "from training, knowledge, and experience that individuals keep business related records, computers, proceeds, and other items in their homes and are known to transport these documents and other items from place to place with the use of their vehicles" and that, as a result, searches of their vehicles would be "likely to provide records of personal and business expenditures, bills, records both paper and digital, and other information that would assist in the investigation." The investigator's affidavit also attested that, while renting the Neal property to others, Auleciems and his wife "stay[ed] in their 2008 Keystone Recreation Vehicle, 5th Wheel travel trailer . . . in a Walmart parking lot" and that KEASons was linked to two addresses, one being the Neal property and the other a post-office box.

We conclude that the warrant application and affidavit established a sufficient nexus between the vehicles and Auleciems's criminal activities. The department of revenue located these vehicles through its investigation, and the warrant affidavit attested that individuals committing tax crimes often transport documents in vehicles. Thus, the district court did not err by denying Auleciems's motion to suppress the warrant on nexus grounds.

C. Documents and Data Related to Castle Construction Advisors Inc.

Auleciems argues that "there is nothing in the affidavit to connect Castle Construction Advisors Inc. to any of the alleged conduct or the people listed throughout the affidavit." The state acknowledges that listing this company in the warrant was a clerical error. The state believes "[t]he most likely explanation" is that the affiant mistakenly blended two names and inserted "Castle Construction Advisors, Inc." for two corporations "known to be associated with Auleciems" called '"**Castle** Advocacy Group, Inc.' and **'Capital Construction** Advisors, Inc.'" The state argues that, nevertheless, no prejudice resulted "from this oversight."

The state refers to *State v. Wilde*, which is instructive here. 947 N.W.2d 473 (Minn. App. 2020), *rev. denied* (Minn. Oct 1, 2020). In *Wilde*, law enforcement obtained urine from an intoxicated driver under a warrant for testing. *Id.* at 475-76. The warrant application used the name of the registered owner of the vehicle, who was the driver's father. *Id.* The appellant-driver moved to suppress the test results, arguing that the warrant "was insufficiently particular because it misidentified the person to be searched." *Id.* at 476. This court affirmed the district court's decision to deny the motion after noting that, while there was an error in the warrant, it "did not result in the sort of general or exploratory search that the particularity requirement prohibits." *Id.* at 479. We concluded that "the circumstances of the case presented no reasonable possibility that officers would search the wrong person" and that the officers obtained urine from the intoxicated driver. *Id.*

Here, as the state points out, Castle Construction Advisors Inc. was mentioned only "once in the warrant application and once in the warrant" and "there is nothing in the record to suggest the warrant yielded any evidence pertaining to that entity." Nor is there any evidence that the entity even existed. While there was an error in the warrant application, the error did not result in an improper "general or exploratory search," as discussed in *Wilde*. *Id.* Thus, the district court did not err by denying Auleciems's motion to suppress evidence on any of the three grounds raised by Auleciems.

V. The district court did not deny Auleciems a fair trial.

Under the Sixth Amendment to the United States Constitution and article I, section 6 of the Minnesota Constitution, criminal defendants have a right to a fair trial. "Included in this constitutional right is the right to present a complete defense." *State v. Voorhees*, 596 N.W.2d 241, 249 (Minn. 1999). "[A] defendant has the right to make all legitimate arguments on the evidence, to explain the evidence, and to present all proper inferences to be drawn therefrom." *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009) (quotation omitted). But "the constitutional guarantee of a fair trial does not [ensure] the accused of a trial which is perfect in every detail." *State v. Billington*, 63 N.W.2d 387, 392-93 (Minn. 1954). Appellate courts grant new trials "cautiously, and a conviction will not be reversed for mere technical errors where it appears that the accused has not been prejudiced through the impairment of substantial rights essential to a fair trial." *Id.* at 393.

Auleciems argues that his right to a fair trial was violated for four reasons that we address in turn.

A. Auleciems was not denied his right to a fair trial when the district court sustained the state's objection to his attorney's reference to the 14-day rule during closing arguments.

Auleciems argues that he was "denied his right to make all legitimate arguments on the evidence when [the state] objected during [his] closing arguments regarding the [14]-day rule and the objections were sustained." Appellate courts "review a district court's restricting the scope of a closing argument for an abuse of discretion." *State v. Caldwell*, 815 N.W.2d 512, 516 (Minn. App. 2012), *rev. denied* (Minn. June 27, 2012).

The context of this objection is important. During trial, Auleciems testified that he believed that the federal tax code allowed him to "rent [his] house for 14 days [each year] and not have to declare the income." The parties referred to this as the "14-day rule." The department of revenue's tax specialist testified that she was familiar with this rule.

Before closing arguments, Auleciems moved to dismiss two counts for filing a false or fraudulent tax return, based on the 14-day rule. In separate memoranda related to motions to dismiss before closing arguments, the parties addressed the 14-day rule in some detail and referred to the federal tax code. The tax code states that

> if a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, then . . . the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer . . . .

26 U.S.C. § 280A(g)(2) (2018).

The district court found that it was "uncontradicted that in the years 2017 and 2019" Auleciems rented the Neal property for less than 15 days. Still, the state argued that the

14-day rule did not apply to Auleciems because KEASons leased the property, not Auleciems, and only an individual or S-corporation can claim the 14-day rule.

The district court decided that the motion to dismiss required "careful analysis and the opportunity for both sides to brief." The district court also determined that the 14-day rule did not impact the jury's deliberations on the remaining counts and then ruled that "[i]f the jury convicts on either of" the counts involving the 14-day rule, the court would request additional written argument. The district court also determined that it was not appropriate to provide a jury instruction about the 14-day rule because "there isn't a question of fact here, it's just a question of law."[5]

During closing arguments, Auleciems's attorney said, "[Y]ou heard three people testify about the 14-day rule." The state objected, and the district court sustained the objection, instructing Auleciems's attorney that he "can talk about testimony from the witnesses, but again, the law is the law that I apply." Auleciems's attorney did not mention the 14-day rule during the rest of his closing argument.

The jury found Auleciems guilty of six counts of filing false tax returns, including the 2017 and 2019 counts. After receiving additional briefing, the district court determined that the 14-day rule applied and acquitted Auleciems of the 2017 and 2019 counts for filing a false tax return.

Auleciems argues on appeal that, although the district court acquitted him of the 2017 and 2019 false-tax-return counts, the district court deprived him on his right to a fair

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[5] Auleciems did not request a jury instruction about the 14-day rule and does not challenge the jury instructions on appeal.

trial by preventing his attorney from discussing the 14-day rule during closing argument. Auleciems claims that the ruling impacted the jury's findings about Auleciems's "understanding of tax requirements" and his intent. The state points out that Auleciems alleged no prosecutorial misconduct and that the district court correctly determined that the application of the 14-day rule is a matter of law for the district court to decide.

The state has a strong argument that the district court did not abuse its discretion in sustaining the objection to referring to the 14-day rule during Auleciems's closing argument. The 14-day rule involved a legal issue to be determined by the district court, the jury was not instructed on it, and Auleciems does not argue any error in the jury instructions. The district court reasonably considered the 14-day rule to be a complicated federal tax-code issue, acted within its discretion by submitting the 2017 and 2019 counts to the jury, and appropriately required additional briefing on the issue before deciding whether the 14-day rule applied to the 2017 and 2019 counts.

Even if we assume that the district court erred by sustaining the objection during closing argument, we conclude that Auleciems was not prejudiced by the error. *See Billington*, 63 N.W.2d at 393 ("[A] conviction will not be reversed for mere technical errors where it appears that the accused has not been prejudiced . . . ."). Ultimately, the district court ruled in Auleciems's favor and acquitted him of the 2017 and 2019 counts. Auleciems does not contend on appeal that the 14-day rule applied to any other counts. Therefore, the district court did not violate Auleciems's right to a fair trial by sustaining the state's objection to Auleciems's attorney's reference to the 14-day rule during closing argument.

B. The district court did not abuse its discretion when it denied Auleciems's request for a continuance four days before trial.

The state disclosed an 83-page report prepared by the department of revenue's tax specialist on October 25, 2023, five days before trial was scheduled to begin. On October 26, 2023, Auleciems moved for a continuance, seeking more time to review the report, "[t]o adequately prepare for his defense, and to protect his right to a fair trial." The district court considered the continuance request before trial, stated that it took the court "about an hour to an hour and a half" to review the state's October 25 report, determined that the report did not change Auleciems's "preparation for the trial," and denied the request for a continuance.

Auleciems argues on appeal that this ruling deprived him of his trial rights and prejudiced him. Auleciems contends that he "needed adequate time to determine where the [department of revenue] was coming up with its alleged income tax numbers by reviewing the voluminous discovery and making the property calculations." The state responds that Auleciems was not prejudiced because it provided the report five days before trial and the district court found that it took about an hour and a half to review the report. Appellate courts "review [a district] court's ruling on a defendant's request for a continuance for [an] abuse of discretion." *State v. Courtney*, 696 N.W.2d 73, 81 (Minn. 2005). "A defendant must show that he was prejudiced to justify reversal." *Id.*

We are not persuaded of error or prejudice. Preliminarily, Auleciems does not claim that the state committed a discovery violation. Nor does Auleciems assert what amount of time would have been "adequate" to review the report or how he was prejudiced by disclosure of the tax specialist's report five days before trial. Auleciems's attorney had ample opportunity to cross-examine the tax specialist who prepared the report. Auleciems does not claim in this appeal that his cross-examination of the tax-specialist was prejudiced. Thus, the district court did not abuse its discretion in denying the continuance request.

C. The district court did not abuse its discretion by allowing a state witness to refer to an illustrative exhibit.

At trial, the district court allowed the department of revenue's tax specialist to refer to an illustrative exhibit during her testimony. The challenged tax exhibit was a compilation of documents and data that the tax specialist prepared. The district court determined that the tax exhibit was presented for "illustrative purposes only" and would not be admitted as evidence and instructed the jury accordingly. Auleciems argues, as he did in a continuing objection at trial, that the exhibit lacked proper foundation.

Appellate courts review a district court's evidentiary rulings for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). "[D]emonstrative or illustrative evidence is admitted, when properly verified, to illustrate or express the testimony of a competent witness." *State v. Stewart*, 643 N.W.2d 281, 293 (Minn. 2002). The Minnesota Supreme Court has concluded that an exhibit that is "admitted and used for illustrative purposes" is "demonstrative evidence." *Id.* "The standard for the admissibility of demonstrative evidence and visual aids is whether the evidence is relevant and accurate and assists the jury in understanding the testimony of a witness." *Id.* To obtain relief on appeal for an evidentiary error, an appellant must establish prejudice. *See Dolo v. State*, 942 N.W.2d 357, 362-63 (Minn. 2020) (stating that the appellant claiming evidentiary error "bears the burden of showing that an abuse of discretion occurred and that he was prejudiced by it").

Auleciems argues that the tax exhibit "lacked proper foundation" because "[i]t was not a fair or accurate depiction of" Auleciems's "tax liability." The state argues that the tax specialist "used the exhibit to establish a frame of reference for the various tax entries discussed during her testimony, providing a frame of reference for each entry along the way."

We conclude that the district court did not abuse its discretion in determining that the tax exhibit was relevant because the exhibit related to the tax specialist's testimony and aided the jury in understanding complex financial and tax information. Any criticism of the tax exhibit—which Auleciems asserts in his reply brief—goes to its weight and not its admissibility. Auleciems does not contend that he was prejudiced by any error, and the tax exhibit was not received into evidence, so there is no danger that the jury placed undue weight on the tax exhibit. Thus, the district court did not abuse its discretion in allowing the tax exhibit.

D. Auleciems's right to a fair trial was not violated based on prosecutorial misconduct.

Auleciems argues that the state committed prosecutorial misconduct while questioning a witness by saying, "[F]or the life of me, I can't find a contract." Auleciems objected at the time of the statement and moved to dismiss the charges based on prosecutorial misconduct. The district court said, "Tell me how that's prosecutorial misconduct. I think it was a mistake." Auleciems argued it was a false statement because the prosecuting attorney "announced to the jury that [he] couldn't find a contract" even though he knew "it existed." The district court told Auleciems that he could raise this issue in closing arguments with the jury, but it was "not prosecutorial misconduct."

The district court allowed the state to make a record on this issue for purposes of appeal. The prosecuting attorney stated that the case involved "significant amounts of paper" and "thousands of documents" that "have been disclosed over the course of two years." The prosecuting attorney explained that the "contract was not in front of" the other prosecuting attorney while he was asking questions about it and that when he said, "for the life of me, I can't find it," he meant that he could not find the copy of the contract in front of him, "[n]ot that it doesn't exist." The state also noted that "[t]he defense has not been prejudiced in any type of way" by this statement.

Auleciems argues on appeal that the prosecuting attorney made a false statement about the contract and that "[t]his serious misconduct was not harmless beyond a reasonable doubt; therefore, the convictions must be reversed and remanded for a new trial." The state argues that "[t]here was no false statement by the prosecution," no prosecutorial misconduct, and "no prejudice suffered" by Auleciems.

"[A] prosecutor's acts may constitute misconduct if they have the effect of materially undermining the fairness of a trial." *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). Appellate courts will reverse a district court's determination regarding objected-to prosecutorial misconduct "only when the misconduct, considered in the context of the trial as a whole, was so serious and prejudicial that the defendant's constitutional right to a fair trial was impaired." *State v. Johnson*, 616 N.W.2d 720, 727-28 (Minn. 2000).

The record supports the district court's finding that the prosecuting attorney made a mistake and did not make a false statement or undermine the fairness of the trial. The prosecuting attorney's statement and its context suggest that the prosecuting attorney could not find the copy of the contract at the time; the statement does not suggest that the contract did not exist. Therefore, the prosecuting attorney's statement did not amount to misconduct.

E. Auleciems is not entitled to a new trial based on cumulative error.

The "cumulative effect of trial errors can deprive a defendant of his constitutional right to a fair trial when the errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the defendant's prejudice by producing a biased jury." *State v. Davis*, 820 N.W.2d 525, 538 (Minn. 2012) (quotation omitted). Auleciems argues that, if this court determines that the previous fair-trial issues do not warrant reversal individually, he is entitled to reversal based on cumulative error. The state argues that Auleciems "has failed to show a single error that adversely affected his right to a fair trial, so the cumulative error doctrine is not applicable." We conclude that, because Auleciems does not show error on any of his fair-trial arguments, he is not entitled to relief based on the cumulative effect of trial errors.

Affirmed.