

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1378**

State of Minnesota,
Respondent,

vs.

Josiah David Delvecchio,
Appellant.

**Filed August 25, 2025
Affirmed
Larson, Judge**

St. Louis County District Court
File No. 69VI-CR-21-1391

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

Kimberly J. Maki, St. Louis County Attorney, Chris Florey, Assistant County Attorney,
Virginia, Minnesota (for respondent)

Andrew C. Wilson, Wilson & Clas, Minneapolis, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

LARSON, Judge

This appeal arises from appellant Josiah David Delvecchio's convictions for conspiracy to commit first-degree premeditated murder, aiding-or-abetting attempted first-degree premeditated murder, aiding-or-abetting first-degree assault, and aiding-or-abetting

second-degree assault. *See* Minn. Stat. §§ 609.17, subds. 1, 4(1), .175, subd. 2(2), .185(a)(1), .221, subd. 1, .222, subd. 1 (2020). On appeal, Delvecchio argues (1) respondent State of Minnesota presented insufficient evidence to sustain the conspiracy conviction and (2) the district court erred when it denied his motion for a new trial based on juror bias. Delvecchio also argues in his supplemental brief that the prosecutor engaged in prosecutorial misconduct. We affirm.

FACTS

On July 10, 2021, L.M.B. (victim) was stabbed at a printshop she operated in Babbitt, Minnesota. The state charged Delvecchio with four separate counts in connection with the incident: (1) conspiracy to commit first-degree premeditated murder (count I); (2) attempted first-degree premeditated murder, or—in the alternative—aiding-or-abetting attempted first-degree premeditated murder (count II); (3) first-degree assault, or—in the alternative—aiding-or-abetting first-degree assault (count III); and (4) second-degree assault, or—in the alternative—aiding-or-abetting second-degree assault (count IV). *See* Minn. Stat. §§ 609.17, subds. 1, 4(1), .175, subd. 2(2), .185(a)(1), .221, subd. 1, .222, subd. 1. The jury found Delvecchio guilty of count I and the aiding-or-abetting alternatives for counts II-IV. The district court sentenced Delvecchio on count I to 204 months in prison. For counts II and III, the district court adjudicated Delvecchio “guilty without sentence pursuant to agreement of the parties” under Minn. Stat. § 609.035 (2020). The district court did not adjudicate count IV because it is an included offense of count III under Minn. Stat. § 609.04 (2020).

The following facts relate to the specific claims raised in this appeal and are derived from the trial record and posttrial proceedings.

I. Evidence Presented at Trial

The victim had been in a relationship with F.M. (boyfriend), an inmate at the Minnesota Correctional Facility at Rush City (MCF-RC). The boyfriend, along with Delvecchio's codefendants Donald James Miller—who was also an inmate at MCF-RC—and Dylan Thomas Peterson, were members of a group known as “Northern Empire.” In the weeks prior to the stabbing, Miller and Peterson grew increasingly frustrated with the victim and her operation of the printshop. These frustrations were captured on recorded phone calls Miller made from prison to his girlfriend and Peterson.

In the phone calls, Miller and Peterson ultimately agreed that “[the victim]’s gotta go” and “[s]he gotta lose everything.” They stated that they would “send a nuclear bomb over there.” Miller and Peterson also discussed their system of “seekers,” including the reward received if Peterson tells one of his seekers to “go do this deadly damage . . . [a]nd he does that deadly damage.”

On July 9, 2021, Miller and Peterson confirmed their plan. Miller said to Peterson that he told the boyfriend, “I’m gonna handle that shop and [the victim’s] goin with it . . . I told him he better kill me, . . . cuz if I touch the streets, you know what’s up.” Peterson responded that he was “gonna send the nuclear bomb.” To which Miller replied, “[I]t looks all that much better . . . be like bro it wasn’t even me.” Peterson then said he had obtained “a seeker” and that the seeker was either going to “make his mettle or . . . something[’]s

gonna happen.” The call ended with Miller and Peterson “vot[ing] yes” to send the “nuclear bomb.”

The next day, in the early afternoon of July 10, 2021, Peterson and Delvecchio exchanged a series of social-media messages. The conversation largely discussed a camping trip the two had planned for the weekend. Around 2:10 p.m., Peterson messaged Delvecchio that he was going to “go grab that thing.” At 4:50 p.m., Delvecchio messaged Peterson that he would be on his way to meet Peterson at the campground soon. Delvecchio immediately followed up this message by asking if Peterson got “that long sleeve shirt and sh-t . . . ?” Peterson responded affirmatively. Delvecchio and Peterson exchanged a few more messages, and the conversation ended around 5:50 p.m. The campground discussed in the messages is about 30 to 40 minutes from the printshop.

At about 7:45 p.m., while the victim, J.V. (bystander), and A.H. (friend) were in the back of the printshop making shirts, a blue Dodge Ram pickup truck entered the printshop parking lot. A person wearing a long-sleeve t-shirt, pants, and an ATV helmet exited the vehicle (assailant). The assailant entered the printshop and stabbed the victim with an icepick. At trial, the victim testified that the assailant “stabbed [her] in the stomach three times,” in the leg one time, and in the thumb one time. The friend testified that the assailant stabbed the victim “three different times.” And the state submitted photographic evidence of the victim’s injuries to her leg and thumb. During opening and closing arguments, the state said the assailant stabbed the victim five times.

Also at trial, the victim and friend offered testimony regarding their belief as to the identity of the assailant. Both identified Peterson, based on their recollection of the assailant's height, build, gait, arm tattoo, and helmet.

Following the stabbing, the assailant fled the store, entered the truck, and drove away. The bystander followed the assailant out of the store and used a handgun to fire multiple shots into the truck as it drove away. The friend immediately called 911 and provided aid to the victim. Police arrived, and the victim went to the hospital.

Later that evening, M.W. (witness)—who lived about two miles from the printshop—had just sat down for dinner when he noticed a blue Dodge Ram pickup truck drive down his dead-end road. The truck parked between the witness's garages, and the witness "went outside to see what was going on." The witness noticed the truck had a flat tire and was leaking gasoline. The driver—Delvecchio—was the truck's sole occupant and told the witness that the truck was damaged while four-wheeling. Delvecchio asked for assistance contacting a friend, and the two went inside the witness's house to wait. Soon after, a sheriff's deputy arrived at the witness's house and asked the witness if he "had heard of anybody having a blue truck shot at in town." The witness did not mention the damaged truck parked between his two garages. After the deputy left, the witness asked Delvecchio "what was really going on" and Delvecchio told the witness "that somebody had emptied a clip from a gun into his truck." A little while later, a male in a black car—Peterson—picked up Delvecchio.

After Peterson and Delvecchio left, the witness called 911, and the deputy returned to question the witness. The deputy had the truck towed. While searching the truck, law

enforcement noted damage consistent with bullet holes and found items containing Delvecchio's name and picture. Law enforcement also determined that the truck matched an image from Delvecchio's June 16, 2021 social-media message where he stated he "[g]ot a truck now too."

That night, officers arrested Peterson in connection with the stabbing. The next day, July 11, 2021, the witness received threatening phone calls and text messages from Delvecchio's phone number. A few days later, on July 15, 2021, a local news station received a social-media message from Delvecchio's account.¹ The message claimed the news station improperly identified the assailant and requested a phone call. A news-station employee later spoke with a male claiming to be Delvecchio. The male said he stabbed the victim. The news-station employee called the police and relayed the conversation. Delvecchio was arrested five months later.

II. Voir Dire and Posttrial Proceedings

A. Voir Dire

Before jury selection began, the parties jointly requested and prepared a written jury questionnaire for potential jurors. Three questions on the questionnaire, and one juror's answers to those questions, were described by the district court as follows:

(34) Have you, a family member, or anyone close to you ever been a suspect in, arrested for, or charged with a criminal offense (not including minor parking or speeding-type traffic offenses)? [The juror] checked "no."

¹ The messages were not located on Delvecchio's social-media account when law enforcement executed a search warrant.

(43) Have you or any of your close friends or family members ever been accused of harming, assaulting, or planning to harm or assault another person? [The juror] checked “no.”

(54) Do you have any concerns that might unduly preoccupy you or prevent you from participating as a juror in this trial? [The juror] checked yes and wrote in . . . “May know both parties. May have gone to high school with victim and may know Defendant from [the juror’s place of employment]. Also believe [I] had Defendant’s sister as a foster child.”

During voir dire, counsel for both parties questioned the juror individually, based on the answers provided in the questionnaire. During questioning, the juror admitted that he thought someone with the surname Delvecchio may have been incarcerated at his place of employment—a correctional facility. But the juror explained that Delvecchio would not have been under his supervision, and he did not personally remember Delvecchio. The juror also stated that he recognized the victim’s name from high school, but noted that they were not acquaintances. Finally, the juror said that Delvecchio’s sister (S) may have been his foster child, and the following colloquy occurred:

STATE: Okay. And then you also mentioned . . . that [you] also believe [you] had [Delvecchio’s] sister as a foster child?

JUROR: Possibly.

STATE: Can you tell me a little bit about that?

JUROR: All I remember about her was, around 2014 or something, her name was [S]. She was about twelve years old.

STATE: [S]. And do you remember [S]’s last name to be Delvecchio?

JUROR: I do not. No. I don’t think it was.

STATE: Okay. . . . [W]hat made you think that you might have had his sister as a foster child? Was it the name that you recognized, or was it –?

JUROR: The way I remember it, while I was there, she said one of her brothers was at [the juror’s place of employment] and did I know. I said he wasn’t on my crew. So, it all kind of – I tried to piece it all together but –

STATE: Yup. Yup. If you don’t mind me asking, how long was [S] in your care?

JUROR: A few months.

Following this conversation, the juror confirmed that none of these connections would impact his decisionmaking in the case. Neither party moved to strike the juror for cause, and Delvecchio did not use a peremptory challenge.

B. Posttrial Proceedings

After trial, Delvecchio filed a motion for a new trial, alleging juror misconduct and structural error based on the juror’s “lack of candor” at voir dire.² In the alternative, Delvecchio requested a *Schwartz* hearing. See *Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960).³

The district court granted Delvecchio’s request for a *Schwartz* hearing. At the *Schwartz* hearing, the juror testified that he still did not know if S was Delvecchio’s sister.

² We note that Delvecchio’s motion included information filed under seal. While we do not disclose the sealed information in this opinion, we have nevertheless reviewed the information. See Minn. R. Civ. App. P. 112.02, subd. 1 (“Materials filed in the [district] court as ‘confidential’ or ‘sealed’ . . . will remain non-public on appeal . . .”).

³ The purpose of a *Schwartz* hearing “is to avoid harassment of jurors and to provide a record on appeal in cases where, after the jury renders the verdict, the losing party becomes aware of facts which indicate the possibility of jury misconduct.” *Zimmerman v. Witte Transp. Co.*, 259 N.W.2d 260, 262 (Minn. 1977). When a losing party becomes aware of

After the juror denied knowing why S left his care, the juror was asked whether he was “aware of any allegations [S] made against [him].” The juror indicated that it was possible that S made an “inappropriate touch” allegation. The juror then explained that he spoke with a caseworker about the allegation, told them nothing happened, “[a]nd that was the end of it.” When asked why, despite this allegation, he responded “no” on the questionnaire to the question about previously being “a suspect in, arrested for, or charged with a criminal offense,” the juror responded that he “was never charged with anything.” The juror then confirmed that, even if he had been certain during trial that S was Delvecchio’s sister, it would not have affected his decision or “ability to be fair and impartial.” The juror explained: “We had very strict orders from [the district court], instructions, and I took them very seriously. Whoever he’s related to wouldn’t matter in the case.”

In an April 16, 2024 order, the district court denied Delvecchio’s motion for a new trial. The district court determined that Delvecchio’s “right to a fair and impartial jury was not violated” and “[s]tructural error did not occur” because the juror did not lack candor, did not provide false or misleading information, and was not biased “even if [the juror] was found to lack candor.” The district court explained that the juror’s answers to the questionnaire “indicate[d] a desire to be candid,” because he “alerted” the parties to the possible past relationship with Delvecchio’s sister and revealed more information when asked additional questions.

possible juror misconduct, they must bring it to the district court’s attention “and, if it appears that the facts justify doing so, the [district] court may then summon the juror . . . and permit an examination in the presence of counsel for all interested parties and the [district court] judge under proper safeguards.” *Schwartz*, 104 N.W.2d at 303.

DECISION

Delvecchio raises three arguments in this direct appeal. First, Delvecchio asserts that the state presented insufficient evidence to sustain his conviction for conspiracy to commit first-degree premeditated murder. Second, he argues the district court erred when it denied his motion for a new trial on the basis that the juror exhibited bias and a lack of candor during voir dire. Last, Delvecchio claims the prosecutor engaged in misconduct. We address each argument in turn.

I.

Delvecchio first argues the state presented insufficient evidence to sustain his conviction for conspiracy to commit first-degree premeditated murder. To find Delvecchio guilty of conspiracy, the state needed to prove: “(1) an agreement between two or more people to commit a crime and (2) an overt act in furtherance of the conspiracy.” *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001); *see also* Minn. Stat. § 609.175, subd. 2 (2020).

Delvecchio argues the state presented insufficient evidence on the first element—agreement. “Proof of a formal agreement to commit a crime is not required for a conspiracy conviction.” *State v. Hatfield*, 639 N.W.2d 372, 376 (Minn. 2002). “If several persons commit separate acts which form parts of a connected whole,” the jury may infer an agreement between the participants. *State v. Longo*, 909 N.W.2d 599, 607 (Minn. App. 2018) (quotation omitted). “The parts or acts done by each must . . . not only tend to show a prior unlawful combination, but negative the idea of lawful undertaking or purpose.” *State v. Burns*, 9 N.W.2d 518, 522 (Minn. 1943). There must be evidence presented for

“both knowledge of an agreement and . . . intent to commit the crime or act that is the object of the conspiracy.” *State v. Tracy*, 667 N.W.2d 141, 146 (Minn. App. 2003) (quotation omitted).

We must first determine whether the state used direct or circumstantial evidence to prove the agreement element. 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) (quotation omitted). Circumstantial evidence is evidence from which the jury “can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted).

Here, the parties contend, and we agree, that the state relied on circumstantial evidence to prove an agreement. Therefore, we apply the heightened circumstantial-evidence test. We first “identify the circumstances proved.” *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). In doing so, we “defer” to the factfinder’s “acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011) (quotation omitted). Second, we must “determine whether the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of . . . guilt.” *Id.* at 669 (quotation omitted). In this step, we do not defer to the factfinder’s “choice between reasonable inferences” and “do not review each circumstance proved in isolation.” *Id.* (quotation omitted). “Instead, we must consider whether the circumstances presented are consistent with guilt and inconsistent, *on*

the whole, with any reasonable hypothesis of innocence.” *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010) (quotation omitted).

Beginning with the circumstances proved, the state established that: (1) Peterson and Miller sought to murder the victim; (2) Peterson told Miller he had “a seeker” to do the “deadly damage” and who would prove “his mettle”; (3) Peterson and Delvecchio were friends; (4) on the day of the incident, Peterson told Delvecchio he was going to “go grab that thing”; (5) Delvecchio responded to Peterson that he was on his way to meet Peterson soon; (6) Delvecchio confirmed that Peterson got “that long sleeve shirt and sh-t”; (7) the assailant arrived at the printshop in a blue Dodge Ram pickup truck; (8) the assailant concealed their identity by wearing a long-sleeve t-shirt, pants, and an ATV helmet; (9) the assailant stabbed the victim multiple times with an icepick; (10) the assailant fled in the truck; (11) the bystander shot at the truck multiple times as it left the printshop; (12) Delvecchio drove the truck to the witness’s residence two miles away from the printshop later that evening; (13) Delvecchio told the witness that someone “emptied a clip from a gun into his truck”; (14) Delvecchio was picked up by Peterson; (15) a search of the truck revealed damage consistent with bullet holes, and items containing Delvecchio’s name and picture; (16) social-media messages reflect Delvecchio owned a blue Dodge Ram pickup truck as of June 16, 2021; (17) the witness received threatening messages from Delvecchio’s phone number after law enforcement towed the truck; (18) a local news station received a social-media message from Delvecchio’s account about the suspect in

the case; and (19) a male claiming to be Delvecchio called the news station and stated that he stabbed the victim.⁴

We next analyze whether the circumstances proved are consistent with guilt. We conclude that, based on these circumstances proved, it is reasonable to infer that Delvecchio knew of, and was part of, the conspiracy to commit premeditated murder. The evidence shows Delvecchio's involvement with the conspiracy before, during, and after the incident. Specifically, the social-media messages demonstrate that Delvecchio assisted in collecting materials for the crime, Delvecchio's truck was used in the commission of the crime, and Delvecchio was located soon after the crime attempting to abandon the truck. This circumstantial "evidence of a common plan, concerted conduct, [and] prior involvement with [a] . . . co-conspirator" supports an inference that Delvecchio agreed with Peterson and Miller to commit premeditated murder. *Hatfield*, 639 N.W.2d at 377; *see also Burns*, 9 N.W.2d at 521 ("[A] conspiracy need not be established by direct evidence. It may be inferred from the circumstances.").

Delvecchio argues that even if the circumstances proved are consistent with guilt, they do not exclude a reasonable inference other than guilt—that Delvecchio agreed to commit an offense less serious than premeditated murder. We are not persuaded. Under existing law, "[i]f several persons commit separate acts which form parts of a connected

⁴ Because the jury found Delvecchio guilty of the aiding-or-abetting alternatives for counts II-IV, the parties dispute whether the state proved Delvecchio was the assailant. In particular, the state asks us to rely on the friend's testimony that they saw a "blue-eyed kind of thing" inside the assailant's helmet and evidence that Delvecchio has blue eyes. Because we need not determine that Delvecchio was the assailant to find that he agreed to engage in this conspiracy, we exclude this evidence from the circumstances proved.

whole,” the jury may infer an agreement between the participants. *Longo*, 909 N.W.2d at 607 (quotation omitted). Here, the evidence presented at trial proved that Delvecchio took specific acts to aid the conspiracy, including providing his truck and transporting clothing for the assailant to use during the commission of the crime. Based on Delvecchio’s level of involvement in the commission of the crime, it is unreasonable to infer that Delvecchio conspired with Miller and Peterson to commit a less-serious crime than that which Miller and Peterson had themselves agreed to commit. Thus, we conclude the circumstances proved do not support any reasonable inference other than guilt.

Accordingly, we conclude the state presented sufficient evidence to sustain Delvecchio’s conspiracy conviction.

II.

Delvecchio next argues the district court abused its discretion when it denied his motion for a new trial following the *Schwartz* hearing. “A [district] court’s decision to deny a motion for a new trial on the basis of jury misconduct will not be overturned absent an abuse of discretion.” *State v. Kelley*, 517 N.W.2d 905, 910 (Minn. 1994). “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. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

A party seeking to obtain a new trial based on juror bias “bears the burden of demonstrating actual bias” at a *Schwartz* hearing. *State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008). Actual bias refers to “a state of mind on the part of the juror, in reference to the case or to either party, which would prevent the juror from trying the issue impartially

and without prejudice to the substantial rights of either party.” *Id.* (quotation omitted). “Actual bias is a question of fact, which the district court is in the best [position] to evaluate.” *Id.* (citations omitted). The district court’s finding that a juror lacked actual bias is based on its “determinations of demeanor and credibility and, thus, entitled to deference.” *Id.* (quotation omitted). We review the district court’s factual findings for clear error. *Id.* “The clearly erroneous standard requires that we be left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

Delvecchio first argues the district court clearly erred when it found the juror never “lacked candor” and that the juror’s testimony during voir dire and the *Schwartz* hearing were “consistent.” Because the record supports the district court’s findings, we are not persuaded. *See State v. Beer*, 367 N.W.2d 532, 535 (Minn. 1985); *cf. State v. Benedict*, 397 N.W.2d 337, 340 (Minn. 1986); *State v. Chauvin*, 989 N.W.2d 1, 23-24 (Minn. App. 2023), *rev. denied* (Minn. July 18, 2023).

Here, the record reflects that the juror responded truthfully on the questionnaire. With regard to the question about the criminal offense, the juror explained that he answered “no” because S’s allegation did not involve any actual charges. Thus, the two answers were not inconsistent and did not indicate any untruthfulness. And, as the district court observed, the questionnaire did “not ask[] if he had ever been accused of a crime.” With respect to the question about being accused of assault, Delvecchio did not ask any specific questions at the *Schwartz* hearing about the juror’s questionnaire answer—aside from the general question about whether any “allegations” were made against him by S. Thus, there is no indication the questionnaire answer was not truthful or consistent with the

explanations given. Finally, we agree with the district court's determination that the juror flagging his potential past relationship with S "indicate[d] a desire to be candid." And the record shows that the juror demonstrated a willingness to reveal more information upon further questioning during voir dire and the *Schwartz* hearing. Based upon this record, the district court did not clearly err when it found the juror candidly answered the questionnaire and testified at voir dire.

Delvecchio disagrees, relying strongly on the juror's statement during voir dire that he provided "[a]ll" of the information he remembered about S. According to Delvecchio, because the juror revealed more details at the *Schwartz* hearing, the juror's statement during voir dire lacked candor. We are not persuaded. As the supreme court explained in *Beer*, a juror does not lack candor simply because more specific probing at a *Schwartz* hearing elicits a more detailed response. 367 N.W.2d at 535 (explaining defense counsel failed to "ask the right question at voir dire to elicit [specific] information" received at posttrial questioning); cf. *Pulczynski v. State*, 972 N.W.2d 347, 362 (Minn. 2022) ("The proper remedy for teasing out potential juror bias during voir dire is for lawyers to ask probing questions of the juror"); *Benedict*, 397 N.W.2d at 340 (concluding district court properly denied *Schwartz* hearing request because defense counsel failed to "ask the sort of clear question that, absent a lack of credibility on the juror's part, necessarily would have elicited the disclosure of the sort of information that the foreman withheld"); *Chauvin*, 989 N.W.2d at 23 (concluding district court properly denied *Schwartz* hearing request because jury questionnaire did not contain "type of probing questions[s] that would elicit a specific response"). And, reviewing the record, Delvecchio did not ask the kind of

probing questions during voir dire that would have elicited the same responses the juror provided at the *Schwartz* hearing. We, therefore, conclude the district court did not clearly err when it found the juror never “lacked candor.”⁵

Delvecchio next argues that the district court applied an incorrect legal standard when it denied his motion for a new trial following the *Schwartz* hearing. To make this argument, Delvecchio targets a single sentence from the conclusion paragraph in the district court’s order, asserting the district court only analyzed whether the juror was biased “towards [Delvecchio]” rather than “towards ‘the case.’” (Emphasis omitted.) We review this issue de novo. *State v. Varner*, 643 N.W.2d 298, 303 (Minn. 2002).

Under Minn. R. Crim. P. 26.02, subd. 5(1), parties may challenge a juror for cause if “[t]he juror’s state of mind – in reference to the case or to either party – satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.” Here, the district court articulated this legal standard, identifying bias as “a state of mind on the part of the juror, *in reference to the case* or to either party, which would prevent the juror from trying the issue impartially and without prejudice to the substantial rights of either party.” (Emphasis added) (quoting *State v. Brown*, 732 N.W.2d 625, 629 n. 2 (Minn. 2007)). The district court then applied that legal standard to Delvecchio’s arguments. *See Caldwell v. State*, 853 N.W.2d 766, 773 (Minn. 2014) (explaining that the district court must both accurately state and correctly apply the legal standard). While it is true that the district court’s conclusion paragraph mentioned bias

⁵ Because we conclude the juror did not lack candor, we need not address Delvecchio’s argument that the juror’s lack of candor created a rebuttable presumption of bias.

towards Delvecchio, when read in context, the district court was clearly responding to Delvecchio’s primary argument that the juror was biased *towards Delvecchio* because of his past relationship with S. We, therefore, conclude the district court did not legally err.

For these reasons, we conclude the district court did not abuse its discretion when it denied Delvecchio’s motion for a new trial following the *Schwartz* hearing.

III.

Finally, Delvecchio argues in his supplemental brief that the prosecutor engaged in misconduct when he elicited false testimony from the victim. Specifically, Delvecchio challenges the repeated assertions at trial that the victim was stabbed in the stomach because the exhibits only “display a cut on a hand and a stab wound to the leg.”

We review unobjected-to prosecutorial misconduct under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). The defendant bears the burden of establishing an error that is plain. *Id.* “An error is plain if it . . . contravenes case law, a rule, or a standard of conduct.” *Id.* (quotation omitted). If the defendant meets this burden, the burden shifts to the state to prove that the error did not affect the defendant’s substantial rights. *See id.* The state meets this burden if it shows that there is “no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Id.* (quotation omitted). “If the State fails to demonstrate that the alleged error did not affect the defendant’s substantial rights, we consider whether the error should be addressed to ensure fairness and the integrity of judicial proceedings.” *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017).

“[A] conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment.” *Napue v. Illinois*, 360 U.S. 264, 269 (1959). “[D]eliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.” *Giglio v. United States*, 405 U.S. 150, 153 (1972) (quotation omitted). “A prosecutor commits misconduct by intentionally misstating evidence,” *State v. Mayhorn*, 720 N.W.2d 776, 788 (Minn. 2006), and by “eliciting inadmissible evidence,” *Ramey*, 721 N.W.2d at 300 (citing *State v. Harris*, 521 N.W.2d 348, 353-54 (Minn. 1994)). A new trial is required if false testimony could, in any reasonable likelihood, have affected the judgment of the jury. *See Napue*, 360 U.S. at 271-72.

Here, the prosecutor stated in opening and closing arguments that the victim was stabbed a total of five times—three times in the stomach, once in the leg, and once in the thumb. The victim’s testimony supported the prosecutor’s statements. While the friend may have provided somewhat conflicting testimony, testimony from the victim is direct evidence of the harm she suffered from the incident. *See State v. Epps*, 949 N.W.2d 474, 487 (Minn. App. 2020) (explaining that witness testimony, including victim testimony, “is considered direct evidence because it is based on personal knowledge or observation and that if true, proves a fact without inference or presumption.” (quotation omitted)), *aff’d* (Minn. Sept. 15, 2021). And because the prosecutor’s arguments to the jury were “based on the evidence produced at trial,” *State v. Porter*, 526 N.W.2d 359, 363 (Minn. 1995), we conclude the state did not err when it described the victim’s wounds during opening and closing arguments. Additionally, “when evidence is admissible under the Minnesota Rules

of Evidence, a prosecutor does not commit misconduct by introducing the evidence at trial.” *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014). Therefore, the prosecutor did not err when they asked the victim about the harm she suffered from the stabbing because the relevant testimony was properly elicited under the rules of evidence. *See* Minn. R. Evid. 401-402.

For these reasons, we conclude the prosecutor did not commit prosecutorial misconduct.

Affirmed.