

STATE OF MINNESOTA

IN SUPREME COURT

A24-1417

A25-1371

Crow Wing County

State of Minnesota,

Respondent,

vs.

Michael Lee LaFlex,

Appellant.

Thissen, J.

Concurring in part, dissenting in part,
McKeig, Moore, III, Hennesy, JJ.

Filed: September 23, 2026
Office of Appellate Courts

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Kelsey A. Hopps, Crow Wing County Attorney, Quinn Hoffman, Assistant County Attorney, Brainerd, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant State Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. The district court did not err when it determined that exigent circumstances justified the warrantless seizure of appellant's cell phone.

2. The district court committed plain error by instructing the jury on the order in which to consider appellant's charges and lesser-included offenses and that the jury

should not consider a lesser-included offense if it found appellant guilty of a greater offense, which, here, affected appellant's substantial rights and must be corrected to ensure the fairness and integrity of the judicial proceedings.

Reversed and remanded.

O P I N I O N

THISSEN, Justice.

Appellant Michael Lee LaFlex appeals his conviction for first-degree premeditated murder, Minn. Stat. § 609.185(a)(1). LaFlex was convicted for the murder of his daughter's boyfriend, Bryce Brogle, who died after LaFlex shot him. LaFlex argues he is entitled to a new trial because the district court erred in denying his motion to suppress evidence obtained following a warrantless seizure of his cell phone. LaFlex also argues that the district court committed reversible error because, after granting LaFlex's request for a first-degree heat-of-passion manslaughter instruction, the court instructed the jury on the order in which it should consider the offenses and that the jury should not consider the lesser-included offense of first-degree heat-of-passion manslaughter if it found LaFlex guilty of first-degree murder. For the reasons stated below, we conclude that the district court did not err in denying LaFlex's motion to suppress, but we conclude that the district court's jury instruction was plain error, the error affected LaFlex's substantial rights because there is a reasonable likelihood that it had a significant effect on the jury's verdict, and the error must be corrected to ensure the fairness and integrity of the judicial proceedings. We therefore reverse LaFlex's conviction and remand to the district court for a new trial.

FACTS

On the afternoon of October 28, 2022, LaFlex's daughter, C.L., entered the Crow Wing County Sheriff's office to report that her boyfriend, Bryce Brogle, was missing. In her initial statement to Investigator Loeffler, C.L. said that the last time she saw Brogle was two days prior when he and LaFlex left LaFlex's house to unload a U-Haul trailer at LaFlex's storage locker. Loeffler contacted his supervisor, Sergeant Downie, and provided the initial details from C.L.'s statement. Downie initiated an investigation and directed Loeffler to obtain a detailed statement from C.L.

Among Downie's first investigatory steps was arranging with cell service companies to "ping" Brogle's cell phone to try to determine its location. Brogle's cell phone pinged in the area of LaFlex's storage locker, which was located approximately a quarter mile from LaFlex's house. Downie drove to the storage locker to investigate.

Meanwhile, Loeffler interviewed C.L. and obtained her detailed statement about the circumstances of Brogle's disappearance. C.L. told Loeffler that, until recently, she and Brogle lived in the state of Washington. Several days before Brogle's disappearance, the couple rented a U-Haul trailer, loaded their possessions, and moved from Washington back to Minnesota. They planned to store their possessions in LaFlex's storage locker.

C.L. told Loeffler that she and Brogle arrived at LaFlex's house around 5:00 p.m. on October 26. When they arrived, LaFlex insisted that C.L. stay behind to shower at her grandmother's house while he and Brogle unloaded the U-Haul. C.L. described LaFlex's insistence that she stay behind as "suspicious." Loeffler asked C.L. if LaFlex and Brogle

“g[o]t along,” and C.L. stated that they “tolerate[d] each other,” but that their relationship was “tense.”

C.L. stated that LaFlex and Brogle left to unload the trailer around 5:30 p.m. Approximately an hour to an hour and a half later, LaFlex returned alone. He appeared “agitated,” “shaky,” and “a little manic.” In her statement to Loeffler, C.L. reported that LaFlex told C.L. that while he and Brogle were inside the storage locker facility unloading the U-Haul, two vehicles that looked like “patrol cars” or “undercover military” pulled up. According to LaFlex, men exited the vehicles wearing “tan gear and black vests,” and had emblems on their uniforms rather than badges. LaFlex told C.L. the men ordered LaFlex and Brogle to the ground and handcuffed them. LaFlex said they read Brogle his rights, placed him into a vehicle, and left.

As Loeffler took C.L.’s statement, Downie investigated the storage locker. During his investigation, dispatch informed Downie that Brogle’s cell phone pings indicated that the cell phone had moved away from the storage locker and was now pinging in the city of Brainerd. Downie contacted Loeffler and learned that LaFlex was at his sister’s house in Brainerd, in the vicinity of Brogle’s pinging cell phone. Downie arranged to meet Loeffler at LaFlex’s sister’s house. They arrived at approximately 5:45 p.m. During a brief interview, LaFlex told the officers that Brogle had been apprehended. Unlike C.L.’s account of what he had told her, LaFlex told the officers that Brogle was apprehended outside the storage facility, after they unloaded the U-Haul.

The officers asked LaFlex if he would show them the storage locker where Brogle was last seen and if he was willing to answer additional questions. LaFlex agreed and

drove to the storage locker where he met Loeffler, Downie, and another investigator at approximately 6:05 p.m. Loeffler asked LaFlex if officers could search the storage unit. LaFlex gave consent and stated that he was expecting to be contacted by law enforcement because C.L. told him she planned to file a missing person report. As Loeffler conducted the search, Downie interviewed LaFlex.

During the course of the interview, LaFlex made a number of potentially incriminating statements. LaFlex repeated that Brogle was apprehended outside the storage facility after they unloaded the U-Haul, which was inconsistent with C.L.'s statement that LaFlex told her the incident occurred within the storage facility while they were unloading the U-Haul. LaFlex also told officers, "I don't care for [Brogle] much." LaFlex explained that Brogle and C.L. lived with him previously, and at that time "there was a lot of verbal abuse toward [C.L.]," and at one point C.L. appeared with "a big bruise on her face." LaFlex stated that he had "messages" on his cell phone demonstrating that Brogle was "nasty" toward him and other family members, and in which LaFlex had told Brogle, "if I ever see another bruise on [C.L.] ... I won't be having words with you." LaFlex attempted to find the messages in his cell phone and told officers that he might have deleted them.

During the interview, Downie briefly walked away and spoke to another investigator on site and learned that Brogle's cell phone was still pinging in Brainerd, and that it had not moved when LaFlex left his sister's house. Approximately 27 minutes into the interview—a bit after 6:30 p.m.—Downie told LaFlex that the officers were tracking Brogle's cell phone and asked LaFlex if he had had anything to do with the cell phone

moving earlier that day. LaFlex denied that he had and volunteered to let the officers search his truck. In a brief search of the truck the officers did not find anything they connected to Brogle's disappearance.

At 6:44 p.m., Downie asked LaFlex if he would consent to a search of his cell phone. LaFlex responded "yeah." Downie then told LaFlex that he was interested in location data on the cell phone and asked LaFlex about where he went after Brogle was apprehended. LaFlex responded that he visited his uncle's house before returning home. Downie asked again if LaFlex had possession of Brogle's cell phone that day.

LaFlex then changed his story. He stated that he had found a cell phone belonging to Brogle in his car after Brogle was arrested. LaFlex told Downie that he had kept the cell phone and that he "just wanted [his] daughter to get away from [Brogle]" and not "keep after him." LaFlex said that he'd had the cell phone with him on his way to his sister's house and that he threw it into a garbage can at a gas station along the way.¹

Although LaFlex had previously consented to a search of his own cell phone, Downie asked for consent again. LaFlex consented again and stated that he would follow the officers to the sheriff's office. Downie stated that, rather than meeting at the office, he needed to take immediate possession of the cell phone to "make sure that you don't do anything to it." LaFlex asked if he should speak to a lawyer. Downie replied that he could

¹ Although LaFlex indicated during the interview that he found a single cell phone belonging to Brogle, upon searching the gas station garbage can law enforcement recovered two cell phones. C.L. told police that the second cell phone also belonged to Brogle, but lacked a service plan, and that Brogle used it for Wi-Fi and to listen to music. Because LaFlex does not dispute the fact of the second cell phone, and the second cell phone does not change our analysis, we refer to Brogle's cell phone in the singular.

not answer that question for LaFlex and stated that, “[W]ith what you’ve told me ... I need to take possession on the phone to make sure nothing gets destroyed.” LaFlex handed Downie the cell phone.

After seizing the cell phone, the officers obtained a warrant to search it. The search revealed location data showing that the night Brogle disappeared LaFlex left the storage locker and drove to a friend’s house, and then to his uncle’s house, before returning to his own house. The data also showed that at around 4:45 a.m. the following morning, the cell phone moved from LaFlex’s house to the storage facility where it remained for around 22 minutes. The cell phone then moved to a piece of wooded public land and remained there from 5:20 a.m. until 6:17 a.m., when it moved back to LaFlex’s house.

Officers searched that wooded location and discovered an area of disturbed dirt. Footage from Loeffler’s body-worn camera suggests that the disturbed dirt was an approximately one-minute walk from the parking area. A team from the Bureau of Criminal Apprehension (BCA) excavated the disturbed area and found Brogle’s body buried approximately three feet deep. The medical examiner determined that Brogle died from a single gunshot wound to his head. LaFlex was arrested and indicted for first-degree premeditated murder and second-degree intentional murder.

Before trial, LaFlex moved to suppress the evidence obtained from his cell phone, arguing that the seizure was unconstitutional. At the suppression hearing, Downie described his investigation and the interview at the storage locker in which LaFlex revealed that he had lied about Brogle’s cell phone and disposed of it in a garbage can. Downie testified that he did not obtain a search warrant before the seizure “[b]ecause the

data on cell phones is easily destroyable,” and that “to prevent the destruction of evidence [he] seized the phone.” Relying on our decision in *State v. Horst*, 880 N.W.2d 24 (Minn. 2016), the district court denied LaFlex’s motion. The district court determined that exigent circumstances justified the seizure because the officers reasonably believed that seizing the cell phone before obtaining a warrant was necessary to prevent the destruction of evidence.

At trial, the State argued that Brogle’s killing was premeditated. The State presented witnesses who testified to hearing LaFlex say he believed that Brogle was abusing C.L. and that he wanted to kill Brogle. Multiple witnesses testified that they heard LaFlex say he knew where to hide a body and that he had already “dug the hole.” LaFlex’s sister testified that LaFlex stored his guns at her house and that he picked one of them up the day that Brogle was killed.

LaFlex testified in his own defense. He admitted that he had shot Brogle and buried him in the woods, but argued that he acted in the heat of passion. LaFlex testified that he insisted C.L. stay home rather than help unload the U-Haul because he was concerned Brogle had abused C.L. He described being unable to reach C.L. by phone when she and Brogle lived out of state because her cell phone was broken in a fight with Brogle and Brogle would not buy her a new one. He testified that he asked for her address in Washington so that he could send her a phone, but that “she wasn’t allowed to tell anybody where [she and Brogle] were at.” He said he wanted to confront Brogle about his concerns, and that he chose the storage locker for the confrontation because he believed the facility had security cameras and he wanted video footage in the event that

Brogle assaulted him. LaFlex testified that when he confronted Brogle at the storage locker Brogle mocked him, stating LaFlex couldn't protect C.L. and that he would "kill C.L. before let[ting] her come back to [her family]." LaFlex said that Brogle was "raising his voice ... with every response," and that after the exchange Brogle went into the storage locker and LaFlex "wasn't sure if [Brogle] was going after a weapon," but he "knew [that Brogle] had an extensive ... collection of knives." LaFlex testified that after Brogle's remarks he was "shocked," "enraged," and was afraid for his life and his daughter's life. LaFlex said that he "looked for anything," saw his gun laying in a bin, loaded it, and shot Brogle. According to his testimony, LaFlex did not "even remember aiming the gun." LaFlex testified that after shooting Brogle he sat down and "cried," and didn't "know where [he] was mentally."

At the close of evidence, the district court granted LaFlex's request for a first-degree heat-of-passion manslaughter instruction. In its instructions to the jury, the district court told the jurors that if they found LaFlex guilty of premeditated murder, they must "bypass" and "ignore" the manslaughter instruction and only consider whether LaFlex was guilty of second-degree intentional murder.

The jury found LaFlex guilty of first-degree premeditated murder and second-degree intentional murder. LaFlex filed a direct appeal, which we stayed to allow him to pursue postconviction relief. In his postconviction petition, LaFlex requested a *Schwartz* hearing.² He asserted that during deliberations, a witness overheard two of the jurors

² "A *Schwartz* hearing is a procedure in which a trial court may investigate alleged juror misconduct by summoning a juror for questioning about the alleged misconduct in

discussing LaFlex's guilt in the parking lot outside the courthouse. The district court denied LaFlex's request for a *Schwartz* hearing and LaFlex appealed. We lifted the stay of his direct appeal and consolidated both appeals for review.³

ANALYSIS

LaFlex challenges the district court's denial of his motion to suppress the evidence obtained after the warrantless seizure of his cell phone, arguing the district court erred when it determined that the seizure was justified by exigent circumstances. LaFlex also argues that the district court committed reversible plain error when it instructed the jury that if it found LaFlex guilty of first-degree premeditated murder it should not consider the lesser-included offense of first-degree heat-of-passion manslaughter.

I.

We first address LaFlex's argument that the district court erred when it determined that exigent circumstances justified the officers' warrantless seizure of his cell phone. We begin with a discussion of the relevant law, including our decision in *Horst*, which the district court relied on in upholding the seizure. We then consider the merits of LaFlex's claim.

the presence of counsel for both parties.” *Martin v. State*, 969 N.W.2d 361, 363 n.1 (Minn. 2022).

³ Because we reverse LaFlex's conviction and remand for a new trial, we need not address LaFlex's request for a *Schwartz* hearing.

A.

The United States and Minnesota Constitutions protect a person's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless seizure is presumptively unreasonable, but that presumption may be overcome if the seizure falls within a recognized exception to the warrant requirement. *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015) (citing *Missouri v. McNeely*, 569 U.S. 141, 148 (2013)).

“One well-recognized exception to the warrant requirement applies when ‘the exigencies of the situation make the needs of law enforcement so compelling that the warrantless [seizure] is objectively reasonable under the Fourth Amendment.’ ” *Id.* (quoting *Mincey v. Arizona*, 437 U.S. 385, 394 (1978)); *see also Michigan v. Tyler*, 436 U.S. 499, 509 (1978) (stating that exigent circumstances may exist when “there is compelling need for official action and no time to secure a warrant”). Such exigent circumstances may exist when “the delay necessary to obtain a warrant would significantly undermine the efficacy of the search,” *Stavish*, 868 N.W.2d at 677, or would “result in the loss or destruction of the evidence,” *State v. Richards*, 552 N.W.2d 197, 203 (Minn. 1996). *See also Kentucky v. King*, 563 U.S. 452, 460 (2011) (“[T]he need ‘to prevent the imminent destruction of evidence’ has long been recognized as a sufficient justification for a warrantless search.” (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006))).

In determining whether a warrantless seizure of LaFlex's cell phone was lawful, we consider the totality of the circumstances and conduct an “objective evaluation of the

facts reasonably available to the officer at the time of the [seizure].” *Stavish*, 868 N.W.2d at 675. Our analysis includes whether probable cause supported the underlying seizure and whether it was objectively reasonable for the officer to conclude that exigent circumstances justified acting without a warrant. *See id.* at 676–77, 677 n.1. We also consider the duration and extent of the intrusion. *See Horst*, 880 N.W.2d at 34 (stating that the seizure of a cell phone for one day until officers could obtain a warrant supported the conclusion that the seizure was reasonable); *Illinois v. McArthur*, 531 U.S. 326, 331 (2001) (explaining that courts must “balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable”).

In *Horst*, we concluded that exigent circumstances justified the warrantless seizure of a cell phone under circumstances similar to those presented here. 880 N.W.2d at 34. In that case, police investigating Horst’s husband’s murder conducted non-custodial interviews with Horst and Horst’s acquaintance, A.P. *Id.* at 35. In separate interviews, Horst and A.P. told investigators their versions of events on the night of the murder. *Id.* Horst also discussed with an investigator the text messages and cell phone calls she exchanged with A.P. and the victim that night. *Id.* at 33. During a break in the interviews, the investigators compared Horst’s and A.P.’s accounts and discovered discrepancies that caused the investigators to suspect that Horst was involved in her husband’s murder. *Id.* at 35. Before concluding his interview with Horst—and concerned that Horst would destroy evidence contained in her cell phone—an investigator seized Horst’s cell phone without first obtaining a warrant. *Id.* at 33–34.

On appeal, Horst argued that no exigency justified the seizure because the officers had sufficient time to obtain a warrant. *Id.* at 34. We upheld the seizure. *Id.* at 35. We concluded that the discrepancies in Horst’s story, and the fact that she discussed texts and calls that she exchanged with the victim the night he died in her interview, provided probable cause for officers to believe that Horst’s cell phone contained evidence of a crime. *Id.* at 34. We further concluded that because Horst was not in custody when officers obtained probable cause regarding the cell phone, the officers did not know when or if she would leave the police station and destroy any evidence in her cell phone. *Id.* at 35. For these reasons, we found that officers acted reasonably in seizing Horst’s cell phone while they obtained a warrant to search it. *Id.*

B.

We now turn to LaFlex’s claim that the district court erred in denying his motion to suppress his cell phone location evidence and the fruits of that evidence. When reviewing the denial of a pretrial motion to suppress evidence, “we review the district court’s factual findings for clear error.” *State v. Chute*, 908 N.W.2d 578, 583 (Minn. 2018). But we review the district court’s legal determinations, and therefore its ultimate determination of exigency, de novo. *Stavish*, 868 N.W.2d at 677. We conclude that here, as in *Horst*, exigent circumstances justified the warrantless seizure of LaFlex’s cell phone.

First, LaFlex does not dispute the district court’s finding that officers had probable cause to seize his cell phone.⁴ On the contrary, as we discuss below, LaFlex’s challenge to the district court’s order denying his motion to suppress is premised on his assertion that officers had probable cause long before the interview that culminated in the seizure, and therefore had sufficient time to obtain a warrant.

Second, the record shows that it was objectively reasonable for officers to conclude that delaying the seizure of the cell phone to obtain a warrant risked LaFlex destroying evidence. *See id.* at 676–77. It is undisputed that LaFlex attempted to mislead officers by initially denying that he possessed Brogle’s cell phone. But LaFlex eventually admitted to possessing Brogle’s phone and throwing it into a garbage can. Although LaFlex denied that he disposed of the cell phone to hide it from law enforcement, officers had reason to believe that may not have been accurate. LaFlex stated at the beginning of his interview that C.L. told him that she planned to file a missing person report and that he “figured sometime if not today, tomorrow you guys will be talking with me.” Given the information available to officers at the time, including that LaFlex was aware C.L. planned to file a report and that LaFlex disposed of the cell phone around the time she made the report, a reasonable officer could have concluded that LaFlex attempted to destroy evidence when he threw the cell phone in the garbage can.

⁴ Probable cause requires a “ ‘fair probability that contraband or evidence of a crime will be found in a particular place.’ ” *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)).

Furthermore, before seizing LaFlex's cell phone, Downie asked for LaFlex's consent to search it and, in doing so, explained that he was interested in the cell phone's location data showing where LaFlex was the night Brogle disappeared. During the exchange, LaFlex acknowledged that he had his own cell phone with him that night. Downie therefore knew that if LaFlex had been involved in Brogle's disappearance, LaFlex's cell phone would likely contain information valuable to the investigation. It was at this point that LaFlex changed his story and admitted that he had Brogle's cell phone earlier that day and that he disposed of it. Downie knew, then, that LaFlex was aware that law enforcement was interested in potential evidence in LaFlex's cell phone and that LaFlex had already attempted to dispose of evidence that evening. Based on these facts, which LaFlex does not dispute, a reasonable officer could have concluded that LaFlex might attempt to destroy evidence in his cell phone if not prevented from doing so.

Third, the nature and duration of the seizure was reasonable. *See Horst*, 880 N.W.2d at 34. The officers in this case chose to seize LaFlex's cell phone until they obtained a warrant, rather than arresting him or searching his cell phone without a warrant. *See McArthur*, 531 U.S. at 332 (stating that police, who possessed probable cause that McArthur's home contained unlawful drugs and had "good reason to fear" that McArthur would destroy the drugs, "made reasonable efforts to reconcile their law enforcement needs with the demands of personal privacy" by preventing McArthur from entering his home unaccompanied until a warrant was issued, rather than arresting him or conducting a warrantless search). After seizing the cell phone, the officers promptly applied for a warrant and did not search the phone until they received a warrant. This

supports the conclusion that the officers seized the cell phone “no longer than reasonably necessary ... to obtain the warrant.” *Id.*; *see also Horst*, 880 N.W.2d at 34 (concluding that a one-day seizure to permit the investigator time to obtain a warrant was a “ ‘limited period of time’ ” (quoting *McArthur*, 531 U.S. at 331)).

Finally, we assess whether the officers had time to obtain a warrant before seizing LaFlex’s cell phone without risking destruction of the evidence. *Cf. Stavish*, 868 N.W.2d at 675 (noting, in the context of a warrantless search, that “[e]xigent circumstances ... may exist when ‘there is compelling need for official action *and no time to secure a warrant.*’ ” (emphasis added) (quoting *Tyler*, 436 U.S. at 509)). LaFlex argues that no exigency justified the seizure because the officers had time to obtain a warrant between their first contact with LaFlex at his sister’s house and the moment of seizing the cell phone.

LaFlex contends that officers considered him a suspect early in their investigation and planned throughout the investigation to search his cell phone, therefore, they had hours in which to obtain a warrant. LaFlex points to Downie’s testimony at the suppression hearing where he stated that he considered LaFlex a “person of interest” early in the investigation and that “collect[ing] data”—including cell phone location data—is an investigatory technique in missing person cases. Given this testimony, LaFlex compares his case to *State v. Olson*, 436 N.W.2d 92 (Minn. 1989), *aff’d*, 495 U.S. 91 (1990), and *In re D.A.G.*, 484 N.W.2d 787 (Minn. 1992).

In *Olson*, a detective investigating a murder received information that a suspect in the case stayed at a particular house. 436 N.W.2d at 93–94. The detective issued a

“probable cause arrest bulletin” for the suspect but did not seek a warrant. *Id.* at 98.

Approximately one hour later, the detective learned that the suspect was in the home and directed police to enter, without a warrant, and arrest him. *Id.* We concluded that no exigency justified the entry, in part because police made no effort to obtain a warrant in the hour between the probable cause to arrest bulletin and the warrantless entry. *Id.*

In *D.A.G.*, police received information about a house that contained a large quantity of drugs. 484 N.W.2d at 788. Over an hour later, they conducted a warrantless search of the house. *Id.* at 791. We concluded that no exigency justified the search in part because police made no attempt to obtain a warrant before the search. *Id.* at 791–92.

In both *Olson* and *D.A.G.*, we concluded that exigent circumstances did not justify warrantless searches or seizures where the records showed that police determined a search or seizure was necessary but made no effort to obtain warrants for an hour before acting without them. *See Tyler*, 436 U.S. at 509 (stating that exigent circumstances may exist when “there is compelling need for official action *and no time to secure a warrant*” (emphasis added)).

Unlike *Olson* and *D.A.G.*, the record here does not support LaFlex’s claim that Downie considered him a suspect early in the investigation or that the officers determined before the interview at the storage facility that they needed to search LaFlex’s cell phone. Downie testified that after learning of C.L.’s missing person report he considered LaFlex a “person of interest,” but he explained that this was because the last person to see someone alive—in this case, LaFlex—is “usually ... a person of interest.” He further

testified that although he believed Brogle may have been murdered or was being held against his will, he did not have any suspects.

Nor is there any support in the record for LaFlex's claim that the officers planned all along to seize his cell phone. LaFlex relies on *Coolidge v. New Hampshire*, a case where the United States Supreme Court concluded that "there was no 'exigent circumstance' to justify the[] failure to obtain a warrant" to search an automobile because "police knew of the presence of the automobile and planned all along to seize it." 403 U.S. 443, 478 (1971). LaFlex compares his case to *Coolidge* based on Downie's testimony describing his discussion with LaFlex near the end of the storage locker interview:

I explained to Mr. LaFlex that this was a missing person investigation and that one of the things that we do in missing person investigations is we try to collect evidence and collect data. That one of those things would be his phone. I asked if he would be willing to consent to us [searching] that phone.

But this testimony does not show that the officers "planned all along" to seize LaFlex's cell phone. *See id.* Rather, this testimony—that officers investigating a missing person "try to collect evidence and collect data"—is no more than a general description of routine, lawful investigatory steps. The fact that Downie was interested in the data in LaFlex's cell phone is consistent with that general practice, particularly because LaFlex was considered a person of interest. But Downie's interest in LaFlex's cell phone data is not akin to the "probable cause arrest bulletin" issued in *Olson*.

Next, LaFlex argues that there was no exigency because officers discovered discrepancies in his story when they briefly spoke to him at his sister's house *before* the

interview that culminated in the seizure of his cell phone, and the officers could have attempted to obtain a warrant at that time. During the interview at his sister's house, LaFlex told officers that Brogle was apprehended after he and Brogle left the storage facility, which was inconsistent with C.L.'s statement that LaFlex described the apprehension as occurring inside the storage facility. LaFlex contrasts this with *Horst*, where investigators discovered discrepancies in Horst's story *during* the interview that culminated in the seizure of her cell phone.

We did not establish in *Horst* that inconsistent statements on their own constitute an exigency justifying a warrantless search or seizure. On the contrary, we reiterated that exigent circumstances require a "case-by-case analysis," and that, in reviewing warrantless conduct by law enforcement, "we look at the totality of the circumstances." *Horst*, 880 N.W.2d at 33, 34 (citing *McNeely*, 569 U.S. at 149, 152). Accordingly, our decision in *Horst* did not, as LaFlex suggests, turn solely on the investigator's discovery of discrepancies in Horst's story. Among other things, we noted that the exigency arose because "the investigator did not have reason to believe that Horst's cellphone contained evidence of a crime until after he discovered discrepancies in Horst's story *and the interview had progressed to a discussion of Horst's texts and calls.*" *Horst*, 880 N.W.2d at 35 (emphasis added). We further noted that the discrepancies in Horst's story made it "apparent that 'something was being omitted' and that Horst was not 'being completely forthcoming.'" *Id.*

Here, the discrepancy LaFlex points to is the initial discrepancy between his firsthand account of Brogle's alleged apprehension and C.L.'s secondhand recounting of

what LaFlex told her. But at the time LaFlex gave this account to the officer at his sister's house, officers were not yet aware that LaFlex had Brogle's cell phone earlier that day, that he had attempted to dispose of it by throwing it in the garbage, or of the extent and nature of the animosity between LaFlex and Brogle. Finally, the officer's interaction with LaFlex happened in the field in an evolving situation. These facts, taken together, make the officer's brief interaction with LaFlex at his sister's house distinguishable from *Horst*.

Finally, LaFlex argues that the officers had time to obtain a warrant because Minnesota Rule of Criminal Procedure 36.01 (2024) permits officers to request search warrants telephonically or via electronic submission.⁵ We addressed this same argument in *Horst*, where we observed that although technological innovations permit officers to obtain warrants more quickly, “ ‘[w]arrants inevitably take some time for police officers or prosecutors to complete and for ... judges to review.’ ” *Horst*, 880 N.W.2d at 35 (alterations in original) (quoting *McNeely*, 569 U.S. at 155). We rejected Horst's argument for the following reason:

Even though Minnesota permits oral testimony in support of a warrant, Minn. R. Crim. P. 36.03 requires the preparation of a “duplicate original warrant.” To secure a warrant while Horst was in the interview room, Rule 36 would

⁵ Minnesota Rule of Criminal Procedure 36.01 in effect at the time officers seized LaFlex's phone provided that, “[a] request for a search warrant may be made, in whole or in part, on sworn oral testimony, to a judge,” and that “[o]ral testimony may be presented via telephone, radio, or other similar means of communication. Written submissions may be presented by facsimile or electronic transmission, or by other appropriate means.” Minn. R. Crim. P. 36.01 (2025) (amended Feb. 12, 2026). Effective July 1, 2026, the words “or other electronic” replaced “radio, or other similar.” Order Promulgating Amendments to the General Rules of Practice for the District Courts, Rules of Criminal Procedure, and Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act, Nos. ADM09-8009, ADM10-8046, ADM10-8049, Order at 9 (Minn. filed Feb. 12, 2026).

have required the investigator to interrupt the interview, draft a warrant application, and then call the judge to provide oral testimony, all the while hoping that Horst remained in the unlocked conference room. The judge may have then taken time to consider the application. Each of these steps risked destruction of the evidence on the cellphone, which was in Horst's possession at the time.

Id. The same is true in this case, and the risk of LaFlex terminating the interview and destroying the evidence was arguably more substantial than in *Horst* because LaFlex knew that officers were interested in his cell phone, and why, when Horst did not.

We conclude that, under the circumstances, the officers did not have time to obtain a warrant without risking the destruction of the evidence contained on LaFlex's cell phone. Even assuming one of the officers on scene could have applied for a warrant from their location at the storage facility, the process still would have required that they draft a warrant and apply for the warrant in writing or by oral testimony, and that a judge then consider whether to grant the warrant. *See generally* Minn. R. Crim. P. 3, 36, 37 (setting forth the requirements and processes to obtain a warrant).

Here, LaFlex was not in custody when he made the admissions that provided officers with reason to believe that his cell phone contained evidence of a crime. The officers therefore did not know if or when LaFlex would terminate their interview and leave the storage facility. Had LaFlex terminated the interview and left, he could have quickly erased evidence on his cell phone or destroyed the cell phone altogether. Under these circumstances, the officers' temporary seizure of LaFlex's cell phone, to prevent LaFlex from destroying evidence while they obtained a warrant, was reasonable.

Accordingly, we conclude that the district court did not err in denying LaFlex's motion to suppress.⁶

II.

We next turn to LaFlex's claim that the district court's erroneous jury instructions warrant reversal of his conviction and remand for a new trial. LaFlex argues that the district court erred by instructing the jury on the order in which jurors should consider the charges and lesser-included offenses and by instructing the jury that it should not consider a lesser-included offense if it found the defendant guilty of a greater offense. LaFlex's argument is based both on the district court's instructions to the jury and its response to a question jurors raised during deliberations.

After instructing the jury on the elements of the first count—first-degree premeditated murder—the district court instructed the jury as follows:

If you find the defendant guilty of count one, murder in the first degree, premeditated bypass the section manslaughter in the first degree, heat of passion and go onto to [sic] count two, murder in the second degree, intentional.

The district court reiterated this point later, telling jurors:

If you find that the State has failed to prove beyond a reasonable doubt that the defendant is guilty of the crime of count one, first degree murder,

⁶ The State also argues that the seizure was constitutional under the plain-view exception to the warrant requirement. The State did not raise this issue in district court, and we decline to consider it. *See Steward v. State*, 950 N.W.2d 750, 756 (Minn. 2020) (“An issue is not properly before our court when it is raised ‘[f]or the first time in [a party’s] brief to our court.’ ” (alterations in original) (quoting *State v. Campbell*, 814 N.W.2d 1, 4 n.4 (Minn. 2012))). Nor do we need to reach the issue because of our resolution of the case.

premeditated, only then should you consider the below, manslaughter in the first degree, heat of passion verdict form.

The district court's written jury instructions similarly provided the following:

If you find the defendant guilty of Count 1: Murder in the First Degree – Premeditated, bypass the next section, Manslaughter in the First Degree - Heat of Passion, and go onto to Count 2: Murder in the Second Degree - Intentional. If you find the defendant not guilty of Count 1: Murder in the First Degree – Premeditated go on to the following: [Manslaughter in the First Degree - Heat of Passion.]

During deliberations, the jury submitted a note to the district court asking: “[C]an a person be convicted of all three of these verdicts or does one verdict get an auto not guilty if one of them is yes guilty?” The district court told jurors:

[Y]ou were instructed that you are to determine on count one, murder in the first degree, premeditated, whether you were gonna find the defendant guilty or not guilty. In the event that you find the defendant guilty you are not to address manslaughter in the first degree, heat of passion. That would mean you would not fill out the verdict forms for manslaughter first degree heat of passion.

....

[I]f you find [the defendant] guilty in the first-degree premeditated, bypass, ignore, do not fill out the verdict form regarding manslaughter in the first degree. You need to address guilty or not guilty on the verdict form for murder in the second degree.

If you find the defendant not guilty of first-degree premeditated murder then you are to fill out a not guilty verdict with respect to that if you are making that finding.

...

[T]hen you would assess guilty or not guilty on the verdict forms regarding manslaughter in the first degree and murder in the second degree.

Because LaFlex did not object to the jury instructions at trial, we review his argument for plain error. *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012).

Under the plain-error doctrine, LaFlex must establish (1) an error, (2) that is plain, and (3) that affects his substantial rights. *Pulczynski v. State*, 972 N.W.2d 347, 356 (Minn. 2022). If LaFlex meets this burden, we may correct the error only if it “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.*⁷

A.

Before we assess whether LaFlex is entitled to relief under the plain-error doctrine, we summarize our cases addressing jury instructions that direct the jury on the order in which jurors should consider the charges and lesser-included offenses, and our cases addressing jury instructions that tell the jury that it should not consider a lesser-included offense if it finds the defendant guilty of a greater offense.

⁷ The dissent asserts that the error in this case is “invited error” and so immediately proceeds to the question of whether the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. While our precedent is unclear as to whether the plain-error test applies to so-called invited error, *see Pulczynski*, 972 N.W.2d at 360 n.10, our precedent *is* clear that we refrain from providing relief from any unobjected-to error—whether characterized as “invited error” or not—unless the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. In other words, whether an unobjected-to error seriously affected the fairness, integrity, or public reputation of judicial proceedings must be addressed whether the defendant simply failed to object to the error or affirmatively acted to invite the error. *See id.* Because we disagree with the dissent’s conclusion that the error did not significantly affect the fairness, integrity, or public reputation of judicial proceedings, we need not resolve whether the plain-error test applies to invited error here. We observe, however, the peculiarity of a rule that would require a defendant to jump through more hoops to obtain relief from an unobjected-to-but-not-invited error (the first three prongs of the plain-error test) than it does for a defendant to obtain relief from an error the defendant affirmatively invited. As we discuss below, the “invited” nature of an error—which falls along a spectrum—is a consideration in whether the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See State v. Sullivan*, 35 N.W.3d 387, 397 (Minn. 2026) (determining that an error did not seriously affect the fairness, integrity, or public reputation of judicial proceedings because the error was a problem the defendant affirmatively created to serve his own interests).

In *State v. Dahlstrom*, 150 N.W.2d 53, 61 (Minn. 1967), the district court’s jury instructions included a “suggested procedure.” The district court suggested that the jury “decide whether [the] defendant was guilty of attempted murder in the second degree; if not, whether he was guilty of attempted murder in the third degree; if not, whether he was guilty of attempted manslaughter in the first degree” *Id.* Although we found no prejudicial error on the specific facts of the case, we stated that “it is important that the trial judge should not in any way impose his views as to the order of procedure to be followed by the jurors in their decision of the case.” *Id.*

In *State v. Prtine*, 784 N.W.2d 303, 316 (Minn. 2010), the district court’s jury instructions described the elements of each of the charges and lesser-included offenses. During deliberations, the jury asked the district court, “If we agree on a higher charge, do we need to rule on the lesser charges? Do we have to vote on all of the charges? Example: So if we ruled on first degree murder, we wouldn’t rule on second degree murder?” *Id.* at 316–17. The district court responded that the jury should “proceed ‘down the line’ until it arrived at a guilty verdict and after arriving at a guilty verdict it was not required to consider the remaining offenses.” *Id.* at 317. We held that instructing the jury to “proceed down the line” was error because it suggested the order in which the jury should consider the charges. *Id.* We explained that “[c]onsideration of both the greater- and lesser-included crimes is important because it may cause the jury to evaluate the evidence differently with regard to an essential element.” *Id.* at 316.

In *State v. Davis*, 864 N.W.2d 171, 179 (Minn. 2015), the district court instructed the jury on the charged offense and lesser-included offenses. The instructions told the

jury that if it found the defendant guilty of the charged offense, the jury “need not consider ... the lesser offenses.” *Id.* We held that the district court erred. *Id.* In reaching our decision, we noted that the district court did not instruct the jury to proceed “down the line.” *Id.* But we reasoned that the jury “easily could have interpreted instructions that it ‘need not consider’ lesser offenses to mean that it should consider the most serious charge first,” or that “if it found the defendant guilty of the most serious charge, it need not continue its deliberations.” *Id.*

Most recently, in *State v. Woodard*, 942 N.W.2d 137, 144 (Minn. 2020), the district court instructed the jury to “only consider murder in the second degree if there’s a not guilty finding on murder in the first degree.” Consistent with our precedents, we concluded that the district court committed plain error. *Id.*

In summary, our case law establishes that a district court should neither suggest that the jury consider the charges against a defendant, including lesser-included offenses, in a particular order, nor tell the jury that it should not consider a lesser-included offense if it finds the defendant guilty of a greater charge. We have explained that this is erroneous because it constrains the jury as to the order in which it considers the charges when, in practice, considering one charge against another may result in the jury evaluating evidence on an essential element of a charged crime differently.

We are not alone in adopting these rules prohibiting what are sometimes known as “acquittal first” or “hard transition” instructions. *See State v. Finneman*, 916 N.W.2d 619, 624 (N.D. 2018) (describing an “acquittal first” instruction as “requir[ing] an acquittal of the offense charged before consideration of lesser-included offenses” (citation omitted))

(internal quotation marks omitted)); *Com v. Roth*, 776 N.E.2d 437, 449 n.14 (Mass. 2002) (stating that a “ ‘hard transition’ ” instruction “requires the jury to reach a genuine ‘verdict’ on the offense as charged before considering any other level of offense”). Some of these decisions from other jurisdictions further highlight the risks acquittal first instructions pose. In *Jones v. United States*, 544 A.2d 1250, 1253 (D.C. 1988), the court noted that an acquittal first instruction “favor[s] conviction of the greater offense” because “[j]urors favoring the lesser offense, unless they can dissuade those favoring the greater, must either hold out until a mistrial is declared because of the deadlock or surrender their opinions and vote for the greater offense.”⁸ In *People v. Hurst*, 238 N.W.2d 6, 10 (Mich. 1976), the court reasoned that requiring jurors to unanimously acquit a defendant of the charged offense before considering a lesser offense interferes with a jury’s deliberations because “even if the jurors were 11 to 1 for acquittal and a significant number of jurors desired to discuss the possibility of convicting the defendant of a lesser offense, consideration of a lesser offense could not begin unless the one juror

⁸ We have recognized a similar concern in cases where a district court refuses to instruct the jury on a “merited” lesser-included offense. We recognize that a defendant suffers prejudice from such a refusal to instruct because the jury is “given what amounts to a Hobson’s choice between the higher offense or nothing.” *State v. Harris*, 713 N.W.2d 844, 850 (Minn. 2006) (citation omitted) (internal quotation marks omitted). We explained that “ ‘[w]here one of the elements of the offense charged remains in doubt, but the defendant is plainly guilty of *some* offense, the jury is likely to resolve its doubts in favor of conviction,’ rather than let the defendant go free entirely.” *Id.* (alteration in original) (quoting *Keeble v. United States*, 412 U.S. 205, 212–13 (1973)). In LaFlex’s case, a juror who believed LaFlex was guilty of a crime but who doubted an element of premeditated murder might resolve those doubts in favor of conviction if the juror was uncertain that all other jurors could agree to a guilty verdict on a lesser charge.

holding out for conviction were dissuaded from that view.” We agree that these are serious concerns.

B.

Against this legal background, we first consider whether the district court erred when it instructed the jury as it did. As discussed above, we have held that a district court errs when it suggests to a jury the order in which it should consider a defendant’s charges and lesser-included offenses and tells the jury that it should not consider a lesser-included offense if it finds the defendant guilty of a greater offense. *Prtine*, 784 N.W.2d at 316; *Davis*, 864 N.W.2d at 179. Here, the district court instructed the jury to find LaFlex guilty or not guilty as to first-degree premeditated murder, to proceed to consider whether he was guilty or not guilty of first-degree heat-of-passion manslaughter only if it found he was not guilty of first-degree premeditated murder, and to proceed to consider whether he was guilty of second-degree intentional murder only after determining whether he was guilty of first-degree premeditated murder. Because this instruction directed the jury to consider the offenses in a particular order and not to consider the lesser-included offense of first-degree heat-of-passion manslaughter if it found LaFlex guilty of first-degree premeditated murder, we conclude that giving this instruction was error.

C.

Next, we must determine whether the error was plain. An error is plain if it is “clear or obvious,” meaning the error “contravenes case law, a rule, or a standard of conduct.” *Prtine*, 784 N.W.2d at 314 (citation omitted) (internal quotation marks omitted).

In *Prtime*, we held that it is error “for a district court to suggest the order in which the jury should consider the charges” against a defendant. *Id.* at 316. In *Davis*, we held it is error to instruct a jury that if it finds a defendant guilty of the greater charge it “need not consider” other charged offenses and lesser-included offenses. 864 N.W.2d at 179. And in *Woodard*, we held that such an instruction is “an error that is plain.” 942 N.W.2d at 144. Because the district court’s instruction in this case “contravenes [our] case law,” we likewise conclude the error was plain. *Prtime*, 784 N.W.2d at 314.

The State makes several arguments that the jury-instruction errors were not plain. First, the State argues that the instruction was not plain error because the district court did not specifically instruct the jury to proceed “down the line.” This argument ignores that in *Davis* we concluded that the instruction was error because the instruction “*reasonably could be construed* as suggesting an order in which the jury should consider the charges.” *Davis*, 864 N.W.2d at 179 (emphasis added). The same is true for the instructions given in this case.

Second, the State attempts to distinguish this case from *Davis* and *Woodard* because, in those cases, the jury was instructed not to consider *any* lesser offenses if it found the defendant guilty of the greater offense, but here the jury was instructed that if it found LaFlex guilty of the greater offense it must still consider at least one other offense (second-degree intentional murder). In *Prtime*, *Davis*, and *Woodard*, however, we said that considering both the greater- and lesser-included offenses is important because it may cause the jury to evaluate the evidence differently with regard to an essential element. *See Prtime*, 784 N.W.2d at 316; *Davis*, 864 N.W.2d at 179; *Woodard*, 942 N.W.2d at 144. In

other words, our concern is that instructing a jury not to consider lesser-included offenses depending on its resolution of other offenses changes the lens through which the jury considers the evidence. That concern exists whether the jury is instructed not to consider any lesser-included offenses or to consider only some lesser-included offenses and not others. And here, the lesser-included offense specifically at issue—first-degree heat-of-passion manslaughter—was the cornerstone of LaFlex’s defense.

Third, the State points to Minnesota Statutes section 631.14, which provides, in relevant part:

Upon an indictment or complaint for murder, *if* the jury finds the defendant not guilty, it may, upon the same indictment or complaint, find the defendant guilty of manslaughter in any degree.

(Emphasis added.) The State interprets this statute to mean that a “jury’s authority to find the defendant guilty of manslaughter is dependent upon them first finding the defendant not guilty of murder.” The State, however, is stretching the statute beyond its intended subject. Section 631.14 concerns a jury’s *authority to find a defendant guilty* of charged greater and lesser offenses. LaFlex does not question this authority. The issue he raises is, instead, whether the district court instructed the jury to properly *consider* those offenses—an issue which the statute does not address.

Finally, the State argues that the district court did not plainly err in instructing the jury as it did because the instructions were necessary to prevent the jury from reaching legally inconsistent verdicts of guilty on both the charge of first-degree premeditated murder and the charge of heat-of-passion manslaughter. *See Phillips v. State*, 7 N.W.3d 577, 581 (Minn. 2024) (stating that the dissimilar mental states required to commit

premeditated murder and heat-of-passion manslaughter “cannot coexist” (citation omitted) (internal quotation marks omitted)); *Tichich v. State*, 4 N.W.3d 114, 122 (Minn. 2024) (“Verdicts are legally inconsistent when proof of the elements of one offense negates a necessary element of another offense.” (citation omitted) (internal quotation marks omitted)). The State is slicing the plain-error onion too thinly.

First, the State does not explain why permitting an acquittal-first jury instruction is the only mechanism to avoid legally inconsistent verdicts; we do not believe it is the only mechanism. Further, our prohibition on jury instructions that direct a jury to consider the charges against a defendant, including lesser-included offenses, in a particular order, and our prohibition against telling the jury that it should not consider a lesser-included offense if it finds the defendant guilty of a more serious charge is long-standing, clear, and founded on important policy considerations. The considerations apply with equal strength when the elements of the charges at issue carry the potential for legally inconsistent verdicts. We have not recognized exceptions to the rule that a district court not instruct a jury on the order in which to consider offenses or that it need not consider certain offenses. We conclude that the district court plainly erred.

D.

Because the district court’s jury instructions constituted plain error, we must determine whether LaFlex has met his burden to show that the error affected his substantial rights. *See State v. Johnson*, 915 N.W.2d 740, 746 (Minn. 2018). An erroneous jury instruction affects a defendant’s substantial rights if “ ‘there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury

verdict.’ ” *Id.* (quoting *State v. Gomez*, 721 N.W.2d 871, 880 (Minn. 2006)). To make this determination, we consider all relevant factors. When the error is an instruction that directs a jury to consider the charges against a defendant, including lesser-included offenses, in a particular order, or tells the jury that it should not consider a lesser-included offense if it finds the defendant guilty of a greater charge, those factors include considering whether a rational jury, based on the evidence adduced at trial, could have acquitted the defendant of the greater charge and convicted the defendant of the lesser charge. *See Woodard*, 942 N.W.2d at 144–45 (“A jury instruction that erroneously directs the jury to consider the more serious charge first does not have a significant effect on the verdict if no rational jury would have acquitted the defendant of the more serious charge based on the evidence at trial.”); *State v. Davenport*, 947 N.W.2d 251, 262 (Minn. 2020) (observing that the question of harmfulness must be tailored to the nature of the error). For instance, in *State v. Huber*, 877 N.W.2d 519, 526–27 (Minn. 2016), we concluded that an erroneous jury-instruction error affected the defendant’s substantial rights because the State’s evidence was not “overwhelming,” and there was evidence in the record that, if believed by the jury, supported his theory of defense. In *Prtine*, we determined that where there was “no evidence adduced to support acquitting of the greater charge and convicting of the lesser charge” and “uncontroverted evidence” supported conviction of the greater charge, the defendant’s substantial rights were not affected. 784 N.W.2d at 317.

We first consider whether LaFlex introduced evidence that, if accepted by the jury, would have supported a heat-of-passion manslaughter conviction. Consistent with the

pattern jury instruction, the district court instructed the jury that a heat of passion is “provoked by words or acts such as would provoke a person of ordinary self-control under like circumstances.... The heat of passion may cloud ... a person’s reason or weaken will-power” *See* 10 Minn. Dist. Judges Ass’n, *Minnesota Practice—Jury Instruction Guides, Criminal*, CRIMJIG 7.17 (7th ed. 2024).

LaFlex testified that when he confronted Brogle at the storage locker about abusing C.L., Brogle mocked him, stating that he would “kill [C.L.] before ... [letting] her come back to [her family]” and that LaFlex couldn’t protect her. According to LaFlex, Brogle “rais[ed] his voice ... with every response.” LaFlex testified that he was “shocked,” felt “enraged,” and was afraid for his and C.L.’s lives. LaFlex said that after the exchange, Brogle went into the storage locker and LaFlex “wasn’t sure if [Brogle] was going after a weapon,” but he “knew [Brogle] had an extensive ... collection of knives.” LaFlex told the jury that he “looked for anything,” saw his gun lying in a bin, loaded it, and shot Brogle. He testified that he did not remember aiming the gun when he fired it.

We also note that the district court granted LaFlex’s request to give a heat-of-passion instruction. In doing so, the district court recognized that the evidence at trial provided a rational basis for acquitting the defendant of one charged offense and a rational basis for convicting him of a lesser-included offense. *See State v. Cruz*, 997 N.W.2d 537, 553 (Minn. 2023) (stating the circumstances under which a district court must give a lesser-included-offense instruction); *State v. Lopez*, 988 N.W.2d 107, 123–24 (Minn. 2023) (same).

Based on this record, we conclude that a rational jury could have found that LaFlex acted in the heat of passion. His testimony indicated he was provoked by Brogle's words and acts, and he described a mental state of clouded reason and weakened willpower. His description of the shooting was not precluded by the evidence in this case.

Because we conclude that there is sufficient evidence for a rational jury to convict LaFlex of heat-of-passion manslaughter, we assess whether the evidence of premeditation was so overwhelming or incontrovertible such that no reasonable jury, even after hearing the evidence supporting a heat-of-passion narrative, would find LaFlex not guilty of premeditated murder but guilty of heat-of-passion manslaughter. *See Woodard*, 942 N.W.2d at 144–45. Consistent with CRIMJIG 7.01, the district court instructed the jury that premeditation means:

[T]he defendant considered, planned, prepared for, or determined to commit an act before the defendant committed it. Premeditation being a process of the mind is wholly subjective and hence not always susceptible to proof by direct evidence. It may be inferred from all of the circumstances surrounding the event. It is not necessary for premeditation to exist for a specific length of time. While premeditation requires no specific period of time for deliberation, some amount of time must pass between the formation of the intent and the carrying out of the act. A premeditated decision to kill may be reached in a short period of time. However, an []unconsidered or rash impulse even though it includes an intent to kill is not premeditated.

See 10 Minn. Dist. Judges Ass'n, *Minnesota Practice—Jury Instruction Guides, Criminal*, CRIMJIG 7.01 (7th ed. 2024).

The State introduced substantial evidence supporting its claim that LaFlex acted with premeditation when he killed Brogle, but we conclude it was not incontrovertible or overwhelming. For instance, LaFlex's brother and multiple acquaintances testified to

hearing LaFlex express concern that Brogle was abusing C.L. and a desire to hurt Brogle. Multiple witnesses testified that LaFlex said he “already dug the hole or was going to,” and “knew where to dispose of the body.” This testimony supports an inference of premeditation. *See, e.g., State v. Kendell*, 723 N.W.2d 597, 606 (Minn. 2006) (concluding prior threat to kill victims was evidence of premeditation); *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (noting that Minn. Stat. § 609.18 defines premeditation as “to consider, plan or prepare for, or determine to commit, the act referred to prior to its commission”). But at the time that LaFlex made several of these statements, C.L. and Brogle lived on the West Coast—with no stated intent to return to Minnesota—and LaFlex, at times, did not know their address. That LaFlex had no reason to know when or if he would see Brogle again supports the alternative inference, suggested by LaFlex’s and his brother’s testimony, that he was venting rather than describing a plan or preparations to kill Brogle.

The trial record shows that LaFlex obtained his gun from his sister’s house the same day that Brogle was killed. This evidence supports an inference of premeditation. *See State v. Anderson*, 789 N.W.2d 227, 242 (Minn. 2010) (procuring weapon used to commit killing in advance is evidence of premeditation). But LaFlex acknowledged that he obtained the gun the day of the shooting and testified that he retrieved it because a customer asked him to shoot a woodchuck living under her deck. The State did not attempt to discredit LaFlex’s claim on cross-examination, nor did it present evidence rebutting it.

The State's case focused heavily on the site where LaFlex buried Brogle. LaFlex testified that after killing Brogle he was scared, and that he woke up early the next morning, retrieved Brogle's body from the storage locker, dug a hole in the woods, and buried Brogle. The State's evidence included location data from LaFlex's cell phone that showed he was at the burial location for approximately 57 minutes the morning after Brogle was killed. The State also offered testimony from the BCA investigator who exhumed Brogle's body and photographs of the burial location taken during the exhumation.

During closing arguments, the prosecutor argued that the burial site was evidence of premeditation. The prosecutor asserted that LaFlex dug the hole before August 2022—months before Brogle's killing—and that LaFlex could not have dug it in 57 minutes. To support this argument, the prosecutor estimated that, after unloading Brogle's body, dragging it "far" into the woods, and packing up, LaFlex had only 34 minutes to dig. He then estimated the cubic footage of the dirt that LaFlex excavated, stated that the dirt was "solid" not "soft," and told jurors it was "mathematically impossible" for LaFlex to have dug the hole in the time his location data showed he was at the site.

The record contains little support for the prosecutor's argument. First, the prosecutor's timeline relied in part on his assertion that LaFlex had to walk "far" into the woods, but the State's evidence did not establish a specific distance or clearly support this assertion. In fact, Investigator Loeffler's body-worn camera suggests he covered the distance in about one minute. Second, central to the prosecutor's theory was the quantity of dirt that LaFlex had to dig in 57 minutes. But the prosecutor's estimate was based

almost entirely on a photograph of the burial site. The record contains a measurement of its depth, but no measurement of its width or length. Furthermore, the photographs may not accurately represent the hole's precise dimensions because the BCA investigator that exhumed Brogle's body testified that investigators dug "further out around the body" to facilitate its removal. The BCA investigator did not testify that the dirt was "solid." Notably, the BCA investigator also testified that the team found "live vegetation" within the layers of dirt "below the surface" at the burial site. Live vegetation within the backfilled hole is more consistent with recent excavation than a months- or weeks-old excavation.

Finally, C.L. testified that LaFlex urged her to shower at her grandmother's house while he and Brogle unloaded the U-Haul. Attempting to isolate a victim may support an inference of premeditation. *See State v. Ulrich*, 3 N.W.3d 1, 12–13 (Minn. 2024) (stating that defendant's attempt to lure victims into a trap supported inference of premeditation). On the other hand, C.L. did not testify that it was LaFlex's idea for her to shower. Rather, she testified that she wanted to shower after riding in a car for two days, and that LaFlex suggested she do it at her grandmother's house. Furthermore, both LaFlex and C.L. testified that the reason LaFlex urged her to shower at her grandmother's was that LaFlex was having trouble with his water pressure, and another State's witness—LaFlex's landlord—corroborated LaFlex's water pressure issues.

Based on our review of the entire record, we conclude that the State's evidence of premeditation, though substantial, when viewed in light of the alternative evidence supporting that LaFlex acted in the heat of passion, was not so overwhelming or

incontrovertible that a rational jury could not have found that LaFlex acted out of heat of passion rather than premeditation. This is not a case like *Woodard* and *Prtine* where evidence of the more serious crime was overwhelming or uncontroverted and evidence the defendant acted in the heat of passion was minimal or non-existent. *Woodard*, 942 N.W.2d at 144; *Prtine*, 784 N.W.2d at 317.

The State also notes that the jury found LaFlex guilty of both first-degree premeditated murder and second-degree intentional murder. It argues that LaFlex was not prejudiced by the district court's jury instructions by extrapolating from our prior holding that "a defendant is not prejudiced by a district court's failure to give a heat-of-passion manslaughter instruction if the jury was presented with both first-degree premeditated murder and second-degree intentional murder, and subsequently finds the defendant guilty of first-degree premeditated murder." *Phillips*, 7 N.W.3d at 581 (citing *State v. Galvan*, 912 N.W.2d 663, 672 (Minn. 2018)). The State argues that if a defendant is not prejudiced by a district court's *failure* to issue a heat-of-passion manslaughter instruction under circumstances where the jury convicts a person of both first-degree premeditated murder and second-degree intentional murder, LaFlex cannot have been prejudiced where the district court actually *gave* the instruction.

We disagree. When a district court fails to give a heat-of-passion manslaughter instruction, the defendant may still argue that the State failed to meet its burden of proof in showing intent and premeditation, and the jury can weigh those arguments in its deliberations. The question here, however, is not simply whether the jury failed to give LaFlex's arguments due weight. As we have explained in justifying our prohibition on

jury instructions that direct the jury to consider the charges against a defendant, including lesser-included offenses, in a particular order or telling the jury that it should not consider a lesser-included offense if it finds the defendant guilty of a greater charge, when a district court *instructs* a jury on the lesser-included offense of heat-of-passion manslaughter, but then directs the jury not to consider heat-of-passion manslaughter unless it first finds the defendant not guilty of first-degree premeditated murder, the harm is different. Our concern is that, by instructing the jury on heat-of-passion manslaughter, but then telling it not to consider that offense until it has come to a decision on first-degree premeditated murder, the district court may cause the jury to “*evaluate the evidence differently.*” *Prtine*, 784 N.W.2d at 316 (emphasis added). This could affect the dynamics within a jury room because the jurors cannot consider a lesser-included offense until there is unanimity that the defendant is not guilty of a more serious offense. *See Hurst*, 238 N.W.2d at 10; *Jones*, 544 A.2d at 1253. In this case specifically, the district court’s erroneous instruction undermines our confidence that the jury fully considered LaFlex’s argument that he acted out of the heat of passion rather than with intent and premeditation. Thus, the mere fact that the jury had the option to find LaFlex not guilty of first-degree premeditated murder but guilty of second-degree intentional murder—the rationale behind our rule in the failure-to-give-the-heat-of-passion-manslaughter-instruction line of cases, *see State v. Chavez-Nelson*, 882 N.W.2d 579, 591–92 (Minn. 2016)—is insufficient to completely rule out the possibility of harm in this case. Furthermore, the district court’s instruction was not limited to the premeditated and heat-

of-passion offenses; the court also improperly directed the jury to consider first-degree premeditated murder before considering the second-degree intentional murder charge.

For these reasons, we conclude that the district court's plain error in instructing the jury affected LaFlex's substantial rights and was not harmless.

E.

That conclusion does not end our inquiry. "A plain error that affects a defendant's substantial rights, without more, does not entitle a defendant to a new trial." *Huber*, 877 N.W.2d at 527. We exercise our discretion to grant appellate relief based on a forfeited error only in situations where the error "seriously affected the fairness, integrity, or public reputation of judicial proceedings." *Pulczynski*, 972 N.W.2d at 358, 360 n.10.

Our analysis of the fairness, integrity, and public reputation of our judicial system "does not focus on whether the alleged error affected the outcome resulting in harm to the defendant in the particular case," but rather "whether failing to correct the error would have an impact beyond the current case by causing the public to seriously question whether our court system has integrity and generally offers accused persons a fair trial." *Id.* at 356. This inquiry requires considering the nature of the harm the error caused and the record in the particular case.

In this case, we conclude that failing to correct the jury-instruction error would cause the public to question the integrity of our court system and its commitment to providing accused persons a fair trial. The public expects jurors to exercise fair and independent judgment based on all the evidence presented by the parties. *See State v. Porter*, 526 N.W.2d 359, 365 (Minn. 1995) (stating that juror independence is the "heart

of the jury system”). And, as described, we find jury instructions that direct the jury to consider the evidence presented in light of the elements of one offense before considering the evidence in light of another, lesser-included offense problematic due to the potential for such instructions to improperly affect how jurors perceive the evidence (or consider it at all). These instructions may cause jurors to give more or less credence to certain evidence based on the offense-based lens through which they are looking at the evidence. *See Prtine*, 784 N.W.2d at 316; *Hurst*, 238 N.W.2d at 10; *Jones*, 544 A.2d at 1253.

Ultimately, instructions about the order in which jurors consider counts and that they need not consider certain counts depending on the resolution of others may affect a defendant’s right to have a jury consider his full defense. *See Troxel v. State*, 875 N.W.2d 302, 307 (Minn. 2016) (stating that “[t]he due process clauses of both the Minnesota Constitution and the United States Constitution guarantee a defendant’s right to a fair opportunity to defend against criminal charges”). We conclude that Minnesotans deeply value these fundamental principles of our criminal justice system.

In addition, we believe that undermining these principles due to the district court’s jury-instruction error, if left uncorrected, would cause Minnesotans to seriously question whether our court system has integrity and offers an accused person a fair trial. LaFlex does not deny that he killed Brogle. The sole issue of dispute in this case is whether he did so with premeditation or acted out of the heat of passion. Our rule that district courts should not instruct jurors on the order in which to consider counts or that they need not consider certain counts depending on how they resolve other counts goes directly to that dispute. And, as discussed above, this is not a case where the evidence of premeditation

was uncontested and overwhelming and the evidence that LaFlex acted out of the heat of passion was non-existent. The jury's question to the district court during deliberations indicates that it was, in fact, struggling with that question.

For these reasons, this case is different from *State v. Griller*, 583 N.W.2d 736 (Minn. 1998). In *Griller*, the district court erroneously instructed the jury that a defendant asserting a defense-of-dwelling defense must prove that they believed their conduct was necessary to prevent death or great bodily harm. *Id.* at 740. We held that the error likely did not affect the verdict because the defendant's argument in our view was "wholly unbelievable." *Id.* at 742. That is not the case here. More importantly, the jury-instruction error in *Griller* was materially different from the jury instruction here. In *Griller*, the jury-instruction error did not distract the jury from considering the defendant's argument for acquittal, and therefore did not affect the fairness, integrity, or public reputation of judicial proceedings. The reason the jury instruction was impermissible in this case, in contrast, is that it may have led the jury to fail to fully and properly assess LaFlex's argument for acquittal. *See State v. Ahmed*, 38 N.W.3d 233, 248 (Minn. 2026) (concluding that reversing defendant's conviction was necessary to protect the fairness, integrity, and public reputation of judicial proceedings where prosecutor's plainly erroneous and prejudicial misstatement of law in closing argument "may well have prevented the jury from considering [the defendant's] primary defense").

Finally, this is not a case where the jury-instruction error was one LaFlex himself invited to serve his own interests. *Cf. State v. Sullivan*, 35 N.W.3d 387, 397 (Minn. 2026) (determining that an error did not seriously affect the fairness, integrity, or public

reputation of judicial proceedings because the error was a problem the defendant affirmatively created to serve his own interests and thus was an error that the defendant “himself invited”).⁹ While it is true that LaFlex did not object to the district court’s jury instructions, this is different and less egregious conduct than inviting error by affirmatively demanding that a jury be instructed a certain way. *See Pulczinski*, 972 N.W.2d at 360 n.10.¹⁰ And because the jury-instruction error was plain—i.e., it was “clear and obvious”—LaFlex is not solely to blame for its occurrence.

In summary, based on our review of the record we conclude that refusing to correct the error in this case would cause the public to seriously question whether our court system has integrity and generally offers an accused person a fair trial. Accordingly, we exercise our discretion to grant relief for the error. We reverse LaFlex’s conviction and remand for a new trial.

⁹ For this reason, *State v. Carridine*, 812 N.W.2d 130, 143–44 (Minn. 2012), where we held that a defendant who *requested* that the district court give a certain jury instruction could not on appeal claim that this instruction was an error, differs from this case. In addition, in *Carridine* we applied the plain-error test and resolved the case under the substantial rights prong of the plain-error test. *Id.*

We also note *State v. Evans*, 756 N.W.2d 854, 864–65, 867 (Minn. 2008), where *defense counsel* requested the language in a subpoena cover letter later claimed to be erroneous. Although we concluded that the error was not plain, we stated that if Evans had demonstrated that the error was plain and affected his substantial rights, and if the district court concluded that the error seriously affected the fairness and integrity of the judicial proceedings, then the district court “could have corrected the error notwithstanding Evans’s agreement to the letter.” *Id.* at 867.

¹⁰ In *Pulczinski*, we expressly rejected the blunt rule from *State v. Weigold*, 160 N.W.2d 577, 579–80 (Minn. 1968)—which was not a plain-error case—that a party in a criminal case is never entitled to any relief for errors to which they consented. 972 N.W.2d at 360 n.10.

CONCLUSION

For the foregoing reasons, we reverse appellant's conviction and remand to the district court for a new trial.

Reversed and remanded.

CONCURRENCE & DISSENT

MCKEIG, Justice (concurring in part and dissenting in part).

I agree that the district court did not err when it determined that exigent circumstances justified the warrantless seizure of appellant Michael LaFlex's cell phone. I disagree, however, with the court's conclusion that LaFlex is entitled to appellate relief based on the district court's erroneous instruction on the order in which the jury should consider the charges. The alleged error was invited by defense counsel, who affirmatively agreed that the jury instructions accurately stated the law. "Under the invited-error doctrine, a party is estopped from assert[ing] on appeal an error that [the party] invited." *State v. Sullivan*, 35 N.W.3d 387, 395 (Minn. 2026) (alteration in original) (citation omitted) (internal quotation marks omitted). The sole avenue for relief from an invited error is to establish that declining to correct the invited error will "seriously affect the fairness, integrity[,] or public reputation of judicial proceedings." *Id.* at 396 (alteration in original) (citation omitted) (internal quotation marks omitted). That inquiry asks whether "failing to correct the error would have an impact beyond the current case by causing the public to seriously question whether our court system has integrity and generally offers accused persons a fair trial." *Id.* (citation omitted) (internal quotation marks omitted). Because the court instead analyzes the issue under the forfeiture doctrine and its plain-error exception, and because granting LaFlex a new trial in these circumstances would undermine the integrity of judicial proceedings and encourage litigants to abuse the judicial process, I respectfully dissent from the court's conclusion that LaFlex is entitled to appellate relief.

A.

As mentioned above, under the invited-error doctrine, a party is estopped from asserting an error that the party invited. *Id.* at 395. Affirmatively consenting to a certain action in trial proceedings amounts to invitation under the invited-error doctrine. In *State v. Weigold*, we held that a defendant whose counsel affirmatively consented on the record to closing a public trial by stating “I have no objection to this,” could not later challenge the closure on appeal. 160 N.W.2d 577, 579–80 (Minn. 1968); *see also State v. Trifiletti*, 6 N.W.3d 79, 94 (Minn. 2024) (citing *Weigold* for the proposition that the invited-error doctrine “prevents a party from challenging on appeal a district court decision to which the party consented”). And in *State v. Evans*, we held that a defendant whose counsel helped to draft a letter authorizing a juror to contact attorneys on the case, agreed to the terms therein, and submitted the letter to the district court could not, because of the invited-error doctrine, later object to the State’s contact with a juror. 756 N.W.2d 854, 864–65, 867, 869 (Minn. 2008).

Defense counsel similarly affirmatively consented to the district court’s jury instructions here. The trial transcript reveals the following exchanges between the district court and defense counsel:

Court:	Then both of you have had an opportunity to review the instructions. There is on there based on the Court’s ruling and the Court’s perception of the prevailing law regarding the difference of the mental states between murder in the first degree and heat of passion. That in the instruction there is an inclusion that if the jury makes a finding that Mr. LaFlex acted with premeditation that they are then to not consider the heat of passion instruction.
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[Defense counsel], anything you wish to note regarding that?

[Defense Counsel]: No, Your Honor.

And one page later:

Court: And then the instructions as a whole are consistent with the law of the State of Minnesota?

[Defense counsel]: Correct, Your Honor.

During deliberations, the jury asked the court about the impact of one verdict upon the others. The district court presented the question to both the State and defense counsel to ensure agreement on the court's response:

Court: But the question is, is can a person be convicted of all three of these verdicts or does one verdict get an auto not guilty if one of them is yes guilty? It would be the Court's intention to essentially reiterate but maybe with a little more clarity as to what they are supposed to do in the alternatives that they are presented. From the Court's perspective if they find the defendant guilty of count one, murder in the first degree, premeditated, they would bypass and not fill out the verdict form for manslaughter in the first degree. If they find the defendant not guilty of murder in the first degree they would address that verdict form of murder in the first degree, address the verdict form for manslaughter, heat of passion in the first degree, and the verdict form for murder in the second degree. [Defense counsel], *accurate with respect to what the law is with respect to these three counts?*

[Defense counsel]: *That's my understanding*, Your Honor, that they'd bypass if they find not guilty of first degree then they'd consider the other two counts.

(Emphasis added.) Defense counsel affirmatively consented to the district court's jury instructions regarding the impact of one verdict on another by agreeing that these

instructions were consistent with the law. In doing so, defense counsel invited the erroneous instructions. *See Evans*, 756 N.W.2d at 864–65, 867, 869; *Weigold*, 160 N.W.2d at 579–80.

Although the invited-error doctrine generally estops a party from asserting an error the party invited, it also provides a safety valve for cases in which enforcing the estoppel doctrine would have an impact beyond the current case by causing the public to seriously question whether our court system has integrity and generally offers accused persons a fair trial.¹ *See Sullivan*, 35 N.W.3d at 397 (“We can exercise our authority to grant relief

¹ The court characterizes as “peculiar[.]” the fact that the exception to the invited-error doctrine has only one analytical step, when the plain-error exception to the forfeiture doctrine has four analytical steps. *Supra* at 24 n.7 (describing the four analytical steps of the plain-error exception as “more hoops” that a defendant must jump through to obtain relief). But when one considers the legal principles underlying the two doctrines, there is nothing peculiar about this distinction. The principle underlying the forfeiture doctrine is that to ensure judicial efficiency, an error must be promptly brought to the attention of the district court so the error can be promptly addressed. *Puckett v. United States*, 556 U.S. 129, 135 (2009) (explaining that the plain-error exception to the forfeiture doctrine strikes a careful balance between judicial efficiency and the redress of injustice); *see also State v. Kelley*, 855 N.W.2d 269, 278–79 (Minn. 2014). Consequently, the plainness of the unobjected-to error is a relevant consideration when deciding whether to enforce the forfeiture doctrine.

In contrast, the principle underlying the invited-error doctrine is that to ensure fair and accurate trials, parties must be estopped from seeking appellate relief based on errors they invited through affirmative consent. *See Sullivan*, 35 N.W.3d at 395–97. Put differently, the invited-error doctrine protects a district court’s reliance on counsel’s affirmative statements and assurances. *See Pulczynski v. State*, 972 N.W.2d 347, 360 n.10 (Minn. 2022) (describing the invited-error doctrine as a “species of estoppel”); *Anderson v. Minn. Ins. Guar. Ass’n*, 534 N.W.2d 706, 709 (Minn. 1995) (“An essential element of equitable estoppel is reasonable reliance.”). Consequently, the focus of an invited-error analysis is on the affirmative statements of counsel, as opposed to the nature of the error, and therefore it is neither surprising, nor peculiar, that an invited error analysis does not require a discussion of the nature or impact of the error.

Admittedly, a discussion of whether it will adversely impact the public’s view of the court system to deny the defendant appellate relief for a problem that he affirmatively

based on an invited error if failing to correct the error would ... caus[e] the public to seriously question whether our court system has integrity and generally offers accused persons a fair trial.” (citation omitted) (internal quotation marks omitted)). If the party invited the error, we may grant relief for that error only if “failing to correct the error would have an impact beyond the current case by causing the public to seriously question whether our court system has integrity and generally offers accused persons a fair trial.” *Id.* at 397 (citation omitted) (internal quotation marks omitted).

I acknowledge that neither party argued that the invited-error doctrine applies here, and that we have never squarely addressed the precise question of whether we may apply the invited-error doctrine sua sponte. But all the federal circuit courts that have considered the question of whether an appellate court may apply the invited-error doctrine sua sponte have uniformly held that appellate courts may do so. *See United States v. Brown*, 934 F.3d 1278, 1301 (11th Cir. 2019) (“Although the government has not argued that this was invited error, an appellate court may apply the invited-error doctrine sua sponte.”); *United States v. Amador*, 752 F. App’x 541, 549 n.4 (10th Cir. 2018) (“[W]e may sua sponte apply the invited error doctrine.”); *United States v. Carter*,

created is more streamlined than a discussion that considers whether there was an error that was plain and affected the defendant’s substantial rights. But this more streamlined discussion does not mean relief is more readily obtained. Counterbalancing the need to protect a district court’s reliance on a party’s affirmative statements is more difficult than counterbalancing the need for judicial efficiency because judicial efficiency is less important. *Cf. Sullivan*, 35 N.W.3d at 396–97 (concluding that this case, in contrast to other plain-error cases, was one of the “very rare cases where the fairness and integrity of judicial proceedings would be adversely affected if we *granted* the relief [the defendant] requests” because the error at issue was one that the defendant himself “created” (citation omitted) (internal quotation marks omitted)).

89 F.4th 565, 567–68 (6th Cir. 2023) (applying the invited-error doctrine despite “the parties’ characterization of the proceedings below” as requiring plain-error review). I would likewise apply the invited-error doctrine to the error alleged here.

Thus, under the invited-error doctrine, LaFlex is estopped from now challenging those instructions on appeal unless he establishes that failing to correct the alleged error would have an impact beyond his particular case “by causing the public to seriously question whether our court system has integrity and generally offers accused persons a fair trial.” *Sullivan*, 35 N.W.3d at 397 (citation omitted) (internal quotation marks omitted). I next consider whether LaFlex has established that the alleged error here has this serious effect.

B.

As discussed above, LaFlex must establish that “failing to correct the [alleged] error would have an impact beyond the current case by causing the public to seriously question whether our court system has integrity and generally offers accused persons a fair trial.” *Id.* (citation omitted) (internal quotation marks omitted). For the following reasons, I conclude that he has not.

First, defense counsel here did more than consent to the jury instructions.² When the district court directly asked defense counsel if the jury instructions accurately reflected the law, defense counsel affirmatively stated that they did. In reliance on that

² The court characterizes defense counsel’s behavior as a passive failure to object to the jury instructions. *Supra* at 43. This characterization is not supported by the trial transcript: defense counsel twice *affirmed* that the instructions were consistent with the law.

affirmative statement, the district court instructed the jurors accordingly. Allowing LaFlex to argue on appeal that the instructions misstated the law is inequitable not only because LaFlex specifically agreed to the erroneous instruction, but also because the district court's reliance on his request did not affect LaFlex's ability to put on a defense or the jury's ability to consider it. In my view, holding LaFlex to the affirmative statements his counsel made in this case will not cause the public to seriously question whether our court system has integrity and generally offers accused persons a fair trial. If anything, granting relief under these circumstances is more likely to erode public confidence by suggesting that a party may induce a district court to proceed on one understanding of the law and then obtain appellate relief by asserting the opposite.

We reached a similar conclusion in *Sullivan*. As part of our analysis, we explained that “[d]eclining to reverse Sullivan’s conviction will not cause the public to seriously question whether our court system has integrity and offers accused persons fair trials” because “[t]he problem Sullivan asks us to remedy—the State’s failure to prove the prior-convictions element required for a felony domestic assault conviction—*is a problem Sullivan created.*” 35 N.W.3d at 397 (emphasis added). The Tenth Circuit Court of Appeals reached a similar conclusion in *United States v. Wells*, 38 F.4th 1246, 1255 (10th Cir. 2022), concluding that the invited-error doctrine estopped the defendant from claiming the jury instruction misstated the law when defense counsel affirmatively agreed to the instruction.

Second, the district court’s alleged error in instructing the jury to consider the offenses in a particular order did not affect LaFlex’s ability to put on a defense or the

jury's ability to consider it. The trial lasted five days. LaFlex testified in his own defense, including that Brogle's statement that Brogle would "kill [C.L.] before [he'd] let her come back to" her family "shocked" and "enraged" LaFlex and caused him to fear for his and C.L.'s lives. LaFlex testified that he did not "remember aiming the gun" and that after he shot Brogle, LaFlex "sat down on the floor and cried," "was scared," "didn't know what to do," and "d[id]n't know where [he] was at mentally." He further testified that he dug the hole where he buried Brogle only after he shot Brogle, not before. In closing, LaFlex's counsel argued that LaFlex "acted in the heat of passion" and reviewed evidence presented at trial to support that finding: Brogle told LaFlex he would kill his daughter; LaFlex knew Brogle was abusing C.L.; Brogle's control over and isolation of C.L., combined with his provocative words, infuriated LaFlex; LaFlex disposed of Brogle's cell phone and lied to police, then admitted his actions, reflecting LaFlex's desperation, not premeditation; and a dog walker who frequented the area where Brogle was buried did not observe a hole prior to the shooting. Thus, LaFlex testified fully about his version of events and presented evidence supporting his claim that his actions were not premeditated. Further, his attorney argued LaFlex's version of events in closing.

Third, the jury instead found that LaFlex's actions *were* premeditated and, as in *Sullivan*, there was plenty of evidence here on which the jury could base that finding. *See* 35 N.W.3d at 397 (noting "[t]here is no question that the State *had* evidence" supporting the conviction). "[A]n inference of premeditation may be supported by several categories of evidence, including planning activity, motive, the nature of the killing, and a

defendant's actions following the killing.” *State v. Cox*, 884 N.W.2d 400, 412 (Minn. 2016). The State presented uncontroverted evidence in all these categories.

There was strong evidence that LaFlex engaged in planning activity before shooting Brogle. He told family members, friends, and acquaintances that he “was going to kill” Brogle, that he “knew where to dispose of the body,” and that “he had already dug the hole or was going to.” LaFlex grabbed his gun from his sister’s house and put it in the storage locker hours before shooting Brogle with that gun in the locker. *See Cox*, 884 N.W.2d at 412 (“Planning activity can consist of prior possession of the murder weapon by the defendant.” (citation omitted) (internal quotation marks omitted)). C.L. testified that the initial plan was for her to go with LaFlex and Brogle to the storage locker and help unload their belongings, but that LaFlex told her to take a shower at her grandmother’s house instead. *See State v. Hughes*, 749 N.W.2d 307, 313 (Minn. 2008) (noting that planning activity includes “taking the prospective victim to a location where others are unlikely to intrude”).

There was also strong evidence that LaFlex was motivated to kill Brogle because Brogle was abusing LaFlex’s daughter. LaFlex testified that, before the shooting, he was “so angry” that Brogle was abusing his daughter. *See State v. Moua*, 678 N.W.2d 29, 41 (Minn. 2004) (noting that motive evidence includes “prior conduct by the victim known to have angered the defendant”). He told several witnesses about Brogle’s abuse and that he “wanted to” or “was going to kill” Brogle. LaFlex expressed as much to one witness the day before he shot Brogle. According to LaFlex’s statements to police, he wanted C.L. to “get away from [Brogle]” and he had previously threatened Brogle that if he ever

saw “another bruise on [C.L.]” that he wouldn’t “be having words with [him].” *See Hughes*, 749 N.W.2d at 314 (noting that evidence of motive “includes prior threats by the defendant to do violence to the victim” (citation omitted) (internal quotation marks omitted)).

The nature of LaFlex’s killing of Brogle also indicates premeditation. LaFlex grabbed his gun, loaded it, and shot Brogle in the back of the head at close range. *See State v. Palmer*, 803 N.W.2d 727, 736 (Minn. 2011) (noting that “infliction of wounds to vital areas” and “[a]n indication that a shooter took careful aim at the victim” may indicate premeditation (citation omitted) (internal quotation marks omitted)); *State v. Petersen*, 910 N.W.2d 1, 8 (Minn. 2018) (noting that the “infliction of gunshot wounds from close range” indicated premeditation (citation omitted) (internal quotation marks omitted)).

LaFlex’s actions after he shot Brogle also support a finding of premeditation. He left Brogle’s body in the storage locker and did not call the police, and he later brought Brogle’s body to a secluded wooded area and buried him. *See State v. Balandin*, 944 N.W.2d 204, 215 (Minn. 2020) (concluding that the defendant “conceal[ing] [the victim]’s body” supported a finding of premeditation); *State v. Ortega*, 813 N.W.2d 86, 101 (Minn. 2012) (concluding that the defendant’s “refus[al] to call the police” supported a finding of premeditation); *Hawes v. State*, 826 N.W.2d 775, 785 (Minn. 2013) (concluding that burning the victim’s body was an “effort[] to hide” the body and strongly supported that the defendant premeditated the killing). LaFlex destroyed the gun he used to shoot Brogle and threw Brogle’s cell phone in a gas station trash bin. *See*

Petersen, 910 N.W.2d at 8 (noting that “evidence that a defendant disposed of a murder weapon after a murder support[ed] an inference of premeditation”). LaFlex lied to C.L. and, initially, to police that men in tactical gear arrested and took Brogle away. *See State v. Hurd*, 819 N.W.2d 591, 600–01 (Minn. 2012) (concluding that the defendant’s lies to law enforcement and others to “avoid detection” after stabbing the victim were consistent with premeditation).

All this evidence supports the jury’s finding that LaFlex premeditated his killing of Brogle. LaFlex did not dispute any of this evidence and presented his theory of defense for the jury to consider. The jury considered the evidence and both sides’ theories of the case and returned a guilty verdict for first-degree premeditated murder. Nevertheless, the court today grants LaFlex a new trial, concluding that failing to do so “would cause the public to seriously question whether our court system has integrity and generally offers an accused person a fair trial.” *Supra* at 43. I would hold that the opposite is true: as in *Sullivan*, “this is one of those very rare cases where the fairness and integrity of judicial proceedings would be adversely affected if we *granted* the relief” that LaFlex requests. 35 N.W.3d at 397 (citation omitted) (internal quotation marks omitted). Accordingly, I dissent from the court’s conclusion that LaFlex is entitled to appellate relief based on an error that defense counsel invited by affirmatively consenting to the district court’s jury instruction on the order in which the jury should consider the charges.

MOORE, III, Justice (concurring in part and dissenting in part).

I join in the concurrence-dissent of Justice McKeig.

HENNESY, Justice (concurring in part and dissenting in part).

I join in the concurrence-dissent of Justice McKeig.