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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0936**

State of Minnesota,
Respondent,

vs.

Fredy Saavedra Olivar,
Appellant.

**Filed June 1, 2026
Affirmed
Wheelock, Judge**

Isanti County District Court
File No. 30-CR-23-889

Keith Ellison, Attorney General, Jacob Campion, Assistant Attorney General, St. Paul, Minnesota; and

Jeffr Edblad, Isanti County Attorney, Cambridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this direct appeal from the judgment of conviction for second-degree murder following his orchestration of a burglary in which an occupant of the home was shot and killed, appellant argues that (1) the aiding-and-abetting statute precludes liability because

he did not directly aid the shooter, (2) intentional murder was not a reasonably foreseeable consequence of the burglary, and (3) disclosure of the identity of a confidential informant four days before trial violated his constitutional rights. We affirm.

FACTS

Appellant Fredy Saavedra Olivar hired Jerry Downs to recruit additional accomplices and to break into an Isanti County home known to be a drug cartel “stash house” (the stash house) to commit a burglary. Downs recruited Jesse Rodriguez and Abraham Houle. During the burglary, a resident of the home, J.F., was shot and killed by Rodriguez.¹

Respondent State of Minnesota charged Olivar with four counts: (1) second-degree intentional murder in violation of Minnesota Statutes section 609.19, subdivision 1(1) (2022); (2) second-degree unintentional murder while committing a felony in violation of Minnesota Statutes section 609.19, subdivision 2(1) (Supp. 2023); (3) first-degree burglary of an occupied dwelling in violation of Minnesota Statutes section 609.582, subdivision 1(a) (2022); and (4) first-degree burglary while possessing a dangerous weapon in violation of Minnesota Statutes section 609.582, subdivision 1(b) (2022). The state prosecuted each charge under a theory of aiding and abetting because Olivar hired Downs to commit the burglary. *See* Minn. Stat. § 609.05, subds. 1-2 (2022) (the

¹ Because Olivar does not dispute that Rodriguez intentionally fired the shots that killed J.F. or that Downs, Rodriguez, and Houle committed the burglary, trial evidence establishing these facts is not reviewed in detail.

aiding-and-abetting statute). After a bench trial, Olivar was found guilty of all four counts and convictions were entered on counts 1 and 4.

A bench trial took place over six days between September 25 and October 3, 2024. The following evidence was introduced at trial and included in the district court's findings of fact.

At around five o'clock in the morning on December 13, 2023, two individuals, C.B. and his wife, S.L., were sleeping with their three-year-old daughter on a lower level in the stash house when they were awakened by the sound of banging on the front door of the house. They heard voices upstairs saying, "Police," and "Put hands up, it's police." A masked man, wearing what looked like a police uniform with a badge on the shoulder, kicked their bedroom door open, pointed a gun at C.B., and tried to tie him up with a "rope-like object." S.L. took the couple's daughter and hid in the closet.

C.B. and S.L. heard several gunshots upstairs, after which the man then left the room and disappeared upstairs. S.L. then heard more gunshots, followed by a period of silence. The man returned to the bedroom, appeared to be "in a panic," broke the bedroom window, and jumped out. S.L. heard someone running and a car driving "really fast."

S.L. later heard another resident of the stash house crying and saying that J.F. had been shot. J.F. was found near the front door with "blood all over," and he was not breathing. Police and emergency medical staff arrived, and police removed an assault rifle from underneath J.F., who was "clearly deceased."

The prior evening, on December 12, a confidential informant, J.T., contacted St. Paul police officer Sean Longen and informed him that Olivar had hired Downs and

another man, Rodriguez, to rob a “stash house” dressed as police officers.² J.T. did not know the exact location of the stash house at that time, but provided information about the vehicle Downs had been driving that evening. Drug task-force agents already had been tracking this vehicle and later determined that it went to the stash house between 4:55 a.m. and 5:08 a.m. on the date the murder occurred. Through information learned from processing the scene and past police contacts, investigators believed that J.F. was involved in the drug trade.

J.T. testified that Olivar picked up J.T. from his home at around 7:30 p.m. on December 12 and the two went to Downs’s house. When they arrived, Olivar reached under the seat of his car, grabbed an object, and then met Downs on the porch outside. J.T. then saw Olivar hand the object to Downs, and the two spoke briefly. When J.T. inquired about what “was going on with” Downs, Olivar told J.T. that he sent Downs to “do that thing you didn’t want to do,” referencing when Olivar previously tried to solicit J.T. to commit the robbery.

Around midnight the same night, Olivar called J.T. and told him that he left a duffle bag with clothes in it at J.T.’s home for J.T. to give to Downs. J.T. discovered that the bag actually contained about a pound of methamphetamine and took the bag to Downs because J.T. did not want it in his home. When J.T. arrived to see Downs, he saw police uniforms, a .380-caliber handgun, and a small 9mm handgun on the bed. J.T. recognized the .380 as

² Many of the witnesses referred to the crime as a “robbery,” and this term appears in the district court’s findings of fact. While Olivar was found guilty of burglary, we use the term robbery when it is consistent with witness testimony and the district court’s order.

the gun he previously had seen Downs carrying and recognized the 9mm as belonging to Olivar. As J.T. left, he saw Rodriguez coming into the house.

Olivar called J.T. in the afternoon after the robbery and murder occurred and asked him to contact Downs right away because Downs was supposed to “bring back something to split with him” but Downs was not answering the phone. J.T. went to Downs’s house, and a person there told J.T. that Downs had moved out. That evening, Downs showed up at J.T.’s home “freaking out” and said that “sh-t went bad,” that he wanted his money from Olivar, and that he needed to get out of town quickly. J.T. later talked to Olivar, who told J.T. that “he wasn’t giving [Downs] sh-t.” The district court found that J.T. “testified credibly at trial,” his “manner was straightforward,” and “his recollection of detail” was “specific” and “consistent with testimony of Officer Longen and with [cell-phone records].”

J.T.’s identity as a confidential informant was protected from disclosure to Olivar pursuant to Minn. R. Crim. P. 9.01, subd. 3(2). Olivar filed a motion to compel disclosure of the informant’s identity, and the district court granted it and ordered that disclosure occur by the Thursday before trial began on Monday. Prior to this disclosure, Olivar was aware that J.T. was a witness and had received substantial discovery related to J.T. He was not aware, however, of J.T.’s status as a confidential informant or that J.T. had informed police that the robbery was going to occur.

Officer Longen testified that he received a call from J.T. the night of December 12 in which J.T. said a home invasion of a stash house was going to occur. J.T. told him that Downs and Olivar were involved, that Olivar previously tried to solicit J.T. to commit the

robbery, and that Olivar had given Downs a handgun. Longen also stated that, in his opinion, J.T. was “reliable.” Longen was cross-examined extensively about his lack of any written summary of his communications with J.T. He confirmed that J.T. never told him about the duffle bag of methamphetamine or that J.T. had contact with Downs on December 14. Longen provided the information he received from J.T. to the Minnesota Bureau of Criminal Apprehension (BCA) and then had no further involvement in the case.

A BCA special agent reviewed data extracted from Downs’s cell phone, which was found outside the stash house. Downs’s phone contained screenshots of a map to the stash house, aerial photographs of the house, and a photograph that was taken from inside of the home’s entryway. The cell-phone data showed that there were 28 calls between Olivar’s and Downs’s phones between December 12 and December 13 and that several text messages were sent from Olivar to Downs in the hours and minutes leading up to the burglary.

A man who was in jail with Olivar after Olivar was arrested also testified. Olivar told the man that he did not know all the people involved in the robbery and that Downs was supposed to split the money stolen from the stash house with the others whom Downs recruited to assist with the robbery. Olivar told the man that he did not know that the people Downs recruited to participate would have a gun or that the victim would have a gun.

Olivar testified that he knew J.F. and was familiar with the residence being used for “controlled substances and possibly large amounts of money” because Olivar’s fiancée purchased drugs from the residence in the past. He stated that he thought J.F. would not

be home on the day of the burglary. Olivar further testified that he lost his phone at some point on December 12 and never found it, so it was not possible that he communicated with Downs leading up to the burglary, contrary to the cell-phone records.

Olivar also testified that he knew of Downs's plan for the robbery, that he was afraid of Downs, and that Downs wanted him to assist in the robbery, but he refused. He explained that he thought Downs's idea was crazy because, if a robbery from the cartel was successful at the drug stash house, everything would "come back to [him]." As to J.T., Olivar testified that he was not aware of any duffel bag of methamphetamine left in J.T.'s apartment and that it does not make sense how that could happen when J.T. lives in a secure building. He also testified that he and the man in the jail discussed only the man buying cars from Olivar to help Olivar get money for legal fees. He denied telling the man anything incriminating.

The district court found Olivar guilty of all four counts and issued its written order. It determined that the state proved beyond a reasonable doubt that Olivar hired Downs to commit the robbery, provided guidance leading up to the robbery via text message, and provided Downs with Olivar's 9mm handgun. Even though Olivar did not personally hire accomplices Houle and Rodriguez, the district court found that he hired Downs to recruit additional accomplices and to rob the home.

Olivar was sentenced to 306 months' imprisonment for count 1, aiding and abetting second-degree intentional murder, and to a consecutive sentence of 60 months' imprisonment for count 4, aiding and abetting first-degree burglary.

DECISION

I. The district court did not err by determining that Olivar was an accomplice to second-degree intentional murder under Minnesota Statutes section 609.05 (2022), even though Olivar did not intentionally aid the shooter.

Olivar argues that he did not aid or abet the murder of J.F. because the plain language of Minnesota Statutes section 609.05 requires that he directly and intentionally aid Rodriguez—the person who ultimately fired the shots that killed J.F.

The district court determined that Olivar hired Downs to recruit additional accomplices and commit the burglary. It further determined that, while Olivar did not personally hire Rodriguez, he knew Downs was going to recruit additional accomplices and split the proceeds with them. The state argues that the district court correctly determined that Olivar’s conduct met the statute’s requirements because he hired Downs to commit the robbery and to hire others and provided Downs with a gun and information on how to conduct the robbery.

A sufficiency-of-the-evidence claim that turns on the meaning of the statute under which a defendant has been convicted presents a question of statutory interpretation that we review de novo. *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018). The aim of statutory analysis is to “effectuate the intent of the legislature.” *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015) (quotation omitted). The statutory language in dispute is not examined in isolation; rather, all provisions in the statute must be read and interpreted as a whole. *Id.* at 683. We presume that the legislature intended that “the entire statute . . . be effective and certain.” Minn. Stat. § 645.17(2) (2024). “Every law shall be construed, if possible, to give effect to all of its provisions.” Minn. Stat. § 645.16 (2024).

If the language of a statute is clear on its face, then the statute is unambiguous and we apply its plain meaning. *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019). If, after considering these principles, we conclude that the statute is “subject to more than one reasonable interpretation,” then it is ambiguous and we “may apply canons of construction to resolve the ambiguity.” *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017) (quoting *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 290 (Minn. 2013)).

Minnesota’s aiding-and-abetting statute allows a defendant to be held criminally liable for the acts of others. Minn. Stat. § 609.05. Aiding and abetting is not a separate substantive offense; it is instead “a theory of criminal liability.” *State v. Segura*, 2 N.W.3d 142, 156 (Minn. 2024) (quotation omitted). “In other words, section 609.05 makes accomplices criminally liable as principals.” *State v. Ezeka*, 946 N.W.2d 393, 407 (Minn. 2020).

Section 609.05 consists of two related provisions that this court has said are “plainly stated.” *State v. Collins*, 24 N.W.3d 693, 701 (Minn. App. 2025), *rev. denied* (Minn. Sept. 17, 2025). Subdivision 1 states, “A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat. § 609.05, subd. 1. Subdivision 2 states, “A person liable under subdivision 1 is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended.” *Id.*, subd. 2. Neither party argues that the statute is ambiguous, but Olivar contends that the plain meaning requires that he have directly aided Rodriguez to be held criminally liable

for the murder committed by Rodriguez. The state asserts the plain meaning establishes that Olivar need only to have aided Downs.

Our interpretation of the entire statute is that subdivision 1 requires that the accomplice directly aid a particular person in the commission of an intended crime and that subdivision 2 expands liability “for any other crime,” regardless of whether it was committed by the same person for whom liability attached under subdivision 1, so long as it is “committed in pursuance of the intended crime.” “[B]y intentionally aiding his fellow burglars,” Olivar is liable for burglary under section 609.05, subd. 1. *Collins*, 24 N.W.3d at 701. “And by being liable for burglary under subdivision 1, he is liable under subdivision 2 for ‘any other’ reasonably foreseeable and probable crime . . . committed in the furtherance of the burglary.” *Id.*

This construction is also consistent with prior caselaw. The supreme court has stated that, in order to prove aiding and abetting under subdivision 1, “the State has to prove that the defendant had knowledge of the crime and ‘intended his presence or actions to further the commission of that crime.’” *State v. Clark*, 755 N.W.2d 241, 257 (Minn. 2008) (quoting *State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007)). The focus of subdivision 1 is the accomplice’s intent and action to aid in the intended crime. And we have not found any caselaw in which Minnesota courts have interpreted subdivision 2 to require that the “other crime” be committed by the same individual who was aided by the accomplice under subdivision 1.

In support of his argument, Olivar asserts that the plain meaning of subdivision 1 may be derived by replacing the words of the statute with the individuals involved, which,

Olivar contends, is as follows: Olivar is criminally liable for a crime committed by Rodriguez if Olivar intentionally aids, advises, hires, counsels, or conspires with or otherwise procures Rodriguez to commit the crime. *See id.*, subd. 1. Olivar then argues that, because application of subdivision 2 first requires that the person be “liable under subdivision 1” and he did not directly aid Rodriguez in doing anything, he cannot be expansively liable for the murder of J.F.

Olivar is correct that subdivision 1’s language requires that Olivar aid a particular person. But the plain language of the statute does not support Olivar’s argument that the particular person must have been Rodriguez. Olivar ignores the fact that subdivision 2 does not contain the same language limiting its scope to aiding a particular person as subdivision 1 does; rather, it uses very broad language that expands liability to “any other crime committed in pursuance . . . of the intended crime.” Minn. Stat. § 609.05, subd. 2.

Olivar’s interpretation would require us to read into subdivision 2 an additional substantive and conditional clause that the legislature did not include. This we cannot do. “We . . . will not add words that the legislature did not draft into a statute: ‘Courts cannot supply that which the legislature purposely omits or inadvertently overlooks.’” *Collins*, 24 N.W.3d at 701-02 (quoting *Martinco v. Hastings*, 122 N.W.2d 631, 638 (Minn. 1963)).

Olivar’s interpretation would require adding the following:

A person liable under subdivision 1 is also liable for any other crime committed [*by the person whom the accomplice aided under subdivision 1*] in pursuance of the intended crime if reasonably foreseeable by the person as a probable

consequence of committing or attempting to commit the crime intended.

Minn. Stat. § 609.05, subd. 2. Moreover, we observe that Olivar's reading would immunize the orchestrator of serious crimes, such as this burglary that resulted in an intentional murder, so long as they hire only one person to recruit others in hopes of avoiding or limiting their liability.

Olivar also argues that he was not Rodriguez's accomplice because none of the typical factors in determining whether someone was an accomplice were present here in the relationship between Rodriguez and Olivar, such as "the defendant's presence at the scene of the crime, a close association with the principal before and after the crime, a lack of objection or surprise under the circumstances, and defendant's flight from the scene of the crime with the principal." *Segura*, 2 N.W.3d at 156 (quotation omitted). This argument is unavailing. *Segura* refers to circumstantial evidence that may be relevant to whether a defendant had the requisite state of mind to "intentionally aid" another in the commission of the intended crime. *Id.* at 157. Olivar is not disputing that he had the requisite state of mind to aid the burglary; he is disputing the actus reus portion of the statute—specifically as to which person he must have aided. Thus, *Segura*'s reasoning does not apply to this issue.

We conclude that the plain language of subdivision 1 of section 609.05 focuses on the accomplice intentionally aiding another to commit the intended crime and that, because subdivision 2 does not contain limiting language, the accomplice may be guilty of any other

crime committed in pursuance of the intended crime, even if it is committed by an individual recruited by the person whom the accomplice aided under subdivision 1.

II. The second-degree intentional murder was reasonably foreseeable.

Whoever “causes the death of a human being with intent to effect the death of that person or another, but without premeditation,” is guilty of intentional murder in the second degree. Minn. Stat. § 609.19, subd. 1(1). Olivar is criminally liable under section 609.05, subdivision 2, for any crimes committed “in pursuance of” the crime he intended to aid—the burglary. To support the conviction, the state needed to establish beyond a reasonable doubt that (1) Olivar was an accomplice in the burglary; (2) the murder was committed in furtherance of the burglary; and (3) the murder was reasonably foreseeable as a probable consequence of the burglary. *See State v. McAllister*, 862 N.W.2d 49, 55-56 (Minn. 2015).

Having established that, pursuant to subdivision 1, Olivar aided and abetted the burglary and thus aided and abetted any other reasonably foreseeable crime in furtherance of that burglary under subdivision 2, we now address Olivar’s argument that the evidence did not establish that second-degree intentional murder was reasonably foreseeable.

“We use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). The relevant standard of review depends on whether the fact-finder—here, the district court—reached their finding on an element of the offense based on direct or circumstantial evidence. *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018). The parties agree that the circumstantial-evidence test applies.

Appellate courts apply a two-step analysis to evaluate the sufficiency of circumstantial evidence. *State v. Ulrich*, 3 N.W.3d 1, 11 (Minn. 2024). At the first step, we identify the facts that constitute the circumstances proved. *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026). In doing so, we “winnow down the evidence presented at trial by resolving all questions of fact in favor of the [fact-finder’s] verdict,” which results in “a subset of facts that constitute the circumstances proved.” *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017) (quotation omitted). An inference is “a permissible deduction that can be drawn from the proven or admitted facts.” *Firkus*, 31 N.W.3d at 483. “[A]n inference should never be included in the first step.” *Id.* Identifying the circumstances proved in this manner “protects the well-established legal principle that the [fact-finder] is in a unique position to determine the credibility of the witnesses and weigh the evidence before it.” *Id.* at 479 (quotation omitted).

At the second step, “we consider whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* at 478 (quotations omitted). We independently review the reasonableness of inferences at this second step without deference to the fact-finder. *Id.* at 483 (quoting *State v. Isaac*, 9 N.W.3d 812, 818 (Minn. 2024)). We will not reverse a conviction “based on mere conjecture.” *Id.* (quotation omitted). However, “[i]f the circumstances proved when viewed as a whole, support a reasonable inference that is inconsistent with guilt, the evidence is not sufficient to support the conviction and we must reverse.” *Id.* (quotations omitted).

“[T]he ‘reasonably foreseeable’ standard is objective, even though the standard operates based only on what would be reasonably foreseeable to a person in the defendant’s shoes.” *McAllister*, 862 N.W.2d at 56. “[R]easonable foreseeability is about whether the defendant could have reasonably foreseen that the victim would be murdered, not whether the defendant accurately predicted the murder.” *Id.* at 56-57 (quotation omitted). A person who has participated in a killing is not relieved of criminal liability even if “the reasonably foreseeable result occurred in an unexpected manner.” *Id.* at 57. “Whether one party to a conspiracy to burgle could have reasonably foreseen that the other might commit an assault” in the event the burglary is somehow interrupted “is a question of fact.” *State v. Filippi*, 335 N.W.2d 739, 742 (Minn. 1983).

Minnesota courts have “previously recognized that the burglary of a dwelling always carries with it the possibility of violence.” *State v. King*, 990 N.W.2d 406, 416 (Minn. 2023) (quotation omitted). The supreme court in *King* held that an appellant’s role in planning a burglary and knowledge that his associates carried handguns, among other circumstances, was evidence tending to support the finding that a murder during the burglary was reasonably foreseeable. *Id.* at 416-17 (affirming conviction for second-degree intentional murder in a burglary-gone-wrong case).

When viewed in a light most favorable to the verdict, the evidence establishes the following circumstances proved with respect to foreseeability:

- Olivar selected the home as a target to burglarize.
- Olivar knew the home to be a “cartel stash house” and had been involved with his fiancée in drug distribution from the home before the burglary.

- Olivar knew the home would likely have significant amounts of cash and drugs.
- Olivar provided Downs with an object the night before the burglary, shortly before J.T. saw Olivar's 9mm gun and police uniforms at Downs's house.
- Olivar knew Downs would recruit additional accomplices to conduct the burglary.
- The accomplices were armed.
- The accomplices broke into the home around 5:00 a.m.
- The accomplices wore police uniforms and yelled, "Police!" and "Put hands up, it's police!"
- The accomplices were confronted with gunfire from J.F.
- C.B. was tied up with a rope-like object and held at gunpoint by an accomplice. A length of paracord was found outside the home.
- C.B. and S.L. heard gunshots from upstairs, and the accomplice who was in their bedroom went upstairs.
- The same accomplice came back downstairs, broke a window, and jumped out to exit the house.
- J.F. was found deceased by the front door of the house.
- An assault rifle was found underneath J.F.'s body. Two additional firearms were found in the home.
- A large amount of cash was found on the property.

We next consider, as a whole, the reasonable inferences that may be drawn from the circumstances proved to determine whether the inferences are consistent with guilt and inconsistent with any rational hypothesis other than guilt. Put another way, as to the third element, we consider whether the circumstances proved are consistent with the inference that the intentional murder was foreseeable and inconsistent with any rational hypothesis to the contrary.

Based on the facts of this case and considering the circumstances proved as a whole, it was reasonably foreseeable to Olivar that an accomplice would "inten[d] to effect the death of . . . another." Minn. Stat. § 609.19, subd. 1(1). More specifically, it was

reasonably foreseeable to Olivar that residents of a known cartel-affiliated drug stash house would be involved in the drug trade or with the cartel; that individuals involved in the drug trade and handling proceeds from that drug trade carry weapons, including firearms; that they would defend themselves and/or the contents of the house; and that they would use a gun to do so when people are breaking into the house at 5:00 a.m. Accordingly, it is also reasonably foreseeable that deadly weapons would be used when robbing a drug stash house and that accomplices (here, Rodriguez) would return fire if they were shot at during the burglary to eliminate the threat. The circumstances as a whole are therefore consistent only with the inference that it was reasonably foreseeable to Olivar that an accomplice would intentionally kill another in the commission of this robbery.

Olivar makes several assertions that, he argues, establish that it was not reasonably foreseeable that the burglary would result in intentional murder. Olivar states that he did not know whether Downs was planning to provide the accomplices he recruited with weapons or if they would just serve as lookouts or drivers and that Olivar told J.T. that this type of burglary would “involve hardly any violence because the victims would simply give the proceeds up.” Olivar also states that the extent of what he could foresee would be that Downs would hire others, not that someone Downs hired would commit a murder.

But the question before the fact-finder was not whether Olivar could accurately predict that a murder would occur. *McAllister*, 862 N.W.2d at 57 (“[I]t is unnecessary under Minnesota law to have predicted with certainty that a companion would intentionally murder the victim.” (quotation omitted)). The question was whether it was reasonably foreseeable that a murder was a probable consequence of the burglary. *Id.* at 55. Moreover,

we consider the circumstances as a whole, and we will not reverse a conviction based on mere conjecture. *Firkus*, 31 N.W.3d at 483.

Next, Olivar argues that there was no plan to shoot or kill anyone and therefore it could not have been foreseeable to Olivar that an intentional murder would occur.³ He contends that this case is like *Segura* and asserts that Segura was found not liable for the principals' intentional murder because "murder was not part of the original plan." 2 N.W.3d at 159. But Olivar misreads *Segura*.

Segura was found guilty of aiding and abetting kidnapping, first-degree intentional felony murder, first-degree premeditated murder, and attempted first-degree premeditated murder. *Id.* at 150-51, 154-55. It was not disputed that the principals conspired to commit kidnapping and, at a minimum, serious assault of the victim. *Id.* at 156. On appeal, the issue was whether Segura had the requisite intent, under subdivision 1, to aid in the plot

³ Olivar concedes that unintentional felony murder would be reasonably foreseeable based on these facts but argues that a second-degree intentional murder was not reasonably foreseeable. We note that, in 2023, the legislature narrowed the scope of liability for aiding and abetting felony murder by adding an exception to expansive liability under subdivision 2. *Raisch v. State*, 8 N.W.3d 237, 239 (Minn. App. 2024) (citing 2023 Minn. Laws ch. 52, art. 4, § 3, at 850 (codified at Minn. Stat. § 609.05, subd. 2a (Supp. 2023))), *rev. denied* (Minn. Nov. 19, 2024). The amendment requires that, for a defendant to be held expansively liable for first-degree felony murder under Minnesota Statutes section 609.185(a)(3) (Supp. 2023), the person must have "intentionally aided, advised, hired, counseled, or conspired with or otherwise procured the other with the intent to cause the death of a human being." Minn. Stat. § 609.05, subd. 2a. It also requires that, to be liable for unintentional second-degree felony murder under section 609.19, subdivision 2(1), the person must have been a "major participant" and must have "acted with extreme indifference to human life." *Id.*, subd. 2a(b). The district court found Olivar guilty of unintentional felony murder under this statute but did not adjudicate this offense. The amendment did not impose any changes to the statute for second-degree intentional murder.

for kidnapping and premeditated murder, or whether she intended to aid a crime less serious than premeditated murder. *Id.*

The supreme court stated that the circumstances as a whole supported a reasonable inference that Segura believed the end goal of the plan was something less serious than premeditated murder and that the circumstances proved did not inescapably lead to the conclusion that murder was part of the principals' original plan. *Id.* at 159. The supreme court observed that, if "murder was not part of the original plan, then Segura could not have known of and intended to further a plan to murder" when she aided in the kidnapping. *Id.*

As explained above, subdivision 1 focuses on the crime the accomplice intended to aid. If Segura was not aware that premeditated murder was the plan, she could not have intended to aid in that plan under subdivision 1. *Segura* does not support Olivar's argument because it is undisputed that Olivar did not intend to aid an intentional or premeditated murder, and indeed, no criminal liability for the murder attached to Olivar under subdivision 1. Olivar's criminal liability pursuant to subdivision 1 stems from his intentionally aiding the burglary. Rather, his liability for the murder attached under subdivision 2 as a crime foreseeably committed in pursuance of the burglary.

Furthermore, the supreme court has rejected arguments on foreseeability similar to those that Olivar advances. In *State v. Pierson*, the appellant argued that it "may have been foreseeable that the gun might be discharged accidentally or might be discharged intentionally to inflict an injury" on someone during the commission of the crime, but it was not foreseeable that the accomplice would *intentionally* kill the victim. 530 N.W.2d

784, 789 (Minn. 1995). In rejecting the argument, the supreme court reiterated that, in Minnesota, an accomplice “is not required to have predicted with certainty that a companion would intentionally murder the victim—only that the murder was reasonably foreseeable as a probable consequence of the intended crime.” *Id.*

We therefore conclude that the state established the reasonable-foreseeability element of section 609.05, subdivision 2, beyond a reasonable doubt.

III. The district court did not violate Olivar’s constitutional rights by ordering disclosure of the confidential informant’s identity days before trial.

After the district court ordered that the identity of the confidential informant be protected, Olivar moved to compel disclosure. The state opposed the motion, arguing that the informant’s identity should be withheld until the beginning of trial. At the motion hearing, Olivar’s counsel did not request a particular date for disclosure, but stated, “I’ll leave that to the Court’s discretion. I’m sure that the Court’s going to fashion something that permits us to meet the witness and prepare.” The district court granted the motion to compel, ordering that the state disclose the identity of the confidential informant by Thursday, September 19, 2024. Disclosure that J.T. was the confidential informant occurred that day, as ordered, at some point after a 10:00 a.m. pretrial hearing. Trial began on Monday, September 23.

Olivar argues that the district court abused its discretion by not requiring that the disclosure occur earlier because (1) the state offered insufficient evidence that nondisclosure was necessary for J.T.’s safety and (2) disclosure “one-and-one-half working

days before trial” was an insufficient amount of time to prepare for trial. We address the standard of review and then each argument in turn.

Appellate courts review a district court order regarding disclosure of a confidential informant’s identity for an abuse of discretion. *State v. Rambahal*, 751 N.W.2d 84, 90 (Minn. 2008). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). If we were to determine that the district court abused its discretion, we also would have to determine that the error was not harmless beyond a reasonable doubt to reverse the district court’s decision. *State v. Westrom*, 6 N.W.3d 145, 155 (Minn. 2024).

The parties disagree on the standard of review we should apply here. The state asserts that the plain-error standard applies because Olivar did not object to the timing of the disclosure and left it to the district court’s discretion. Olivar argues that the alleged error is subject to the constitutional harmless-error standard.⁴ But we need not resolve this dispute because (1) the district court did not err, and (2) even if it did, Olivar was not prejudiced and his arguments fail, even under the more favorable constitutional harmless-error standard. *See State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013); *State v. Sanders*, 775 N.W.2d 883, 888 (Minn. 2009) (explaining that the supreme court need

⁴ Not every assertion that a constitutional right has been violated makes it so. *See State v. Jaros*, 932 N.W.2d 466, 473 (Minn. 2019) (rejecting appellant’s framing of an evidentiary error as a due-process violation).

not decide which harmless-error standard applied “because even under the more favorable constitutional harmless-error standard Sanders was not prejudiced”).

The state has an ongoing obligation to disclose required information “in time to afford counsel the opportunity to make beneficial use of it.” Minn. R. Crim. P. 9.03, subd. 2(a). The state must generally disclose the names and addresses of witnesses who may be called at trial. Minn. R. Crim. P. 9.01, subd. 1(1). Under Minnesota Rule of Criminal Procedure 9.01, subdivision 3(2), a prosecutor may file a certificate with the district court to prevent disclosure of certain information concerning witnesses when disclosure may “subject witnesses or other persons to physical harm or coercion.” Nondisclosure under this rule cannot extend beyond the time witnesses are sworn to testify at trial. *Id.*, subd. 3(2).

The common law affords the government a “privilege to withhold from disclosure the identity of persons who furnish information” to law enforcement. *Roviaro v. United States*, 353 U.S. 53, 59 (1957); *see also Rambahal*, 751 N.W.2d at 90 (stating that Minnesota courts have recognized this privilege). “The privilege is not unlimited, however, and it gives way when ‘the disclosure of an informer’s identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause.’” *Rambahal*, 751 N.W.2d at 90 (quoting *Roviaro*, 353 U.S. at 60-61).

A district court must, upon certification by the prosecutor, make a record of the evidence presented by the prosecutor of the witness’s risk and the court’s determination of its sufficiency before rule 9.01, subdivision 3(2), is applied. *State v. Hathaway*,

379 N.W.2d 498, 506 (Minn. 1985). But there are no fixed rules with respect to the circumstances of the disclosure. *Rambahal*, 751 N.W.2d at 90. The analysis instead must occur on a case-by-case basis with the public's interest in protecting the flow of information balanced against the individual's right to prepare his defense. *Id.* "Our cases reflect that the emphasis in this inquiry is on fundamental fairness." *Id.* The central focus is "whether disclosure is necessary to a fair determination of the defendant's guilt." *Id.* at 90-91 (quotation omitted).

The supreme court has articulated four nonexclusive factors, known as the *Syrovatka* factors, that inform a district court's analysis of whether to order disclosure of a confidential informant's identity: (1) whether the informant will be a material witness; (2) whether the informant's testimony will be material to the issue of guilt; (3) whether testimony of officers is suspect; and (4) whether the informant's testimony might disclose entrapment. *Id.* at 90 (quoting *Syrovatka v. State*, 278 N.W.2d 558, 561-62 (Minn. 1979)).

The prosecutor's affidavit asserted the following bases for nondisclosure of J.T.'s identity: (1) the confidential informant provided inculpatory information to law enforcement, including Olivar's role in planning the robbery; (2) Olivar is known to law enforcement due to his involvement in drugs and his violent criminal history; (3) Olivar has been charged with multiple counts of domestic assault and was previously charged with felony assault, though the case was dismissed because the victim relocated to Mexico; (4) Olivar has connections to a drug cartel and its network of individuals; (5) Olivar was in regular contact with his wife, who was not incarcerated; and (6) the confidential informant expressed fear for his safety. The district court found that only the first and

second *Syrovatka* factors were relevant and favored disclosure. Balancing Olivar's need to prepare his defense with the confidential informant's safety and the public's interest in receiving truthful information, the district court concluded that disclosure of the informant's identity a few days before trial struck a fair balance.

We first address Olivar's argument that the state offered insufficient evidence that nondisclosure was necessary. Olivar contends that the state's evidence was insufficient because (a) it did not claim anyone threatened J.T., (b) it did not explain how harming J.T. could benefit Olivar, (c) it exaggerated and speculated about Olivar's criminal history, (d) it did not support the state's vague claims that Olivar was known to law enforcement and had connections to a drug cartel, and (e) it did not establish that J.T. was in danger because the state took no action to protect or hide J.T. None of Olivar's assertions are supported by legal authority.

Subdivision 3(2) of rule 9.01 does not require any of the findings that Olivar asserts were missing from the state's affidavit. Contrary to Olivar's contentions, the facts of this case strongly support that disclosure of J.T.'s identity as the confidential informant at an earlier time may have subjected him to physical harm or coercion. J.T. was the individual who initially reported that the burglary was going to occur, and the burglary was committed at a known drug stash house, involved weapons, and ultimately led to the intentional murder. We reject Olivar's argument that we should impose requirements for certification that are not contained in the rule or caselaw, and we conclude that the district court did not abuse its discretion by delaying disclosure in this case.

We next address Olivar's argument that the district court abused its discretion by ordering the disclosure by Thursday, four days before trial began on Monday. The district court determined that, given the materiality of the confidential informant's anticipated testimony, disclosure needed to occur before trial to avoid prejudice to Olivar. The district court balanced concerns for J.T.'s safety with Olivar's need to have an opportunity to make beneficial use of the confidential informant's identity. It determined that the September 19 disclosure date would give Olivar adequate time to investigate the informant's background.

Olivar asserts that he was prejudiced by this date for two reasons. First, Olivar had noticed J.T. as a possible alternative perpetrator, but the date of disclosure set by the district court did not give Olivar enough time to gather the needed evidence to present that theory. Second, Olivar argues that he had insufficient time and information to cross-examine J.T. on his reliability. He asserts that his due-process and Sixth Amendment rights were violated. We address each argument in turn.

We first consider Olivar's alternative-perpetrator theory. The Due Process Clauses of the United States and Minnesota Constitutions guarantee a criminal defendant's right to present a complete defense. U.S. Const. amend. XIV; Minn. Const. art. I, § 7. Included in the right to present a complete defense is the right to introduce evidence that an alternative perpetrator committed the crime. *State v. Rooney*, 23 N.W.3d 75, 81 (Minn. 2025). A defendant's right to present a complete defense is not absolute, however. *State v. Jenkins*, 782 N.W.2d 211, 224 (Minn. 2010).

Olivar's argument is not persuasive because Olivar does not explain how learning that J.T. was the confidential informant prevented him from producing

alternative-perpetrator evidence. For most of the time the case was pending, Olivar knew that J.T. was going to be a witness for the state. Olivar received substantial discovery related to J.T.'s involvement as a witness and the intended substance of his testimony. Olivar does not dispute that the only information regarding J.T. that he did not have until the disclosure was that J.T. was the confidential informant who first warned Longen that the robbery was going to occur and that Olivar was involved.

Moreover, Olivar noticed J.T. as a possible alternative perpetrator and included J.T. on his witness list in August. Thus, it appears Olivar had sufficient time, if he had so chosen, to introduce evidence of J.T. as an alternative perpetrator irrespective of his identity as the confidential informant.

We next consider Olivar's argument that he did not have time to investigate J.T. and thus had no way to impeach J.T. or Officer Longen when Longen testified about J.T.'s honesty and reliability. "The Sixth Amendment to the Constitution guarantees the right of an accused in a criminal prosecution to be confronted with the witnesses against him." *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995) (quotations omitted). "The main and essential purpose of confrontation is *to secure for the defendant the opportunity of cross-examination.*" *Id.* (quotations omitted). A violation of this right is shown by establishing that a defendant "was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness." *Id.* (quoting *State v. Pride*, 528 N.W.2d 862, 866 (Minn. 1995)).

At trial, Olivar's counsel expressed concern about not receiving any narrative reports or documentation from Longen about his experience with J.T. The district court

stated that it would take objections to the testimony on a statement-by-statement basis. The district court also noted a continuing objection and stated that it would reserve Olivar's right to request a continuance if Longen's or J.T.'s testimony went into any area that required additional investigation or documentation beyond what was previously provided. Olivar never requested a continuance at trial.

Information about J.T.'s prior work as a confidential informant was not elicited at trial. The district court sustained several objections to questions related to any prior work J.T. had done as a confidential informant and details of the purpose and length of time of Longen's work with J.T. Olivar's argument is focused on a single question. Longen was asked for his opinion on J.T.'s reputation for truthfulness, and Longen replied, "He's reliable."

Olivar's claim that he was unable to cross-examine Longen or J.T. about J.T.'s reliability is not supported. Olivar's cross-examination of Longen regarding J.T.'s reliability spanned more than 13 pages. Longen was extensively questioned on the fact that he created no reports or documentation of his conversations with J.T. Notwithstanding Longen's testimony, the district court explained that it found J.T. credible because his testimony was consistent with text messages, tracking data, and witness testimony, including much of Olivar's testimony. It is clear that the district court, sitting as fact-finder, did not find J.T. credible merely because a police officer stated his opinion that J.T. was reliable.

In addition, the substance of Olivar's counsel's cross-examination shows that counsel was able to investigate J.T. in the time allowed by the September 19 disclosure.

For example, Olivar's counsel investigated J.T.'s presence on social media and questioned Longen about what he found. He asked Longen about Facebook posts in which, Olivar's counsel asserted, J.T. was threatening others, inquired about a post in which J.T. stated that he would be "shooting somebody center mass," and whether Longen knew that J.T. held himself out to be a bounty hunter. Olivar's counsel also elicited inconsistencies in J.T.'s story, questioning J.T. and Longen about J.T.'s failure to inform Longen about delivering the duffel bag of drugs and obtaining testimony from Longen that he would consider leaving out that information to be "dishonest" and that such conduct may "destroy trust."

Olivar's claim that the late disclosure caused him to be unable to prepare an adequate defense is not supported by the record. Because Olivar was not prejudiced by the date of disclosure, the district court did not abuse its discretion when it ordered that the disclosure occur on September 19.

In sum, based on the facts established at trial and the plain meaning of the aiding-and-abetting statute, Olivar's criminal liability for the burglary and his expansive liability for the murder of J.F. stands. The intentional murder of J.F. was a reasonably foreseeable consequence of orchestrating the burglary of a known cartel drug stash house, and the district court did not abuse its discretion or violate Olivar's constitutional rights by ordering disclosure of the confidential informant's identity four days before trial.

Affirmed.