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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1576**

State of Minnesota,
Respondent,

vs.

Ronald Dean Davis, Jr.,
Appellant.

**Filed September 8, 2026
Affirmed in part, reversed in part, and remanded
Harris, Judge**

Mille Lacs County District Court
File No. 48-CR-23-618

Keith Ellison, Attorney General, Timothy C. Rank, Assistant Attorney General, St. Paul, Minnesota; and

Corey Haller, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Wheelock, Judge; and Halbrooks, Judge. *

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellant argues that his convictions for two counts of aiding and abetting a drive-by shooting must be reversed because a retrial, which led to his convictions, was barred by the Double Jeopardy Clauses of the United States and Minnesota Constitutions. He argues that the district court abused its discretion by declaring a mistrial during his first trial without a manifest necessity for doing so. Alternatively, appellant argues that the district court erred by convicting him of two counts charged under the same statute and arising from one behavioral incident. Because we conclude that the mistrial was manifestly necessary and the district court acted within its discretion in declaring the mistrial, we affirm in part. But because the district court erred by entering convictions on both drive-by-shooting offenses, we reverse the judgment of conviction of aiding and abetting a drive-by shooting of an unoccupied motor vehicle or building, and remand to the district court to vacate that conviction and correct the warrant of commitment. We therefore affirm in part, reverse in part, and remand.

FACTS

After a shooting at a residence, respondent State of Minnesota charged appellant Ronald Dean Davis Jr. with one count of drive-by shooting toward an occupied motor vehicle or building, in violation of Minnesota Statutes section 609.66, subdivision 1e(a)(2) (2022); one count of drive-by shooting toward an unoccupied motor vehicle or building, in violation of Minnesota Statutes section 609.66, subdivision 1e(a)(1) (2022); and one count of recklessly using or handling a dangerous weapon, in violation of Minnesota Statutes

section 609.66, subdivision 1(a)(1) (2022). The complaint alleged that Davis participated in a drive-by shooting with two other individuals, R.K. and J.M. Law enforcement believed that J.M. was the driver, R.K. was the front passenger, and Davis was the rear passenger and the shooter.

First Trial

The matter proceeded to a jury trial. A key issue at trial was whether Davis was the shooter. On the first day of trial, the district court granted the state's request to include an aiding-and-abetting theory of liability. On the second day of trial, the state called R.K. to testify. During cross-examination, the following exchange occurred:

DEFENSE COUNSEL: [R.K.], do you recall specifically what the two counts were that you plead [to] as part of your plea deal? If I ha --

R.K.: Like what was --

DEFENSE COUNSEL: If -- if I gave you the plea deal, would it refresh your memory? Would that work for you just to recall the two counts that you plead to as part of this plea?

R.K.: Drive-by Shooting Occupied Residence and Drive-by Shooting Unoccupied.

DEFENSE COUNSEL: And it's correct that in the plea deal it doesn't give the term Aid and Abe[t]?

R.K.: Wait. Wha -- I don't -- I don't know what --

DEFENSE COUNSEL: If I could approach, your Honor, with the -- a plea and re -- refresh his memory?

THE COURT: You can approach the witness.

DEFENSE COUNSEL: [R.K.], this is a copy of a Plea Petition, and if you could refer to the whole portion there (indicating), the Counts 1 and 2.

R.K.: (Witness reviews document) Oh, yes.

DEFENSE COUNSEL: Does that refresh your memory?
R.K.: Yeah.

DEFENSE COUNSEL: There isn't any sort of language that [states] that you were Aiding and Abetting? It was you were Operating a Dangerous Weapon in a Drive-by Shooting, Count 1.

The state objected based on hearsay and the parties engaged in an off-the-record discussion at the bench. After the jury was excused, the parties engaged in further discussion about the objection and R.K.'s plea petition. R.K.'s plea petition included the petition itself and an attachment. The petition referenced aiding and abetting when describing the charges, but the aiding and abetting language was not included in the attachment that contained the terms of the agreement for R.K. to cooperate as a witness. The state alleged that defense counsel misrepresented the petition to the jury by suggesting that R.K. pleaded to committing the drive-by shooting as the principal. Defense counsel argued that the questions to R.K. were proper, as they were based on the attachment. The parties discussed how to remedy the situation, including initially agreeing to a curative instruction. But after taking at least two recesses, researching the issue, hearing arguments from the parties, and consulting with a judicial colleague, the district court ultimately declared a mistrial over Davis's objection.

The district court explained, in part, that it did not "see a path forward in this case," and did not believe that there was a way for the jury to base its decision on the facts. The district court concluded that it was not possible to meaningfully convey to the jury that R.K. did not plead guilty as the principal. It expressed concern about certain risks, including "calling the process into question such as why the prosecutor would have – would

or wouldn't have done something. And of course – of course this is what will happen. Of course he [pleaded guilty] – he got a lesser charge. He entered [an] agreement.” But, the district court was also concerned about calling too much attention to the issue, stating, “[I]f I call too much attention to it, I leave the impression that after a diligent investigation and all the other prosecution efforts, they're still searching for . . . a person to convict. And . . . we have Mr. Davis here. He's the one that you should go after.” The district court summarized its position, stating: “I think we've introduced into their minds too much of the thought of what this person pled to which wasn't actually reflected in the petition upon further review.”

The district court also commented on the specific facts of the case, stating:

And let's not forget the facts in this particular case. One gun. One car. Snapchat evidence show[s] . . . that gun in the State's witness's possession prior to the incident. And so if they have found the person because he admitted to – 'cause in their minds he has admitted to it, which was suggested by that line of questioning, their inquiries should stop. And because they – there weren't multiple guns, we don't have the chance – we don't have a choice – we don't have the opportunity to make that argument that multiple persons were armed and as a result this person could've been aid and abet and direct.

Ultimately, the district court concluded that, “it's become too difficult . . . to clarify this with the jury because it is a process question.” The district court declared a mistrial, explaining, “I think based on the information that I've got and have consulted with colleagues about and shared with them, I do think there is a manifest necessity to mistry this case.”

Motion to Dismiss

Before the retrial, Davis moved to dismiss all charges on double-jeopardy grounds. The district court heard arguments from the parties and denied Davis's motion. In its written findings of fact, conclusions of law, and order, the district court found that defense counsel had "mischaracterized [R.K.'s] plea agreement" and that the mischaracterization constituted "legal misconduct." The district court explained that it conducted a lengthy discussion regarding the mischaracterization and considered "a variety of alternatives to remedy the mischaracterization of the document and its contents." The district court ultimately concluded that, in light of the state's objection and the resulting manifest necessity, "there was no other remedy but to declare a mistrial."

Retrial and Sentencing

Prior to the start of the second trial, the state filed an amended complaint to add two aiding and abetting counts of drive-by shooting toward an occupied and unoccupied motor vehicle or building as counts 4 and 5.

A second jury trial was held in March 2025. The jury found Davis guilty of the two counts of aiding and abetting a drive-by shooting and could not reach a verdict on the remaining three counts.

The district court convicted Davis of both counts, granted his request for a downward durational departure, and sentenced him to 36 months' imprisonment for aiding and abetting a drive-by shooting of an occupied building.

Davis appeals.

DECISION

Davis raises two issues on appeal. He first contends that his convictions must be reversed because the district court violated his constitutional protections against double jeopardy by sua sponte declaring a mistrial over his objection, requiring us to determine whether the mistrial was supported by a manifest necessity and whether the district court adequately considered less drastic alternatives. Alternatively, he argues that the district court improperly entered convictions for two drive-by-shooting offenses based on a single criminal act, requiring us to determine whether both convictions may stand under Minnesota Statutes section 609.04 (2022). We address each issue in turn.

I. The district court acted within its discretion by sua sponte declaring a mistrial during Davis’s first trial because there was a manifest necessity for the mistrial.

Davis argues that his convictions must be reversed because a retrial was barred by the Double Jeopardy Clauses of the United States and Minnesota Constitutions, which protect criminal defendants from multiple punishments and multiple prosecutions. U.S. Const. amend. V; Minn. Const. art. I, § 7; *see also State v. Chavarria-Cruz*, 839 N.W.2d 515, 520 (Minn. 2013). He maintains that the district court violated his double-jeopardy rights because there was no manifest necessity for declaring the mistrial and less drastic alternatives existed. We review the district court’s application of the constitutional protections against double jeopardy de novo. *State v. Gouleed*, 720 N.W.2d 794, 800 (Minn. 2006). But we review the district court’s decision to sua sponte declare a mistrial for an abuse of discretion. *Id.*

“[T]he overriding interest in the evenhanded administration of justice” requires an appellate court to accord “the highest degree of respect” to the district court’s evaluation that a mistrial was necessary. *Arizona v. Washington*, 434 U.S. 497, 511 (1978). The United States Supreme Court explained that a more stringent standard could deter a district court from properly declaring a mistrial out of fear that an appellate court’s disagreement with such a decision would automatically bar retrial. *Id.* at 513. In addition, the district court is entitled to deference because it is “more conversant with the factors relevant to the determination than any reviewing court can possibly be,” as the district court heard the jurors during voir dire, is familiar with the evidence and background of the case, observed the trial, and observed the jurors’ reactions. *Id.* at 513-14.

When the district court declares a mistrial over the defendant’s objection, “retrial can only occur if there was manifest necessity for terminating the first trial.” *State v. Lerma*, 25 N.W.3d 40, 46 (Minn. 2025). Manifest necessity means “[a] high degree of necessity—not absolute necessity.” *State v. Long*, 562 N.W.2d 292, 296 (Minn. 1997). Applying the manifest-necessity standard is a fact-intensive inquiry. *Gouleed*, 720 N.W.2d at 800 (citing *Illinois v. Somerville*, 410 U.S. 458, 462 (1973)). The Minnesota Supreme Court has also articulated that the manifest-necessity standard “is a flexible one that seeks to achieve fairness for the prosecution, the defendant, and the public interest.” *Id.* (citing *Long*, 562 N.W.2d at 296 (other citation omitted)).

Davis first argues that the district court was wrong to conclude that defense counsel’s questioning mischaracterized the plea agreement and that a manifest necessity existed to justify a mistrial because defense counsel had the right, with some limitations,

to ask R.K. about his signed plea agreement. Davis relies on *State v. Gilleylen*, 993 N.W.2d 266 (Minn. 2023), to support this argument. In *Gilleylen*, the supreme court held that the district court did not violate appellant's constitutional right to confront witnesses after the district court prevented defense counsel from telling the jury that appellant's codefendant faced a mandatory life sentence before accepting the plea agreement. 993 N.W.2d at 277-280. The supreme court reasoned that the district court had allowed sufficient cross-examination for the jury to appropriately draw inferences about the codefendant's reliability. *Id.* at 279.

We agree with Davis that his defense counsel was permitted to ask R.K. questions about the plea agreement. But the district court can restrict cross-examination about a codefendant's plea agreement, so long as the jury has sufficient information to assess the witness's credibility. *See Gilleylen*, 993 N.W.2d at 277-78; *State v. Yang*, 774 N.W.2d 539, 553 (Minn. 2009). And here, the district court determined that defense counsel's questions were about the title of the charges, not the terms of the agreement itself, and that the questions went beyond credibility and were "cross-examining whether a form has the right attachment to it." Davis cites no authority supporting his argument that he was entitled to ask R.K. how the charges were labeled in the attachment or explaining why defense counsel's questions about the attachment to the plea petition were essential to undermining R.K.'s credibility.

Davis also contends that defense counsel's questioning was supported by the attachment to the plea petition because "the attachment to the plea petition left an open question whether [R.K.] pleaded guilty to aiding and abetting or as a principal." Even if

there were an open question, the district court found that defense counsel ignored the rest of the petition and overstated the contents of the attachment, as “[t]he plea petition clearly says on its face aid and abet as the charges.” The district court also determined that the attachment was not the petition, that R.K. was “not responsible for the content of the attachment,” and that it had no reason to believe the attachment had any weight.¹ These determinations are supported by the record. Although Davis is correct that the attachment does not include a reference to aiding and abetting, the charges outlined in the plea petition do. Yet, defense counsel’s questions stated the opposite: “And it’s correct that in the plea deal it doesn’t give the term Aid and Abe[t].” And, after approaching R.K. to refresh his recollection with the petition, defense counsel stated, “There isn’t any sort of language that [states] that you were Aiding and Abetting.”

Lastly, Davis asserts that there was not a manifest necessity for the mistrial because less drastic alternatives existed, such as the curative instruction that the parties initially agreed to. An important factor that we often consider in determining whether the district

¹ At the hearing addressing Davis’s motion to dismiss the charges on double-jeopardy grounds, the district court stated that the record was “abundantly clear” that R.K. pleaded guilty to aiding and abetting a drive-by shooting and was not charged with being the primary actor. The district court reached this conclusion after listening to the recording of R.K.’s plea hearing. The district court explained that it listened to the recording because Davis’s defense attorney had submitted the plea petition to the court. On appeal, Davis cites *State v. Dorsey*, 701 N.W.2d 238, 249-50 (Minn. 2005), and argues that the district court could not rely on the recording because defense counsel lacked access to it. But, as Davis acknowledges, the district court reviewed the recording after the mistrial had already been declared and did not rely on the recording when it initially found a manifest necessity for the mistrial. Davis does not argue that the district court violated his due-process rights or that the district court erred by investigating facts outside the record when denying his motion to dismiss. See *State v. Morrow*, 834 N.W.2d 715, 724 n.4 (Minn. 2013) (stating that arguments not briefed on appeal are forfeited).

court acted within its discretion in declaring a mistrial over the defendant's objection is whether the district court engaged in a "thoughtful and thorough evaluation" of the less drastic alternatives to the mistrial. *Long*, 562 N.W.2d at 297-98.

Davis contends that the district court took an erroneous view of the law when it reasoned that the jury would not have followed the curative instruction and could not resolve the alleged mischaracterization of the plea agreement. Davis points out that the law presumes that the jury would have followed the instruction and disregarded R.K.'s testimony. He also contends that the district court's reasoning that the jury would have been confused about why Davis was on trial because R.K. had already pleaded guilty to the offense as the principal was mistaken, since Davis was also charged as an accomplice. We disagree with these contentions.

Although less drastic alternatives existed, such as providing a curative instruction or entering the plea petition into evidence, the record shows that the district court carefully considered these options and determined, based on the facts and circumstances of this case, that these alternatives could not provide a remedy that would guarantee either party a fair trial. While Davis was also charged as an accomplice, the record reflects that the district court also considered prejudice to the state. The district court recognized that it was not the state's line of questioning and reasoned that the jury might question why Davis was on trial if R.K. had already pleaded guilty to the offense as the principal.

In sum, we agree with the district court's determination that, based on the facts of this case, defense counsel's characterization of the plea agreement created a manifest necessity for the mistrial. And the record shows that the district court thoroughly and

thoughtfully considered whether there was a manifest necessity for a mistrial and whether less drastic alternatives existed. The district court took at least two recesses, conducted research, consulted with a judicial colleague, and heard extensive arguments from the parties. “[T]he belief that another judge might have proceeded in a different fashion does not render one trial judge’s declaration of mistrial error.” *Long*, 562 N.W.2d at 297-98 (citing *Washington*, 434 U.S. at 511). Accordingly, the retrial did not violate Davis’s double-jeopardy rights.

II. The district court erred by entering convictions for both drive-by-shooting offenses.

Alternatively, Davis argues that the district court erred by entering convictions on both drive-by-shooting offenses because both convictions resulted from a single criminal act. The state agrees that the district court should only have entered a conviction on one of the counts. Although the parties agree, “it is the responsibility of appellate courts to decide cases in accordance with law.” *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (quotation omitted).

“Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1. Relevant here, an included offense is “a lesser degree of the same crime.” *Id.*, subd. 1(1). “[T]he term ‘degree’ in the phrase ‘lesser degree of the same crime’ in Minnesota Statutes section 609.04, subdivision 1(1), is an unambiguous technical term referring to offenses within an ordinal statutory scheme.” *State v. Bradley*, 4 N.W.3d 105, 113 (Minn. 2024). The supreme court has also explained that section 609.04 “bars multiple convictions under

different sections of a criminal statute for acts committed during a single behavioral incident.” *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985). And “[i]f the lesser offense is a lesser degree of the same crime or a lesser degree of a multi-tier statutory scheme dealing with a particular subject, then it is an ‘included offense’ under section 609.04.” *State v. Hackler*, 532 N.W.2d 559, 559 (Minn. 1995). Whether one offense is a lesser-included offense of another is a legal question that we review de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

Here, it is undisputed that the offenses occurred during a single behavioral incident. And the provisions that reference shooting at or toward either an unoccupied or occupied building or vehicle are different subsections of the same statute. Minn. Stat. § 609.66, subd. 1e(a)(1), (2); *see also State v. Clark*, 486 N.W.2d 166, 170-71 (Minn. App. 1992) (concluding that district court erred by entering convictions for both driving under the influence of alcohol and driving with a blood alcohol concentration of 0.10 because both are “different subsections of the same statute” that applied to a single behavioral incident). The felony drive-by-shooting statute also appears to have its own “multi-tier statutory scheme” because it outlines different penalties in subdivision 1e(b) depending on which substantive provision was violated. Minn. Stat. § 609.66, subd. 1e(b) (2022); *see also State v. Hayes*, 826 N.W.2d 799, 805 (Minn. 2013) (analyzing the 2012 version of section 609.66 and concluding that subdivision 1(e)(b) defined a sentencing enhancement, not a separate offense, applicable only when the person committed the offense of drive-by shooting defined in subdivision 1(e)(a)). Accordingly, we conclude that the district court erred when it entered convictions for both drive-by-shooting offenses. Therefore, we reverse the

conviction for aiding and abetting a drive-by shooting of an unoccupied motor vehicle and remand to the district court to correct the warrant of commitment. We direct the district court to vacate the erroneously included conviction and leave the guilty verdict in place. *State v. Westrom*, 6 N.W.3d 145, 161 (Minn. 2024).

Affirmed in part, reversed in part, and remanded.