STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2011

State of Minnesota,
Respondent,

vs.

Hassan Mohamed Abdillahi,
Appellant.

Filed March 1, 2011
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-CR-08-52463

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Hassan Mohamed Abdillahi, Bayport, Minnesota (pro se appellant)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

A jury convicted appellant Hassan Mohamed Abdillahi of second-degree intentional murder. Through appellant's former counsel, he argues: (1) the evidence was

insufficient to sustain the verdict; (2) the district court abused its discretion by admitting *Spreigl* evidence; (3) the district court gave erroneous jury instructions related to the *Spreigl* evidence; (4) the prosecutor committed misconduct; and (5) the district court abused its discretion by denying appellant's discovery request involving two unrelated homicide investigations. Appellant raises additional arguments in a pro se supplemental brief and addendum and argues that the cumulative effect of these alleged errors denied him a fair trial. We affirm.

D E C I S I O N

I.

Appellant argues that the evidence was insufficient to sustain the verdict. Our review of this claim is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Circumstantial evidence is entitled to as much weight as direct evidence, so long as the circumstances proved are consistent with the hypothesis of guilt and inconsistent with any rational or reasonable hypothesis except that of guilt. *State v. Quick*, 659 N.W.2d 701, 710 (Minn. 2003). And "the circumstances must form a complete chain which, in the light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference

other than that of guilt." *Id.* Even under this standard, the jury determines the credibility and weight of the circumstantial evidence. *Id.*

Minnesota law provides that whoever causes the death of a human being with intent to effect the death of that person, but without premeditation, is guilty of second-degree intentional murder. Minn. Stat. § 609.19, subd. 1 (2008). "With intent to" means "that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause the result." Minn. Stat. § 609.02, subd. 9(4) (2008). "Intent is an inference drawn by the jury from the totality of circumstances." *State v. Fardan*, 773 N.W.2d 303, 321 (Minn. 2009) (quotation omitted).

The victim here was fatally shot on September 29, 2008, while he stood outside a Minneapolis commercial building. At trial, the jury viewed surveillance recordings that showed a hooded individual approach A.I., S.M., and the victim as they stood near the building's entrance. The hooded individual walked past the group, and A.I. and S.M. entered the building. Less than one minute later, the hooded individual approached the victim and shot him. A.I., whom appellant admitted he had known for ten years, testified that appellant had walked past him, S.M., and the victim shortly before the shooting. A.I. also testified that, based on the surveillance recordings, appellant was the shooter. This evidence was sufficient for the jury to reasonably conclude that appellant was the shooter. *See State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990) (stating that murder conviction can rest upon testimony of a single witness).

We also conclude that the evidence was sufficient for the jury to reasonably determine that appellant intended to kill the victim. K.O. testified that in mid-September

2008, appellant had stated that his cousin had been killed by S.A., a friend of the victim, and that appellant would retaliate by killing the victim at the end of September. The medical examiner testified that the victim was killed by a single gunshot to the chest that had been fired from a distance of no more than four feet. And the surveillance recordings show the shooter standing over the still-moving victim for several seconds before fleeing. *See Fardan*, 773 N.W.2d at 322 (concluding that evidence was sufficient to support jury's finding of intent to kill where defendant stood three to five feet away from victim, pointed gun at victim, shot victim in the abdomen, and left victim lying on the ground, still alive and bleeding).

Appellant attacks A.I.'s testimony as being "not adequately corroborated by other credible evidence" and attacks K.O.'s credibility. But appellant cites no legal authority to support his assertion that non-accomplice testimony must be corroborated. And it is the role of the jury, not this court, to evaluate witness credibility. *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006).

We conclude that the evidence was sufficient to sustain the verdict.

II.

Appellant next argues that the district court abused its discretion by admitting *Spreigl* evidence that appellant shot S.A. on September 4, 2007. *See State v. Blom*, 682 N.W.2d 578, 611 (Minn. 2004) (stating that a district court's decision to admit *Spreigl* evidence is reviewed for an abuse of discretion). To successfully challenge the admission of *Spreigl* evidence, appellant must show that the district court erred and that the error was prejudicial. *See State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998).

Before a district court can admit *Spreigl* evidence, (1) the prosecutor must give notice of the state's intent to admit the evidence; (2) the prosecutor must clearly indicate what the evidence will be offered to prove; (3) the defendant's involvement in the act must be proven by clear and convincing evidence; (4) the evidence must be relevant and material to the prosecutor's case; and (5) the probative value of the evidence must not be outweighed by its potential for unfair prejudice to the defendant. Minn. R. Evid. 404(b); *State v. Ness*, 707 N.W.2d 676, 685-86 (Minn. 2006). Appellant assigns error only to the fourth and fifth steps of the district court's *Spreigl* analysis, waiving appellate review of the first three requirements. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (stating that issues not briefed on appeal are waived), *review denied* (Minn. Aug. 5, 1997).

Relevance and materiality

The district court ruled that the state could seek to admit evidence that appellant shot S.A. in September 2007 to prove that appellant had motive to kill the victim in September 2008. The district court explained that the *Spreigl* incident was relevant and material because it would assist the jurors in understanding the pattern of retaliatory violence that preceded the charged offense.

Evidence of another crime, wrong, or act of the defendant is admissible to prove motive. Minn. R. Evid. 404(b); *State v. Ferguson*, 581 N.W.2d 824, 834 (Minn. 1998). Motive involves "external facts that create a desire in someone to do something." *Ness*, 707 N.W.2d at 687 (no internal quote in quoted material). Even if motive is not an

element of the crime, the state is usually entitled to prove it because motive "explains the reason for an act and can be important to a required state of mind." *Id.*

Appellant argues that the *Spreigl* incident is not "the reason" that might have motivated him to shoot the victim. Appellant contends that even if he had not shot S.A. in September 2007, he would still have had motive to shoot the victim because S.A. allegedly murdered appellant's cousin in April 2008. But the supreme court has rejected the argument that a prior bad act must provide the but-for reason for committing the charged offense. In *State v. Burrell*, the district court admitted evidence of four *Spreigl* incidents in which the defendant had fired shots at other persons because the incidents "shed light" on why the defendant later fired a bullet that missed its target—a member of a rival gang—but struck and killed an 11-year-old girl: "The pattern of shooting incidents shows a young man caught up in a violent rivalry with another street gang. This rivalry, illustrated by the prior shooting incidents, helps explain why [the defendant] would have shot at [the member of a rival gang]." 772 N.W.2d 459, 461, 465-66 (Minn. 2009).

The *Spreigl* incident here was part of a pattern of violence between appellant and his family and S.A. and his associates. In addition to the *Spreigl* incidents, the jury heard about several violent incidents that were relevant to appellant's motive to kill the victim: a stabbing assault upon appellant in August 2007; the alleged murder of appellant's cousin in April 2008; the attempted shooting of appellant and several of his family members in August 2008; and the shooting of one of appellant's uncles two days before

the charged offense. Because the *Spreigl* evidence was relevant to the state's case, we do not reach the state's intrinsic-evidence argument.

Balancing

This court must also examine whether the probative value of the *Spreigl* evidence outweighed its potential for unfair prejudice. *Fardan*, 773 N.W.2d at 319. To make this determination, we balance the relevance of the *Spreigl* evidence, the risk of the evidence being used as propensity evidence, and the state's need to strengthen weak or inadequate proof. *Id.* "In cases where the prior bad act provides a clear motive for committing the charged offense, the evidence could be characterized as highly probative. In such a case, the likelihood that the risk of unfair prejudice outweighs the probative value of the evidence is diminished." *Burrell*, 772 N.W.2d at 466 (citation omitted). Unfair prejudice does not mean the damage to the opponent's case that results from the legitimate probative force of the evidence; rather, it refers to the unfair advantage that results from the capacity of the evidence to persuade by illegitimate means." *Ferguson*, 581 N.W.2d at 834 (quotation omitted).

Appellant argues that the probative value of the *Spreigl* evidence is minimal because (1) the issue of motive was not disputed and (2) he shot S.A. more than one year before the charged offense. But the issue of motive *was* disputed—appellant testified that he had no desire to seek revenge for the violence committed against him or his family and that he bore no ill will toward the victim. And although the *Spreigl* incident occurred in September 2007, it was one of a series of violent events that arguably led to the charged offense.

Appellant argues that the evidence was unfairly prejudicial because the *Spreigl* incident was "remarkably similar" to the charged offense and was presented to the jury in "excruciating detail." *See Fardan*, 773 N.W.2d at 319 (stating that *Spreigl* evidence cannot be "so similar or presented with enough detail that it would cause the jury to convict based on the other offense[] rather than the charged crime"). We disagree. First, the *Spreigl* incident is not as similar to the charged offense as appellant argues. The *Spreigl* shooting occurred during a chase and physical struggle between appellant and S.A. Appellant testified that the gun discharged accidentally while he and S.A. fought, and this is not obviously contradicted by the surveillance recordings. In contrast, the perpetrator of the charged offense waited for the victim to be alone, approached the victim, appeared to converse with him, then shot him. Second, appellant's assertion that the jury saw the *Spreigl* incident in "excruciating detail" is misleading. Although appellant stipulated that he shot S.A., the surveillance recordings do not clearly show when the weapon was fired.

Appellant argues that the state did not need the *Spreigl* evidence to prove motive because other evidence was presented about violence committed against appellant and his family. But the conflict between appellant and S.A. did not start with the death of appellant's cousin. Instead, as the district court observed, the evidence shows that a violent rivalry existed between appellant and S.A., and their violent acts supported the theory that appellant had motive to kill the victim.

We conclude that the district court did not abuse its discretion by admitting the *Spreigl* evidence.

III.

Appellant's next arguments address unobjected-to jury instructions related to the *Spreigl* evidence. We review jury instructions in their entirety to determine whether they fairly and adequately explain the law of the case. *State v. Hollins*, 765 N.W.2d 125, 129 (Minn. App. 2009). It is within this court's discretion to review an unobjected-to jury instruction under the plain-error doctrine. *State v. Goodloe*, 718 N.W.2d 413, 422 (Minn. 2006). If the defendant establishes (1) error, (2) that was plain, and (3) that affected his substantial rights, this court must also decide whether the integrity and fairness of the judicial proceedings were seriously affected. *Hollins*, 765 N.W.2d at 128.

Appellant argues that the district court erroneously instructed the jury that the *Spreigl* incident occurred in 2008, not 2007; failed to instruct the jury in its final charge that the *Spreigl* evidence "was to be considered only for motive"; and failed, in unspecified ways, to "comply with the parties' stipulation as was approved by the Court." We address each of these arguments in turn.

Date of *Spreigl* incident

The district court initially told the jury that that the *Spreigl* incident took place in 2008. Appellant makes no argument as to how this unobjected-to misstatement affected his substantial rights. *See State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998) (stating that appellant bears the "heavy burden" of proving that his substantial rights were affected). Moreover, the district court told the jury the correct date three times after the

unobjected-to misstatement; the stipulation presented to the jury contained the correct date; and the witnesses uniformly testified that the *Spreigl* incident took place in 2007.

Motive

Appellant argues that the district court erred by failing to admonish the jury, in its final charge, that the *Spreigl* evidence could be used only to establish motive. Before the *Spreigl* evidence was presented, the district court modified the model cautionary instructions to be given to the jury before presentation of *Spreigl* evidence to specify that the evidence was being offered to prove motive. *See* 10 *Minnesota Practice*, CRIMJIG 2.01 (2006). In its final charge, the district court's instructions regarding the *Spreigl* evidence did not specify that the evidence could be used only to establish motive. But the district court's final instructions were consistent with the model cautionary instructions to be given at the close of a case regarding *Spreigl* evidence. *See* 10 *Minnesota Practice*, CRIMJIG 3.16 (2006). And appellant did not request a closing instruction on the specific purpose for which the *Spreigl* evidence could be considered. In these circumstances, the district court did not err by failing to instruct the jury as to the specific purpose—motive—for which the *Spreigl* evidence could be considered. *See State v. Broulik*, 606 N.W.2d 64, 67-68, 70-71 (Minn. 2000) (holding that where jury is given CRIMJIGs 2.01 and 3.16 and defendant does not request an instruction on the specific purpose for which *Spreigl* evidence may be considered, failure to give such an instruction is not error).

Stipulation

Appellant asserts that the district court did not comply with the parties' stipulation as to the *Spreigl* evidence. Our review of this issue is precluded by appellant's failure to adequately explain and support this assertion. *State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008) (declining to consider issues not supported by argument or authority), *cert. denied*, 129 S. Ct. 1624 (2009).

We conclude that appellant has not shown that the district court committed plain error affecting his substantial rights as to the *Spreigl* jury instructions.

IV.

Appellant argues that the prosecutor committed several instances of misconduct. This court will reverse a conviction because of prosecutorial misconduct "only if the misconduct, when considered in light of the whole trial, impaired the defendant's right to a fair trial." *State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003). If the defendant objected to the misconduct at trial, the supreme court has employed a two-tiered harmless-error test. *State v. Yang*, 774 N.W.2d 539, 559 (Minn. 2009). For cases involving claims of "unusually serious prosecutorial misconduct," the conviction may be upheld if there is "certainty beyond a reasonable doubt that misconduct was harmless." *Id.* For cases involving less serious prosecutorial misconduct, an appellate court determines whether the misconduct likely played a substantial part in influencing the jury to convict. *Id.* If the defendant did not object to the misconduct at trial, this court reviews the defendant's claim under a modified plain-error test. *State v. Ramey*, 721

N.W.2d 294, 302 (Minn. 2006). We address each of appellant's prosecutorial-misconduct arguments in turn.

Reference to religious beliefs

At trial, appellant testified that he lived with his girlfriend but kept only a small amount of clothing at her residence to prevent their respective families from learning of the cohabitation. As part of his closing argument on appellant's credibility, the prosecutor stated:

> And this is a small thing. It's a small thing. They keep—he keeps his clothes, the amount of clothes, down at [the girlfriend's residence] so that her family doesn't know he is staying there or living there. Now, that's deceitful. Understandable deceit, yes. But it is still deceitful. It is not a big thing on its face, *although in some religions it would be a big thing.*

(Emphasis added.) Appellant's trial counsel objected to the prosecutor's reference to religion, and, contrary to appellant's assertion, the district court sustained the objection.

Appellant argues that the prosecutor's comment was improper. We agree. The prosecutor's comment improperly linked appellant's credibility to his religious beliefs. *See* Minn. R. Evid. 610 (prohibiting impairment of a witness's credibility through evidence of his religious beliefs); *State v. Wangberg*, 272 Minn. 204, 205, 206-07, 136 N.W.2d 853, 854-55 (1965) (holding that prosecutor committed misconduct by arguing that defendant, the son of a Lutheran minister, should be held to a higher standard than that of state law because of his religious beliefs).

But the district court cured any potential prejudice created by this comment by immediately instructing the jury to disregard the comment. *See State v. Davis*, 685

N.W.2d 442, 446 (Minn. App. 2004) (holding that potential prejudice resulting from prosecutorial misconduct was cured by sustained objection, jury instruction to disregard, and comment being stricken from the record), *review denied* (Minn. Oct. 27, 2004). We also note that the comment was the sole improper reference to religion in a 27-page closing argument and 3-page rebuttal. *See Powers*, 654 N.W.2d at 679 (noting that erroneous statement constituted two sentences in a lengthy closing argument). We conclude that the instance of misconduct was harmless beyond a reasonable doubt.

Referring to appellant as "deceitful"

Appellant challenges the prosecutor's argument that appellant's behavior, in hiding his and his girlfriend's cohabitation from their families, was "deceitful." After careful review of the record, we conclude that the prosecutor used the word "deceitful" and its variations as part of permissible closing argument regarding appellant's credibility. *See State v. Lopez-Rios*, 669 N.W.2d 603, 614 (Minn. 2003) (stating that an attorney may argue the credibility of witnesses in final argument if the argument is tied to the evidence). Despite appellant's assertions to the contrary, not all of the testimony about the cohabitation was objected to, sustained, and stricken. Appellant's explanation as to why he kept a minimal amount of clothing at his girlfriend's residence—that is, that the couple were deceiving their respective families—is part of the record.

Surveillance recordings

Appellant challenges the prosecutor's use of the surveillance recordings of the murder and of the *Spreigl* incident during closing argument. We conclude that the prosecutor's use of the recordings was permissible because it was part of his analysis and

explanation of the evidence. *See State v. Starkey*, 516 N.W.2d 918, 927 (Minn. 1994) (stating that a prosecutor is permitted to present to the jury all legitimate arguments on the evidence, to analyze and explain the evidence, and to present all proper inferences to be drawn from the evidence).

Propensity

Appellant challenges the prosecutor's references to the *Spreigl* evidence in closing argument. Specifically, appellant argues that the following comments—to which appellant did not object—were improper attempts to establish that appellant has a "retaliatory nature and propensity for violent crime":

> Now, [appellant] has testified that he doesn't believe in retaliation. Didn't get angry. You are the ones to make the decision here. And you saw that video of the day of [the *Spreigl*] event, and it sure looked like [appellant] was angry when he ran after [S.A.], and it sure looked like retaliation. And remember he shot him.
>
> . . . .
>
> . . . This photograph shows . . . that [S.A.] had stopped chasing [appellant]. . . . [Appellant] admits he has a gun in his hand. What do we have here? That's the beginning of [appellant] chasing [S.A.], and he says self[-]defense. How reasonable is that? How reasonable given this, that he doesn't believe in retaliation?

We conclude that these statements were permissible references to the *Spreigl* evidence because they rebutted appellant's testimony that he is not a vindictive person and that he shot S.A. in self-defense. *See Starkey*, 516 N.W.2d at 927-28 (stating that prosecutor can present legitimate arguments from the evidence); *Lopez-Rios*, 669 N.W.2d at 614 (stating that prosecutor can argue credibility).

V.

Before trial, appellant requested discovery of police reports related to two open Hennepin County homicide investigations. Appellant's counsel explained that he believed the police files in those cases contained false allegations against appellant and that the allegations had been made by persons who were also accusing appellant of the charged offense. Appellant was not arrested or charged in either case. When the district court inquired as to how appellant's counsel had learned of the accusations against appellant, appellant's counsel stated: "Just through my client. . . . People in the community were claiming that he [committed the murders]." Appellant requested the police files for both cases; in the alternative, he requested that the district court review the files in camera "to see if [appellant]'s name is mentioned in any of . . . those reports." The district court denied the request, finding that appellant had failed to show "any nexus beyond community rumor and familial feelings of accusations." Appellant now challenges the denial of his discovery request.

A district court has "wide discretion" in granting or denying a discovery request; absent a clear abuse of that discretion, a discovery ruling will not be reversed. *State v. Crane*, 766 N.W.2d 68, 71 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009). "To find an abuse of discretion, an appellate court must conclude that the district court erred by making findings unsupported by the evidence or by improperly applying the law." *State v. Underdahl*, 767 N.W.2d 677, 684 (Minn. 2009).

> The rules of criminal procedure allow for broad discovery, but they require that the requested documents relate to the guilt or innocence of the defendant or negate the

> guilt or reduce the culpability of the defendant as to the offense charged.
>
> The requested material must not only be relevant, but the request itself must be reasonably specific. If the material is sensitive or confidential in nature, the court should inspect the material in camera.

State v. Lynch, 443 N.W.2d 848, 852 (Minn. App. 1989) (citations and quotation omitted), *review denied* (Minn. Sept. 15, 1989).

Appellant's discovery request is similar to the request of the defendant in *State v. Lynch*. In that case, the defendant requested access to police records "which possibly contained references to gang-related activities of the complainants" that could be used to impeach them for bias at trial. *Id.* at 850-51. In the alternative, the defendant requested in camera review of the records. *Id.* at 851. This court upheld the district court's denial of the discovery request, noting that the request was not specific. *Id.* at 852. Similarly, appellant here has only provided the district court with assertions that unspecified persons have stated that other unspecified persons have falsely accused him of two additional murders. In effect, appellant asked for permission to comb through the homicide files in an attempt to find information to impeach unspecified witnesses in the charged matter—or, in the alternative, to have the district court perform this task on his behalf. *See State v. Hunter*, 349 N.W.2d 865, 866 (Minn. App. 1984) (stating that discovery rules are not to be used for "fishing expeditions"). Because appellant's discovery request was not reasonably specific, the district court did not abuse its discretion by denying the request.

VI.

Appellant makes additional arguments in a pro se supplemental brief and addendum. Appellant argues that the district court (1) abused its discretion by denying his motion for a mistrial related to an outburst by K.O.; (2) committed plain error by allowing a witness to testify about statements A.I. made shortly after the murder; (3) abused its discretion by granting the jury's request to view the surveillance recordings of the murder during deliberations; and (4) should have questioned all jurors separately about a comment made to them by a member of the public during the last day of deliberations.

Appellant also argues that his trial counsel was ineffective in several respects: (1) failing to challenge the district court's finding of probable cause; (2) failing to "argue bail"; (3) failing to investigate the relationships between the victim and S.A. and the victim and K.O.; (4) failing to make unspecified objections; (5) failing to call certain witnesses; (6) failing to effectively cross-examine certain witnesses; (7) failing "to do a reverse *Spreigl* on" two individuals; and (8) failing to move for a mistrial related to the comment made to the jurors on the last day of deliberations.

Finally, appellant alleges several instances of prosecutorial misconduct and challenges the restitution order.

We have thoroughly reviewed all of appellant's arguments and conclude they are entirely without merit.

VII.

Finally, appellant contends that he is entitled to a new trial on the ground of cumulative error. *See State v. Mayhorn*, 720 N.W.2d 776, 792 (Minn. 2006) (remanding because the cumulative effect of prosecutorial misconduct and evidentiary errors denied appellant a fair trial). But the only errors appellant has shown are that (1) the prosecutor inappropriately linked appellant's credibility to his religious beliefs; and (2) the district court initially misstated the date of the *Spreigl* incident. We conclude that appellant has not shown that the cumulative effect of these errors deprived him of a fair trial.

Affirmed.