**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A08-453**

State of Minnesota,
Respondent,

vs.

Tyvarus Lee Lindsey,
Appellant.

**Filed December 22, 2009**
**Affirmed**
**Stauber, Judge**

Ramsey County District Court
File No. K1071181

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, Suite 315, 50 Kellogg Boulevard West, St. Paul, MN 55102 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Wright, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

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

**STAUBER**, Judge

On appeal from his conviction of two counts of second-degree murder, appellant argues that (1) it was reversible error for the prosecutor to call appellant's girlfriend to the witness stand and have her invoke her Fifth Amendment privilege when the prosecutor allegedly knew that she would exercise that privilege; (2) the district court erred in admitting the out-of-court statements made by appellant's girlfriend, who did not testify at trial, when the statements were not relevant to appellant's case or were only relevant if offered for the truth of the matter asserted; (3) his Fourth Amendment rights were violated when neither the search warrant nor an exception to the warrant requirement permitted the seizure of cameras and the photographs that were developed from those cameras; and (4) the individual and cumulative effect of numerous other errors deprived him of his right to a fair trial. We affirm.

## FACTS

On April 24, 2005, Leon Brooks attended an after-hours party in St. Paul with his girlfriend, J.S., and another female friend, S.V. As the threesome left the party and attempted to get into Brooks's SUV, they were accosted by two assailants armed with handguns. Brooks fled the scene and was chased by one of the assailants. After shots were fired, a woman who lived nearby was awakened by someone pounding on her door. When she opened the door, she found Brooks laying face down on her porch. Brooks had been shot through his left elbow and through his right hand. He also had an entrance

wound in his side. Brooks was subsequently taken to the hospital where he died from internal hemorrhaging and blood loss.

Law enforcement investigating the shooting learned that on the night of the incident, Brooks was wearing a diamond ring and a watch that had a large rectangular face surrounded by black diamonds. The ring was reportedly valued at approximately $3,000, and the watch was reportedly valued at about $4,000. When Brooks was brought to the hospital, the ring and the watch were not found on his person.

After Brooks had been taken to the hospital, J.S. and S.V. contacted law enforcement. Both J.S. and S.V. reported that after leaving the after-hours party, they were accosted when they attempted to get into a SUV. J.S. claimed that when Brooks attempted to flee the scene, he was chased and shot at by one of the assailants. J.S. and S.V. also claimed that when they attempted to flee the scene, they were chased by two females and a male. According to S.V. and J.S., the assailants caught up with them and took S.V.'s purse containing $2,000. S.V. and J.S. further reported that the male struck each of them with his pistol. Both J.S. and S.V. were shown photo lineups, and both women positively identified Vincent Smith as the male assailant.

During the course of the investigation, law enforcement spoke with O.G. who said that Smith and appellant Tyvarus Lindsey were responsible for robbing and shooting Brooks. O.G. claimed that he had spoken with appellant the day before the robbery, and appellant claimed that they were going to rob somebody at the after-party. O.G. also claimed that he talked to Smith and appellant a few days after the incident. According to

O.G., both Smith and appellant were considering leaving town because someone was showing pictures of appellant and Smith and inquiring about them.

On May 16, 2005, a warrant was issued authorizing police to search the apartment where appellant and his girlfriend C.J. lived. The warrant authorized police to seize "[a]ny photos, video recording, papers and drawings that relate to gang members or gang activity." Police executed the warrant the next day, and during the search, police seized five disposable cameras. The film from these cameras was developed and turned over to investigators who recognized appellant, Smith, and C.J. in some of the pictures. Some of the photographs showed two individuals posing with blue bandanas over the lower parts of their faces displaying a watch and ring that matched the description of the jewelry taken from Brooks at the time of his murder. These photographs also show the individuals standing next to a table on which various items were placed, including cash, Newport cigarettes (the brand Brooks smoked), and two guns that were capable of firing the bullets that killed Brooks. Other photographs depict Smith and appellant wearing a ring and watch matching the description of the watch and ring taken from Brooks on the date of the murder.

After the search warrant was executed, C.J., who was in jail on an outstanding warrant, made a telephone call from the jail. During the conversation, C.J. was informed that police searched her apartment earlier that day and seized some cameras. In response to this information, C.J. stated: "Oh, f-cked up. They were supposed to have gotten those f-ckin' cameras out of there."

On April 2, 2007, appellant was charged with two counts of second-degree murder in connection with Brooks's death: intentional murder without premeditation and unintentional murder while committing or attempting to commit a felony. After pleading not guilty, appellant moved to suppress the photographs seized during the execution of the search warrant of C.J. and appellant's apartment. The district court denied the motion and a jury trial was held.

During voir dire, but outside the presence of the jury, the prosecutor informed the district court that he intended to call C.J. as a witness, and if she refused to answer questions despite being given immunity, he would ask that she be held in direct contempt of court until she changed her mind. The district court then asked C.J. whether she would refuse to testify, even if granted immunity, to which C.J. replied, "With all due respect to the court's decision, I have nothing to say." At a later time during voir dire, the district court again spoke with C.J. outside the presence of the jury and advised her that if she refused to testify, she would probably go to jail. Although C.J. stated that she had not had enough time to speak with her lawyer, she indicated that she was fine with her decision not to testify.

At trial, the state called C.J. as its first witness. After being sworn in, C.J. refused to answer any questions. The district court then directed C.J. to answer the questions, adding that she would be granted immunity in conjunction with any Fifth Amendment rights she wanted to assert. C.J. again refused to answer questions, and the court found her in contempt of court and imposed a jail sentence of 40 days. The court told C.J. that if she changed her mind about testifying, she should contact her attorney.

After C.J. was found in contempt of court, the state introduced several witnesses who testified about the incident on April 24, 2005. The state also introduced the testimony of several witnesses who saw appellant with a watch and ring similar to the items taken from Brooks, and who heard appellant reference his role in the robbery and murder of Brooks. In addition to this testimony, the state introduced photographs taken from a surveillance camera inside a gas station located a few blocks from the scene of Brooks's murder. The photographs, taken about two hours before the murder, concern the carjacking of an SUV with special tire rims. R.S., one of the victims of the carjacking, testified that when she and her companions pulled into the gas station, three black males with guns carjacked the SUV and took two necklaces from one of the men in the SUV. R.S. picked appellant's picture out of a photo line-up and claimed that she saw C.J. at the gas station. The stolen SUV was recovered the next day in a garage rented by C.J.

On October 23, 2007, the jury found appellant guilty of both charged counts. The same day, the district court denied appellant's post-verdict motion for a judgment of acquittal. The court subsequently sentenced appellant to 429 months in prison. This appeal followed.

## D E C I S I O N

### I.

Appellant argues that, based upon C.J.'s statements during voir dire, the prosecutor knew that C.J. would invoke her Fifth Amendment privilege if called as a witness. Thus, appellant argues that because the prosecutor had no basis to believe that

C.J. would testify, it was reversible error for C.J. to be called as a witness to have her invoke her Fifth Amendment privilege in front of the jury.

When the state calls a witness who invokes the privilege against self-incrimination, "a natural, indeed an almost inevitable, inference arises as to what would have been" the answer if the witness had not refused to testify. *United States v. Maloney*, 262 F.2d 535, 537 (2d Cir. 1959). The potential for prejudice in asserting the privilege in the presence of the jury is high. *Id.* Despite the constitutional status of the privilege, many people view it as "a shelter for wrongdoers" and may "readily assume that those who invoke it are either guilty of crime or commit perjury in claiming the privilege." *Mitchell v. United States*, 526 U.S. 314, 329, 119 S. Ct. 1307, 1315 (1999) (quotation omitted). And just as it is impermissible to infer the defendant's guilt because he invoked the privilege, it is equally impermissible to do the same when someone who is allegedly associated with the defendant invokes it. *State v. Mitchell*, 268 Minn. 513, 515–17, 130 N.W.2d 128, 130–31 (1964).

In *Mitchell*, the defendant argued that he was entitled to a new trial after the prosecutor called a witness to the stand who asserted his privilege against self-incrimination in front of the jury. *Id.* at 515, 130 N.W.2d at 129–30. In addressing the defendant's claim, the supreme court stated that if the state calls and examines a witness knowing that the privilege against self-incrimination will be asserted, the state is charged with notice of the probable effect of a witness's refusal to testify upon the jury's mind. *Id.* at 516, 130 N.W.2d at 130. Thus, if the witness is called in bad faith, the defendant is

entitled to a new trial regardless of whether any actual prejudice can be shown. *Id.* at 517, 130 N.W.2d at 131.

The state argues that it was not reversible error to call C.J. as a witness because unlike the witness in *Mitchell*, C.J. had been granted immunity and, therefore, had no privilege against self-incrimination. We disagree. The state is correct in that the privilege against self-incrimination ceases to apply when the witness is granted immunity with respect to the incriminating testimony. *Ullmann v. United States*, 350 U.S. 422, 431, 76 S. Ct. 497, 502-03 (1956). But the cases on which the state relies to support its claim are distinguishable. In the cases relied upon by the state, the witnesses' privilege against self-incrimination ceased to exist before the witnesses were called to testify. *See State v. Black*, 291 N.W.2d 208, 212 (Minn. 1980) (noting that witness had no privilege against self-incrimination where she had testified under oath in her own trial); *see also State v. Collier*, No. A06-2386, 2008 WL 2446333, at *6-8 (Minn. App. May 20, 2008) (noting that the circumstances in *Mitchell* were not present where the witnesses who asserted their Fifth Amendment privilege in front of the jury were granted immunity prior to trial). In contrast, C.J. was not granted immunity until *after* she took the stand in front of the jury and refused to answer questions. We cannot agree that granting a witness immunity in front of a jury relieves the state of any misconduct when the state, in bad faith, calls a witness to the stand knowing that the witness intends to assert his or her privilege against self-incrimination. Therefore, even though C.J. was granted immunity after she took the witness stand, appellant is entitled to a new trial under *Mitchell* unless

the record demonstrates that the prosecutor had a good faith basis for calling C.J. to the stand.

The issue of whether the state acted in bad faith by calling C.J. as a witness requires us to again turn to *Mitchell* for guidance. In analyzing whether the prosecutor called the witness in bad faith, the supreme court in *Mitchell* noted that there was no objection that a claim of privilege by the witness would prejudice the defendant, and that the objection to the witness testimony concerned the protection of the rights of the witness rather than the defendant. 268 Minn. at 519-20, 130 N.W.2d at 132. The court also noted that (1) no claim was made to the court that the state was calling the witness "for the sole purpose of creating an atmosphere prejudicial to the defendant" and (2) it was not clear from the record that the witness would not testify. *Id.* at 520, 130 N.W.2d at 132. Thus, the court held that the state did not call the witness in bad faith. *Id.* at 133.

Here, the record reflects that during voir dire, but outside the presence of the jury, the following exchange took place between the district court and C.J.:

> THE COURT: Then the second issue is your attorney has told us, [C.J.], that even if I would grant a motion from the State which would in essence[] require you to testify, and if I granted that motion, which I haven't yet - - If I granted that motion, then you would be granted what's called . . . immunity. That means nothing you say in this trial could be used against you to prosecute you in the future. But even if I did that, you said you're still very uncomfortable about testifying and would not testify in the case even if I ordered you do to so; is that true?
> C.J.: With all due respect to the Court's decision, I have nothing to say.
> THE COURT: Okay. We don't need to finalize that discussion right now. . . . [Y]ou'll have to come back, and we'll address those issues at that time about what could

> happen to you if you refuse to testify. It may be that I would send you to jail if you don't testify because you would then be in contempt of court. . . .

The next day, the issue was discussed again outside the presence of the jury. The district court acknowledged C.J.'s indication that she would not testify even if granted immunity and informed her that after researching the issue, she would be subject to jail time if she refused to testify. C.J.'s attorney then stated that "I have essentially advised the same thing. So I think [C.J.] does understand the nature and consequences of refusing to answer questions." When asked if she had anything to add, C.J. stated, "Well, I don't think I had enough time to talk with proper counsel but - - I mean, I feel like this is a no-win situation for me so I'm in agreement with [my attorney] and myself and my decision." C.J. further stated that "I ain't had enough time. This is all a surprise to me." Although C.J. then stated that she was "okay with my decision" and that she was ready to "get it all over with and make preparations for my kids if I am going to jail," C.J. acknowledged that her attorney was available if she wanted to discuss the issue further.

Based on our review of the record, we cannot conclude that the state acted in bad faith by calling C.J. as a witness. Like *Mitchell*, there was no objection to the state's calling of C.J. as a witness, and the proceedings indicate that no claim was made to the district court that the state was calling C.J. for the sole purpose of creating an atmosphere prejudicial to appellant. Moreover, it was not entirely clear from the record that C.J. would not testify. Although C.J. indicated that she would not testify even if granted immunity, the record reflects that C.J. desired more time to discuss the issue with her attorney. It was reasonable for the prosecutor to believe that after further discussions

with her attorney, and being faced with the reality of jail time if she refused to testify, C.J. would change her position about testifying if called at trial.

Because the record does not demonstrate that the state acted in bad faith by calling C.J. as a witness, we must determine whether appellant was prejudiced by C.J.'s refusal to testify in front of the jury. *See Mitchell*, 268 Minn. at 517, 130 N.W.2d at 131 (stating that where the witness is called in good faith, the question arises as to whether, in content and extent, the prosecutor's examination is of a type that has prejudiced defendant to the extent that he has been denied a fair trial). In *Mitchell*, the supreme court found no prejudice to the defendant where the state called, in good faith, a witness who asserted his Fifth Amendment privilege in front of the jury. *Id.* at 520-21, 130 N.W.2d at 132-33. The court held that the lack of prejudice was demonstrated by (1) the failure to request that the testimony be stricken from the record and the failure to seek a curative instruction and (2) the fact that the questions asked by the prosecutor were brief, not fact-laden, and did not go to the substance of the offense. *Id.*

Here, the record reflects that, after stating her name for the record, C.J. was asked what her relationship was to appellant. C.J. responded by refusing to answer any questions. Like *Mitchell*, the questioning of C.J. was brief, not fact-laden, and did not go to the substance of the offense. Moreover, the record reflects that after C.J. refused to testify, the district court provided a curative instruction. As addressed by our supreme court, this instruction usually eliminates any prejudice. *See State v. Jones*, 277 Minn. 174, 182, 152 N.W.2d 67, 74 (1967) (stating that most courts that have considered situations where the state has called a witness who has invoked a Fifth Amendment

privilege in front of the jury follow the rule that a cautionary instruction by the court will usually eliminate the prejudice caused by improperly asking the question).

We also note that there was substantial evidence linking appellant to Brooks's murder. This evidence included photographs of appellant and Smith wearing jewelry that matched the description of the jewelry taken from Brooks. Some of these photographs also depict appellant and Smith wearing masks over the lower portions of their faces, displaying the jewelry, and standing next to a table on which substantial amounts of money and Newport cigarettes (the brand Brooks smoked) lay. There was also a witness who testified that he heard appellant admit to shooting and robbing Brooks and numerous other witnesses whose testimony linked appellant to the murder. Accordingly, there was no significant prejudice resulting from the prosecutor's decision to call C.J. as a witness.

Finally, we stress that the decision to grant immunity to C.J. should have been conducted on the record but outside the presence of the jury. Had this occurred, the need to call C.J. as a witness and have her refuse to testify in front of the jury would have been alleviated. We encourage practitioners and district courts to follow this practice in future cases.

**II.**

Appellant argues that the district court abused its discretion in admitting the statements C.J. made during her jailhouse phone call. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court

abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citations omitted).

Generally, hearsay evidence is inadmissible unless it comes within a recognized exception. Minn. R. Evid. 802. Under one recognized exception, Minn. R. Evid. 803(3), a declarant's statements about his or her own then-existing state of mind are admissible. To be admissible under the state-of-mind exception, "the statement must be contemporaneous with the mental state sought to be proven. There must be no suspicious circumstances suggesting a motive for the declarant to fabricate or misrepresent his or her thoughts. The declarant's state of mind must be relevant to an issue in the case." *State v. DeRosier*, 695 N.W.2d 97, 104-05 (Minn. 2005) (quotation omitted).

Here, the state sought to introduce a recording of the telephone call that C.J. made from jail. The state claimed that the recording was admissible under Minn. R. Evid. 803(3) because the recording was only being offered for its effect on C.J. of what was said during the call with respect to the items seized from C.J.'s dwelling during the execution of the search warrant. Over appellant's objection, the district court admitted the recording of the telephone call C.J. made from jail. The district court concluded that the recording was not hearsay because it was not being offered for the truth of the matters asserted.

Appellant argues that the district court erroneously admitted the recording because the recording did not demonstrate the effect on C.J. We disagree. A review of the recording reveals that, during the conversation, C.J. was informed that police had searched her apartment earlier that day and seized some cameras. In response to this

information, C.J. declared: "Oh, f-cked up. They were supposed to have gotten those f-ckin' cameras out of there." This statement indicates C.J.'s shock and concern that the cameras contained prejudicial information and demonstrates that she was upset that law enforcement obtained the pictures. Thus, the district court properly concluded that these recorded statements demonstrated the effect on C.J.

Appellant also contends that the effect on C.J. was irrelevant and that any possible relevance was based on the truth of the matter asserted. Evidence must be relevant to be admissible. Minn. R. Evid. 402. Evidence is relevant if it tends to make the existence of a fact that is of consequence more probable or less probable than it would be without that evidence. Minn. R. Evid. 401. Relevant evidence may be excluded if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or misleading the jury. Minn. R. Evid. 403.

Here, C.J.'s statement was relevant because it demonstrates that C.J. was aware of cameras that contained pictures of appellant showing off the stolen jewelry. Her reaction to being told that police seized the cameras indicates that she was concerned that law enforcement recovered incriminating evidence. Moreover, whether the statement was true is irrelevant. Regardless of whether it was true that somebody should have disposed of the cameras, the statement indicates C.J.'s knowledge of incriminating evidence, and that it was potentially prejudicial to appellant for law enforcement to have received this evidence. Thus, appellant has not shown that the district court abused its discretion in admitting these recorded statements

Appellant further argues that the district court abused its discretion in admitting the remaining part of the recording because it was irrelevant, prejudicial, and far beyond that which satisfies the state-of-mind exception. Based on our review of the recording, we agree that much of the recording was irrelevant and beyond the scope of state's claimed basis to admit the recording. Indeed, careful redaction of the tape would have effectuated the district court's ruling. However, appellant is unable to demonstrate any prejudice. As discussed above, there was ample evidence offered at trial proving appellant's guilt. Thus, appellant is not entitled to a new trial on this issue.

**III.**

Appellant argues that the district court erred in denying his motion to suppress. In reviewing pretrial orders on motions to suppress evidence, we independently review the facts and determine, as a matter of law, whether the district court erred in suppressing - - or failing to suppress - - the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We accept the district court's factual findings unless they are clearly erroneous, but the district court's legal determinations are reviewed de novo. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006).

The United States and Minnesota constitutions prohibit the government from conducting unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A district court or magistrate may issue a search warrant only after making a probable cause finding, based on the totality of the circumstances, that "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quoting *Illinois v. Gates*, 462 U.S.

210, 238, 103 S. Ct. 2317, 2332 (1983)). A probable cause determination must be based on "all the circumstances set forth in the [warrant] affidavit . . . including the 'veracity' and the 'basis of knowledge' of persons supplying hearsay information." *Id.*

"The Fourth Amendment requires that a search warrant describe the things to be seized with sufficient particularity to prevent a general exploratory rummaging in a person's belongings." *United States v. Carey*, 172 F.3d 1268, 1272 (10th Cir. 1999). "Prohibiting the issuance of general search warrants, the Fourth Amendment requires that a search warrant describe and identify the items to be seized with particularity." *United States v. Cartier*, 543 F.3d 442, 447 (8th Cir. 2008). Broad terms are sufficiently particular if "the description is as specific as the circumstances and the nature of the activity under investigation permit." *United States v. Leary*, 846 F.2d 592, 600 (10th Cir. 1988) (quotation omitted). But items to be searched must be described "with as much specificity as the government's knowledge and circumstances allow." *Id.*

Appellant argues that because a "camera" and a "photograph" are two separate and distinct items, the search warrant was not sufficiently particular for law enforcement to seize the cameras when the warrant only stated that "photos" could be seized. Thus, appellant argues that the district court erred in declining to suppress the photographs.

Appellant's argument is without merit. "Generally, any container situated within a residence that is the subject of a validly-issued warrant may be searched if it is reasonable to believe that the container could conceal items of the kind portrayed in the warrant." *State v. Wills*, 524 N.W.2d 507, 509 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). Here, the cameras were essentially the containers in which the items sought to be

recovered (i.e., the photographs) were stored. Moreover, as the district court found, the undeveloped film in the cameras is the functional equivalent of photographs. *See People v. Patterson*, 841 N.E.2d 889, 907 (Ill. 2005) (stating that "it is difficult to imagine any use for exposed but undeveloped film other than to develop it into photographs"). If the warrant lists "photographs" as an item to be seized, but the photographs are still on the camera because the warrant was issued before the suspect had the opportunity to develop the film, it would be illogical to conclude that the search warrant was not sufficiently particular. *See State v. Miller*, 666 N.W.2d 703, 713 (Minn. 2003) (stating that the standard to be used in identifying the objects authorized to be seized "is one of practical accuracy rather than technical nicety"). Therefore, because "photos" is sufficiently particular for the seizure of the cameras, the district court did not err in denying appellant's motion to suppress.

Appellant also appears to argue in his pro se supplemental brief that the warrant application did not set forth sufficient probable cause to believe that photos related to gang activity would be found at the residence. We disagree. A court should give great deference to a magistrate's decision to issue a warrant. *State v. Martinez*, 579 N.W.2d 144, 146 (Minn. App. 1998), *review denied* (Minn. July 16, 1998). Resolution of a doubtful or marginal case should be determined in favor of the decision to issue the search warrant. *State v. Albrecht*, 465 N.W.2d 107, 109 (Minn. App. 1991). The sufficiency of the search warrant application and affidavit is determined from its totality without engaging in a hypertechnical examination of the affidavit. *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998).

Here, the affiant was a St. Paul police officer with ten years of experience. At the time of the warrant application, the officer had been assigned to the Minnesota Gang Strike Force (MGSF) for the past three years. As part of her assignment to the MGSF, the officer attended numerous training seminars involving the activities of criminal gangs, and participated in multiple gang investigations where search warrants were executed. The officer stated in the affidavit that she has knowledge from her training and experience that it is common for criminals to keep evidence of their crimes at the place of their residence. Just as in angling where catching a large walleye requires photographic memorialization to attest to the event and the prowess of the angler, evidence of crimes can certainly be memorialized in photographs. Thus, based on the totality of the circumstances, and the applicable standard for examining whether sufficient probable cause existed to issue the warrant, there was probable cause to believe that photos showing gang activity may be found at appellant's residence.

Appellant further argues in his second pro se supplemental brief that there was insufficient probable cause to support the issuance of the warrant because the police provided inadequate information as to the reliability of their confidential informant. But the affiant stated that she has worked extensively with informants and that she spoke personally with the confidential reliable informant (CRI) in this case. The affiant also stated that she has received reliable information from the CRI in the past and the CRI's information was corroborated by other information relating to the investigation and robbery of Brooks. Finally, there was no evidence in the record to suggest that that the CRI provided false information in the pursuit of his or her own interests. Accordingly,

there was adequate information to establish the reliability of the CRI, and the district court did not err in denying appellant's motion to suppress the photographs.

**IV.**

Finally, appellant argues that the cumulative effect of numerous errors at trial deprived him of a fair trial. *See State v. Williams*, 525 N.W.2d 538, 549 (Minn. 1995) (reversing when cumulative effect of several errors, including admission of evidence and prosecutorial misconduct, deprived defendant of a fair trial). These alleged errors include: (1) Sergeant Janet Dunnom's reference to Brooks as the "victim," and her reference to a gang sign in a photograph; (2) O.G.'s testimony at trial that he did not want to be known as an informant because he was afraid of being killed; and (3) a witness's testimony explaining the origin of the jewelry appellant was wearing in a photograph.

Our review of the record reveals that appellant's claimed errors consist of the type of unanticipated comments that often occur at trial. Moreover, even if we were to agree that appellant's claimed errors are errors in fact, appellant cannot demonstrate prejudice. The claimed errors are not so prejudicial to overcome the substantial weight of the state's evidence against appellant. Therefore, we conclude that appellant has not met his burden demonstrating that he is entitled to a new trial.

**Affirmed.**