IN THE COURT OF APPEALS OF IOWA

No. 7-048 / 05-0926
Filed April 25, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RACARDIOUS MATAVIS SPATES,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister, Judge.

Defendant appeals his conviction for first-degree murder. **AFFIRMED.**

Thomas P. Frerichs of Frerichs Law Office P.C., Waterloo, and John Rausch of Rausch Law Firm, P.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett and Ann Brenden, Assistant Attorneys General, Thomas J. Ferguson, County Attorney, and Joel Dalrymple, Assistant County Attorney, for appellee.

Heard by Mahan, P.J., and Eisenhauer and Baker, JJ.

MAHAN, P.J.

Defendant Racardious Martavis Spates (hereinafter "Carl") appeals from his jury trial conviction and sentence for first-degree murder in connection with the death of Thyanna Parsons. Carl claims the district court erred in several respects. We affirm.

I. Facts and Prior Proceedings

At approximately 2:00 a.m. on October 10, 2004, a violent fight broke out in the parking lot of a Waterloo bar between a group of men calling themselves "L-Block" and a group of men calling themselves "the Hood." An hour later, the L-Block group approached the Hood's "afterset"[1] house party bearing multiple firearms. Someone fired a shot, and a gunfight ensued. Thyanna Parsons, a young female standing in the kitchen at the afterset party, was killed when a bullet fired by an SKS assault rifle went through her arm and pierced her chest.

On October 22, 2004, four people in the L-Block group—Carl, Christopher Spates, Damean Spates, and Dorondis Cooper—were charged with first-degree murder on the theory of felony murder for the death of Thyanna Parsons.

Damean Spates and Dorondis Cooper pled guilty to second-degree murder in exchange for their testimony against Carl and Christopher Spates. Paul Ackerman, a person who transported some of the men to the afterset party, pled guilty to a misdemeanor in exchange for his agreement to testify at trial.

Prior to trial, the State filed a notice of its intent to use hearsay and videotape evidence at trial pursuant to Iowa Rule of Evidence 5.803(24). The State sought to introduce evidence of videotaped interviews with one witness

[1] An "afterset" party is a party where food is served after the bars have closed.

who spoke with Carl in the moments after the shooting. The court admitted the videotape under the residual exception to the hearsay rule.

The matter proceeded to a joint trial of Carl and Christopher Spates. Damean and Dorondis both testified Carl was with them during the gunfight and he carried the SKS assault rifle. In addition to his testimony placing Carl at the scene of the shooting, Paul Ackerman testified that he sold the assault weapon to Carl weeks before the shooting. Carl relied on an alibi defense, claiming he was at home at the time of the shooting. At the conclusion of the five-week jury trial, Carl and Christopher were both convicted of first-degree murder.

We proceed to analyze only those issues properly presented for our review. *See* Iowa R. App. P. 6.14(1)(*c*) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.").

II. Residual Hearsay Exception

After the shooting, Carl's cousin, Ashley Scott, was interviewed by the police on three separate occasions. In the videotaped interviews, Ashley stated she talked to Carl on his cell phone shortly after the shooting and he told her he was out "riding around." These facts corroborated the testimony of Dorondis Cooper, Damean Spates, and Paul Ackmeran and contradicted Carl's alibi defense that he went home after the fight in the bar parking lot.

One month after she gave her last videotaped interview to the police, Ashley signed an affidavit recanting her statements. The State then filed a notice of intention to produce her videotaped interviews as evidence and a motion asking for a pretrial determination of the admissibility of that evidence. The court found the tapes were admissible under the residual hearsay exception.

Iowa Rule of Evidence 5.803(24) sets forth the residual hearsay exception:

> A statement . . . having equivalent circumstantial guarantees of trustworthiness [is not excluded by the hearsay rule] if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

In *State v. Brown*, 341 N.W.2d 10, 14 (Iowa 1983), our supreme court succinctly stated the requirements for this exception:

> Before hearsay evidence can be admitted pursuant to [rule 5.803(24)], the trial court must determine that the conditions of the rule are met. This requires five specific findings by the trial judge (trustworthiness, materiality, necessity, notice, and service of the interests of justice).

The district court first found there was proper notice, then analyzed the videotaped interviews and concluded they were "particularly trustworthy," material, necessary, and that their admission served the interests of justice.

On appeal, Carl argues the court improperly admitted these videotaped statements and committed reversible error because the hearsay on these tapes serves as the only corroboration for the State's "accomplice" witnesses.[2] Carl challenges the court's findings with regard to trustworthiness, necessity, and the

[2] We assume, arguendo, that Paul Ackerman, Dornodis Cooper, and Damean Spates were all accomplice witnesses and that this testimony was necessary for corroboration.

interest of justice and contends the court made a major revision of the rules of evidence.[3]

The standard of review for the admission of hearsay testimony is for errors of law. *State v. Long*, 628 N.W.2d 440, 447 (Iowa 2001). We "give deference to the district court's factual findings and uphold such findings if they are supported by substantial evidence." *Id.*

For the reasons stated below, we find the district court did not err or make a major judicial revision of the rules of evidence when it admitted the videotape testimony under the residual hearsay exception.

A. Trustworthiness

Factors to consider in making a trustworthiness determination under rule 5.803(24) include: the declarant's propensity to tell the truth, whether the alleged statements were made under oath, assurance of declarant's personal knowledge, the time lapse between the alleged event and the statements concerning the event, and the motivations to make the alleged statements. *See State v. Weaver,* 554 N.W.2d 240, 248 (Iowa 1996), *overruled on other grounds by State v. Hallum,* 585 N.W.2d 249 (Iowa 1998). Also, it is proper to consider whether the statements have a "ring of veracity" and whether the statements were consistent throughout the interview. *State v. Rojas*, 524 N.W.2d 659, 663 (Iowa 1994).

[3] Despite Carl's claims on appeal, a specific finding of "exceptional circumstances" is not required under our rule. *See, e.g.*, *State v. Rojas*, 524 N.W.2d 659, 662-64 (Iowa 1994) (setting forth residual exception requirements without making a specific finding that the situation qualifed as an exceptional circumstance).

Several factors support the court's trustworthiness finding. The interviewer asked open-ended, nonleading questions. *See id.* (stating open-ended questions asked by interviewing agent supported circumstantial guarantees of trustworthiness). Her answers were detailed, unambiguous, and not inconsistent throughout the series of taped interviews. While she was not placed under oath, the officer impressed upon her the importance of telling the truth and the penalties for perjury. Finally, she is Carl's cousin, and there is no known reason why she would fabricate claims against his interest. Upon our review of the videotaped interviews, we agree with the district court's conclusion that the tapes were "particularly trustworthy." The interviews have an overall ring of veracity and have sufficient circumstantial guarantees of trustworthiness. *See id.* (stating a videotape "is more reliable than many other forms of hearsay because the trier of fact could observe for itself how the questions were asked, what the declarant said, and the declarant's demeanor.").

B. Necessity

Ashley's taped interview provided probative evidence of Carl's whereabouts during the time leading up to the murder and the time shortly after the murder. The district court found that because Ashley later recanted her statements made in the interview, the admission of the videotape was the only means by which the State could introduce the information it had received from Ashley. We agree this satisfies the necessity requirement. *See State v. Kone*, 562 N.W.2d 637, 638 (Iowa Ct. App. 1997) (finding same).

C. Interest of Justice

The "interest of justice" element is satisfied where "[t]he appropriate showing of reliability and necessity [is] made, and admitting the evidence advances the goal of truth-seeking expressed in Iowa Rule of Evidence [5.102]." *Rojas*, 524 N.W.2d at 663.

We are satisfied that admitting this videotape evidence serves the interests of justice. As stated above, the videotaped interviews have sufficient guarantees of trustworthiness. The interviews were conducted relatively soon after the incident, while the affidavit was written more than four months after the incident. As noted by the district court, the affidavit was also "carefully constructed to avoid a direct denial of her previous statements" and "it artfully avoid[ed] a direct contradiction of what she previously stated with obvious certainty." Finally, the videotape evidence serves the interest of justice because it gives the trier of fact the ability to observe for itself the declarant's demeanor and what the declarant said.

III. Constitutional Confrontation

On appeal, Carl now claims the admission of the videotape was a gross misapplication of his constitutional right to confront witnesses against him as established in *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

At the hearing regarding the admissibility of the videotape evidence, counsel for the State declared "*Crawford* is not an issue" in this case, and then went on to explain why he thought *Crawford* was not applicable. In response, Carl's trial counsel stated "I think the analysis is not under *Crawford*. It's under

Turecek." Taking the cue from *both* the State and Carl, the district court's ruling did not address *Crawford* or whether Ashley's availability at trial provided the necessary constitutional confrontation.[4] As our supreme court has repeatedly explained,

> [B]ased upon considerations of fairness, . . . this court is not ordinarily a clearinghouse for claims which were not raised in the district court[.] "[I]t is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider. Furthermore, it is unfair to allow a party to choose to remain silent in the trial court in the face of error, taking a chance on a favorable outcome, and subsequently assert error on appeal if the outcome in the trial court is unfavorable."

Sorci v. Iowa Dist. Ct., 671 N.W.2d 482, 489 (Iowa 2003) (quoting *DeVoss v. State,* 648 N.W.2d 56, 60 (Iowa 2002)). We find Carl did not preserve error on this issue, and therefore we will not address it on appeal. *Bill Grunder's Sons Const., Inc. v. Ganzer*, 686 N.W.2d 193, 197 (Iowa 2004) ("We will not review issues on appeal unless they were properly preserved below.").

In his reply brief, Carl made the following alternative argument: If his trial attorney failed to preserve this error for appeal, then we should review this case for constitutional error for ineffective assistance of counsel. Because "[p]arties cannot assert an issue for the first time in a reply brief," we will not address this alternative argument on appeal. *Sun Valley Iowa Lakes Ass'n v. Anderson,* 551 N.W.2d 621, 642 (Iowa 1996).

IV. Severance

Carl contends the district court abused its discretion when it admitted into evidence a mask and DNA evidence found in Christopher Spates' car. Carl

[4] The court did note Ashley would be available for cross-examination, but its ruling did not address the constitutional issue of confrontation.

argues the evidence would not have been admissible against him if he were tried separately and the evidence was so prejudicial it denied him a fair trial. In essence, Carl argues the court erred when it did not grant his motion to sever the trial.

The general rule is "defendants who are indicted together are tried together." *State v. Sauls*, 356 N.W.2d 516, 517 (Iowa 1984). Iowa Rule of Criminal Procedure 2.6(4)(*b*) provides, in pertinent part:

> When an indictment or information jointly charges two or more defendants, those defendants may be tried jointly if in the discretion of the court a joint trial will not result in prejudice to one of the parties. Otherwise, defendants shall be tried separately.

A district court's refusal, in the exercise of its discretion, to grant a severance will be reversed on appeal "only if the defendant demonstrates an abuse of discretion." *State v. Belieu*, 288 N.W.2d 895, 900 (Iowa 1980). The court will not be found to have abused its discretion unless the challenging defendant demonstrates a joint trial prejudiced his or her right to a fair trial. *Id.*

Carl submits that under the circumstances in which Parsons was shot and killed, the mask was "scary enough to inflame the jury." Also, DNA evidence that linked the mask to Christopher Spates and one other person "permitted the jury to speculate as to Carl's involvement with the mask." Carl contends evidence of Dorondis Cooper's blood in Christopher Spates' vehicle was prejudicial because "in this age of 'Law and Order' and 'CSI' juries are especially impressed with DNA evidence."

These arguments are illogical and unpersuasive. There was no evidence, direct or circumstantial, that connected Carl to the mask. There was testimony

that more than two assailants approached the afterset party with firearms; therefore, the jury could just as well have speculated DNA on the mask belonged to one of the other assailants. Also, the fact that Cooper's blood was in Christopher Spates' vehicle had no bearing or relation to Carl's case. *State v. Stuart,* 241 Iowa 1004, 1006, 43 N.W.2d 702, 703 (1950) ("A conviction will not be reversed because some evidence has been admitted which was clearly not prejudicial to the defendant, although it may have been irrelevent or immaterial."). We find no prejudice here.

V. "Mutual Combat" Jury Instruction

Carl contends the district court committed reversible error in formulating and submitting the following "mutual combat" instruction to the jury:

> If you find that either of the defendants, or any person or persons that either of the defendants was acting together with, were voluntarily engaged in mutual combat by shooting guns at each other and that, by exchanging gunfire, they jointly created a zone of danger likely to result in the death or injury of innocent bystanders, then you may also find that each of the combatants, including the defendant, aided and abetted each of the other combatants and it makes no difference which of the combatants fired the first shot or which of the combatants fired the shot which struck and killed Thyanna Parsons.
>
> To constitute "mutual combat" there must exist a mutual intent and willingness to fight and this intent may be manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat.

Carl claims numerous errors in relation to this instruction. We will address each in turn. Our standard of review concerning alleged error with respect to jury instructions is for correction of errors at law. *Duncan v. City of Cedar Rapids,* 560 N.W.2d 320, 325 (Iowa 1997). Error in giving or refusing to give a particular

instruction does not warrant reversal unless the error is prejudicial to the party. *Thavenet v. Davis*, 589 N.W.2d 233, 236 (Iowa 1999).

Carl contends the court violated his due process rights when it "played" the role of prosecutor for the State by formulating and submitting this instruction. We disagree. The court is required to instruct the jury "as to the pertinent issues, the law, and the definition of the crime." *State v. Oetken*, 613 N.W.2d 679, 686 (Iowa 2000). While it may be customary for both parties to submit proposed jury instructions to the court, the court need not rely upon the parties to generate the proposed jury instructions for the case. *See State v. Sallis*, 262 N.W.2d 240, 248 (Iowa 1978) (stating it is "the trial court's duty to instruct a jury fully and fairly, even without request . . . ."); *see also* Iowa R. Civ. P. 1.924 ("The court shall instruct the jury as to the law applicable to all material issues in the case . . . . Before argument to the jury begins, the court shall furnish counsel with a preliminary draft of instructions which it expects to give on all controversial issues."). The court had a reasonable basis of law from which to form this instruction. *See State v. Brown*, 589 N.W.2d 69, 74-75 (Iowa 1998), *overruled on other grounds by State v. Reeves*, 636 N.W.2d 22 (Iowa 2001) ("In consideration of the mens rea element of second-degree murder, we hold that if death to an innocent bystander ensues from gang-style gunplay in a crowded urban area, each participant in the lethal encounter has exhibited malice."); 40 Am. Jur. 2d *Homicide* § 26, at 476-77 (1999) ("If two men engage in shooting at each other in a crowded place, and a bystander is killed, both are guilty of murder, one as principal and the other as an aider and abettor."). Therefore, we find it was not

improper for the court to instruct the jury on this matter, even though the instruction was not first proposed by the prosecutor.

Carl also claims there was not sufficient evidence to support submitting this instruction to the jury because there was no agreement to engage in mutual combat and someone on the other side of the street fired first. We find no error here because the disputed instruction did not require an agreement between the parties. All that was required was "a mutual intent and willingness to fight, and this intent may be manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat." Ample evidence supports the proposition that there was a mutual intent and willingness to fight. Testimony indicates Carl and his group of friends were in a fight with persons known to be at the afterset party earlier in the evening. Carl and his friends then gathered firearms and traveled to the afterset party with the intent to "shoot the house up." Which group fired the first shot is inconsequential to this instruction.

We also reject Carl's claim that his due process rights were violated because the trial information did not give him notice that he would be prosecuted under this instruction. The State was not required to charge him as an aider and abettor in addition to his role as a principal. *State v. Black*, 282 N.W.2d 733, 734-35 (Iowa 1979). Similarly, Carl was on notice that the State was asserting a vicarious liability theory by virtue of the felony-murder charge. Carl had sufficient notice to defend against this instruction.

VI. Voluntary Manslaughter

Carl contends the district court committed reversible error by refusing to instruct the jury on voluntary manslaughter. Carl argues there was a factual

basis for this instruction because the jury could have found that someone from the afterset party fired the first shot, and this would have provoked a sudden, violent, and irresistible passion to return fire.

We review the district court's refusal to give a jury instruction for abuse of discretion. *State v. Holtz*, 548 N.W.2d 162, 164 (Iowa Ct. App. 1996). "Parties to lawsuits are entitled to have their legal theories submitted to a jury if they are supported by the pleadings and substantial evidence in the record." *Sonnek v. Warren*, 522 N.W.2d 45, 47 (Iowa 1994). Generally, a district court commits reversible error by failing to instruct on all lesser-included offenses. *State v. Anderson*, 636 N.W.2d 26, 38 (Iowa 2001).

At first blush, the voluntary manslaughter instruction appears appropriate because, by statute, voluntary manslaughter "is an included offense under an indictment for murder in the first or second degree." Iowa Code § 707.4 (2003); *State v. Jefferies*, 430 N.W.2d 728, 737 (Iowa 1988). However, because this is a statutorily-mandated lesser-included offense, the district court must apply the factual test to determine if substantial evidence supports each element of the crime of voluntary manslaughter. *State v. Inger*, 292 N.W.2d 119, 122 (Iowa 1980); *State v. LeGrand*, 442 N.W.2d 614-15 (Iowa Ct. App. 1989).

Iowa Code section 707.4 (2003) sets forth the definition of voluntary manslaughter. It provides, in pertinent part:

> A person commits voluntary manslaughter when that person causes the death of another person, under circumstances which would otherwise be murder, if the person causing the death acts *solely as the result of sudden, violent, and irresistible passion resulting from serious provocation* sufficient to excite such passion in a person and there is not an interval between the provocation

> and the killing in which a person of ordinary reason and temperament would regain control and suppress the impulse to kill.

Iowa Code § 707.4 (emphasis added).

Our supreme court has held section 707.4 contains both a subjective requirement and an objective requirement. *Inger*, 292 N.W.2d at 122. The subjective requirement is that the defendant must have acted "solely as a result of sudden, violent, and irresistible passion." *Id.* The objective requirement is that the sudden, violent, and irresistible passion "must result from serious provocation sufficient to excite such passion in a reasonable person." *Id.*

The objective standard is not disputed in this case. While there is some question as to which group fired the first shot, multiple witnesses testified that the first shot came from the afterset party. A reasonable person could find this sufficient provocation to excite an irresistible passion to retaliate. However, there is no evidence in the record which indicates it excited an irresistible passion *in Carl* and no evidence that Carl fired his gun *solely* as a result of a sudden, violent, and irresistible passion. On the contrary, Carl asserted an alibi defense and, through the testimony of other witnesses, claimed he was not present at the murder scene. Carl did not present evidence outlining his subjective state of mind at the time of the shooting; instead, he invited the fact finder to speculate that if he had been there, he would have only returned fire as a result of sudden, violent, and irresistible passion.

We reject this argument because evidence that only generates speculation is not substantial evidence. *State v. Hutchison*, 721 N.W.2d 776, 780 (Iowa 2006). Without some type of evidence indicating Carl's state of mind

at the time of firing the gun, we cannot infer his decision to fire the gun was solely as a result of an irresistible passion simply because gunfire *could* be sufficient provocation to excite an irresistible passion in a reasonable person.

Because there was no evidence to support the subjective requirement that Carl acted out of passion resulting from serious provocation, the court properly refused to submit the manslaughter instruction to the jury.

Carl also contends a jury instruction which defined the term "heat of passion" in the preceding second-degree murder instruction was similar to the model instruction on provocation. Because there was no voluntary manslaughter instruction, he contends this "provocation instruction" could have confused the jury.

Objections or exceptions to instructions must be specific so as to alert the trial court to any alleged error to be corrected. *State v. Aldape,* 307 N.W.2d 32, 39 (Iowa 1981). At trial, Carl did not object to the portion of the instruction defining heat of passion. Instead, he told the court he wanted the definition of heat of passion because "you have to define it." After he repeatedly told the court he wanted the heat of passion definition, he argued the last paragraph of the instruction was covered "well enough" in another instruction.[5] On appeal, he now claims the court erred in using the heat of passion definition. Because a defendant cannot amplify or change an objection on appeal, *State v. LeCompte*, 327 N.W.2d 221, 223 (Iowa 1982), we find this argument was not preserved for our review.

[5] Christopher Spates' attorney specifically objected to the definitional portion of this instruction, but Carl's attorney adamantly stated that he wanted the heat of passion instruction. He cannot now claim on appeal that the court erred in granting his request.

VII. Plea Bargain Testimony

Carl claims there was a constitutional error because testimony from Damean Spates, Dorondis Cooper, and Paul Ackerman came from a corrupt or coercively induced plea bargain. He claims the testimony was either "bargained for" or "so inherently untrustworthy that it must therefore have been elicited as part of a corrupt or coercively induced plea bargain." Carl points to evidence that the witnesses' stories before they entered the plea agreement differed from the testimony they gave after they entered the plea agreement. Because Carl claims a constitutional error, our review is de novo. *State v. McGonigle*, 401 N.W.2d 39, 41 (Iowa 1987).

The State has a right to bargain for truthful testimony in exchange for immunity, lenience, or prosecutorial abstinence. *Id.* However, accomplice testimony becomes tainted and inadmissible if the prosecutor bargains for false testimony, specific testimony, or a specific result. *State v. DeWitt*, 286 N.W.2d 379, 386 (Iowa 1979). The plea agreement between the State and Paul Ackerman states that he was required to "tell the truth, and nothing but the truth" at all stages of the proceedings. Despite Carl's bold assertions to the contrary, we find no evidence that false testimony, specific testimony, or a specific result was bargained for.

We also reject Carl's argument that testimonial inconsistencies meant the alleged accomplice testimony was so inherently untrustworthy that it must have been elicited as part of a corrupt or coercively induced plea bargain. Inconsistent prior versions of events do not contaminate accomplice testimony. *Id.* at 385. Such inconsistencies go to the weight of the testimony. *Id.* "Only when no

reasonable person could conclude other than that the testimony was inherently untrustworthy and was elicited as part of a corrupt or coercively induced bargain should the trial court exclude the witness's testimony." *McGonigle*, 401 N.W.2d at 42.

We find reasonable minds could differ with respect to the truthfulness and credibility of these witnesses' testimony. Carl had the opportunity to fully cross-examine the State's witnesses. While the inconsistencies revealed by his cross-examination may have shed light on the credibility of these witnesses, it did not unearth evidence of a corrupt bargain with the State. We conclude the district court properly admitted their testimony for consideration by the jury.

VIII. Jury Deliberation

Carl claims he was denied a fair trial because the jury was provided, upon its request, a laptop computer so it could review exhibits stored on CDs. Carl claims this was a violation of Iowa Rule of Criminal Procedure 2.19(5)(*g*) and a denial of fundamental fairness because his counsel was not notified that the jury was provided the laptop until after the verdict. Rule 2.19(5)(*g*) states, in its entirety,

> *Report for information.* After the jury has retired for deliberation, *if there be any disagreement as to any part of the testimony, or if it desires to be informed on any point of law arising in the cause,* it must require the officer to conduct it into court, and, upon its being brought in, the information required may be given, in the discretion of the trial court. Where further information as to the testimony which was given at trial is taken by the jury, this shall be accomplished by the court reporter or other appropriate official reading from the reporter's notes. Where the court gives the jury additional instructions, this shall appear of record. The procedures described shall take place in the presence of defendant and counsel for the defense and prosecution, unless such presence is waived.

(Emphasis added.) We find this rule inapplicable because the jury did not indicate there was any disagreement as to any part of the testimony and it did not make any request to be informed of any point of law. The jury simply asked to view evidence that was properly admitted and sent back to the jury room, without objection. Providing a computer to view the recordings is no different than providing a tape recorder, VCR, or a DVD player. The CDs would not work in a DVD player, so the court properly allowed the jury to view this information on the laptop. We find no error here.

IX. Conclusion

We have considered all arguments presented and find no basis for overturning the defendant's conviction. Accordingly, we affirm the decision of the district court.

AFFIRMED.