This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1997

State of Minnesota,
Respondent,

vs.

William Aaron Wozna, III,
Appellant.

Filed December 10, 2018
Affirmed
Halbrooks, Judge

Traverse County District Court
File No. 78-CR-15-139

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

Matthew P. Franzese, Traverse County Attorney, Wheaton, Minnesota (for respondent)

Bradford Colbert, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

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

HALBROOKS, Judge

On appeal from his conviction of first-degree burglary, appellant argues that the district court erred by denying his motion to suppress evidence discovered during an

investigatory stop and abused its discretion in instructing the jury. Wozna also makes claims for relief in a pro se supplemental brief. We affirm.

FACTS

On September 22, 2015, S.G. was at home with her two daughters. At approximately 1:00 p.m., she heard a knock at the back door. When she went to answer the door, she saw a man pointing a handgun at her. The man was wearing a red bandana across his face and a black sweatshirt. A second man opened the door before S.G. was able to lock it. The second man was wearing a skull face mask and gray sweatshirt. S.G. told her daughters to run and hide. After the two men entered the home, the man in the skull mask demanded to know where S.G. kept her safe. S.G. told them the safe was in her bedroom. The man in the skull mask went to retrieve the safe while the other man continued to point the handgun at S.G. After the man in the skull mask returned with the safe, the two men fled, and S.G.'s daughter called 911.

Chief Deputy Greg Forcier of the Traverse County Sheriff's Office and Chief James Minion of the Wheaton Police Department responded to the 911 call. Chief Deputy Forcier interviewed S.G. She gave descriptions of the men's clothing and physical appearance and provided an inventory of the items in the safe. Deputy Joshua Gareis of the Traverse County Sheriff's Office later returned to the home to ask follow-up questions. S.G. repeated her descriptions and stated that she did not recognize their voices. Her husband, J.G., told Deputy Gareis that he was not home at the time of the burglary and did not have any idea who either man could be.

On September 24, J.G. contacted Deputy Gareis and asked to meet with him. When the two met, J.G. identified appellant William Aaron Wozna and Stephen Shawnoskey as suspects. J.G. explained that he had learned that Wozna and Shawnoskey were attempting to pawn one of the items from the stolen safe. J.G. then sent Wozna a message on Facebook, asking him to return certain items from the safe. In exchange, J.G. said he would not contact law enforcement. Wozna responded that he would leave the items behind a power box near an intersection in Roberts County, South Dakota. Deputy Gareis conveyed the information to law enforcement in Roberts County, and an officer retrieved a plastic bag containing the stolen items from the location provided by Wozna.

The following day, J.B. contacted the Watertown Police Department. J.B. is an assistant manager at the Dakota Sioux Casino in Watertown, South Dakota. She reported that two men wanted for the burglary in Browns Valley were in the casino and had loaded weapons. When the men left the casino, J.B. provided dispatch with a description of their vehicle, including the license plate number and the direction and street on which the men were traveling.

Officers located the vehicle and conducted an investigatory stop. When asked for identification, Wozna told the officers that his identification was in a suitcase in the backseat of the vehicle. He gave the officers permission to open the suitcase to find his identification. While retrieving the identification, the officers noticed the suitcase contained various items associated with the burglary, including the skull mask. After contacting the Traverse County Sheriff's Office, the officers detained Wozna and obtained a warrant to search the vehicle. Through the search, the officers discovered items from the

stolen safe, including a $100 bill from 1934, jewelry, and savings bonds in the names of S.G.'s children.

The state charged Wozna with two counts of first-degree burglary under Minn. Stat. § 609.582, subd. 1(a), (b) (2014). Wozna moved to suppress the evidence discovered during the investigatory stop, arguing that the officers did not have a reasonable, articulable suspicion to support the stop. The district court denied the motion.

At trial, S.G. identified Shawnoskey as the individual wearing the bandana and holding the handgun during the burglary. The prosecutor argued that Wozna was the individual wearing the skull mask who took the safe. While discussing proposed jury instructions, the parties disagreed how the jury should be instructed with respect to Minn. Stat. § 609.582, subd. 1(b). The prosecutor argued that Wozna could be convicted under the statute based on an accomplice's possession of a dangerous weapon during the burglary. Wozna disagreed and argued that the statute required that he be the one to physically possess the weapon to be convicted. The district court ultimately instructed the jury that Wozna could be convicted if "[Wozna] or an accomplice possessed a dangerous weapon" during the burglary. The jury found Wozna guilty of both counts. The district court sentenced Wozna to 58 months in prison. This appeal follows.

D E C I S I O N

I. Investigatory Stop

When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings for clear error and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). We review reasonable

suspicion to justify a stop de novo. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). We consider the totality of the circumstances in determining whether a stop is justified. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

An investigatory stop of a vehicle is valid if an officer has "specific and articulable facts establishing reasonable suspicion of a motor vehicle violation or criminal activity." *State v. Duesterhoeft,* 311 N.W.2d 866, 867 (Minn. 1981) (quotation omitted). The reasonable-suspicion standard is "not high." *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quotation omitted). But suspicion must be based on more than a "mere hunch." *State v. Battleson*, 567 N.W.2d 69, 70 (Minn. App. 1997). The reasonable-suspicion standard can be established based on information provided to law enforcement by a reliable informant. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008).

Wozna argues that the information provided by J.B. was insufficient to satisfy the reasonable-suspicion standard because "there was no indication that [J.B.] was reliable, other than her identification." But we "presume that tips from private citizen informants are reliable." *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). This is particularly true "when informants give information about their identity so that the police can locate them if necessary." *Id.* at 183. J.B. provided identifying information that would allow the police to locate her if necessary. Accordingly, we presume that her tip was reliable. And her tip provided the officers with sufficient information to satisfy the reasonable-suspicion standard. J.B. indicated that she recognized the men as suspects in the burglary, identified the location in which the burglary occurred, and reported that the men were dangerous and had loaded weapons. She also provided a detailed and accurate description of their vehicle.

This provided law enforcement with more than a "mere hunch" that Wozna may be involved in criminal activity, specifically the burglary in Browns Valley. Because the investigatory stop was supported by reasonable, articulable suspicion, the district court did not err by denying Wozna's motion to suppress.

II. Jury Instructions

We review a district court's jury instructions for an abuse of discretion. *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). District courts are afforded "considerable latitude" in the selection of language for jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). The instructions must be viewed in their entirety to determine if they fairly and adequately state the law. *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). An instruction is erroneous if it materially misstates the law. *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001). Wozna argues that the district court abused its discretion in instructing the jury because the instruction given misstates the law. The district court instructed the jury that Wozna could be found guilty under the statute if he "or an accomplice possessed a dangerous weapon." Wozna argues that the statute requires that he be the one to physically possess the dangerous weapon to support a conviction.

Minn. Stat. § 609.582 (2014) sets out four degrees of burglary. Each degree establishes that a burglary occurs when an individual enters a building without consent and intends to commit a crime or commits a crime while inside, "either directly or as an accomplice." Minn. Stat. § 609.582, subds. 1-4. Minn. Stat. § 609.582, subd. 1(a)-(c) defines three situations that constitute first-degree burglary. Minn. Stat. § 609.582, subd. 1(b) provides:

> [w]hoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the first degree . . . if:
>
> . . . .
>
> (b) the burglar possesses, when entering or at any time while in the building, any of the following: a dangerous weapon, any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or an explosive[.]

Wozna argues that because Minn. Stat. § 609.582, subd. 1(b), requires that "the burglar possesses . . . a dangerous weapon" and does not include the language "either directly or as an accomplice," he cannot be held liable for first-degree burglary based on his accomplice's possession of a dangerous weapon.

In *State v. Bates*, the Minnesota Supreme Court addressed the evidence required to sustain a conviction for burglary. 183 N.W.2d 287, 289-90 (Minn. 1971). In *Bates*, a lumberyard was burglarized on a snowy night. *Id.* at 288. The police discovered two sets of fresh footprints in the snow near a broken window and followed the footprints until they found Bates and his accomplice hiding in a field. *Id.* Their shoeprints matched those leading away from the broken window, and Bates's accomplice had the stolen items in his pocket. *Id.* at 289. Following a jury trial, Bates was convicted of burglary. *Id.* at 288.

Bates appealed his conviction, arguing that the evidence was insufficient to sustain his conviction. *Id.* The relevant statute provided that "[w]hoever enters a building without the consent of the person in lawful possession, with intent to commit a crime therein, commits burglary." *Id.* Bates argued that the state failed to present evidence establishing that he actually entered the building, and therefore he could not be held liable for burglary.

Id. at 289. The supreme court rejected his argument. The supreme court noted that the state did not present direct evidence that Bates entered the building, but determined that "there is enough evidence that [Bates] was present and joined in the criminal activities." *Id.* The supreme court explained that "[t]here is no distinction between principals and accessories. All participants concerned in the commission of the offense of burglary are deemed principals and are charged and punished accordingly." *Id.* at 289-90.

This court has since applied this principle in unpublished opinions addressing liability for first-degree burglary. In *State v. Zenzius*, we rejected the argument now made by Wozna. No. A13-2257, 2015 WL 133821 (Minn. App. Jan. 12, 2015), *review denied* (Minn. Mar. 25, 2015). In *Zenzius*, this court considered whether the plain language of Minn. Stat. § 609.582, subd. 1(b), contemplated liability for first-degree burglary when another individual possessed a dangerous weapon during the commission of a burglary. *Id.* at *2. Zenzius argued that because the term "accomplice" was used in the general definition of burglary, but not in the aggravating-element subdivision, the statute did not allow for liability based on another person's possession of a dangerous weapon. *Id.*

In rejecting that argument, this court first noted that Zenzius's argument overlooked the fact that the aggravating factor was a subsection of the general crime of burglary, which contemplates liability when an individual commits the crime "either directly or as an accomplice." Minn. Stat. § 609.582, subd. 1. We then reasoned that "[o]nce a burglary is established, it follows that both the 'direct' individual or the 'accomplice' individual is the burglar." *Id.* Based on this, this court concluded that the term "burglar" was broad enough to include both the "direct burglar" and "accomplice burglar," and therefore the subdivision

contemplated liability for first-degree burglary when another individual possessed a dangerous weapon during the burglary. *Id.*

Similarly, in *State v. Trambell*, this court rejected the argument that an individual could not be held liable for first-degree burglary based on an assault committed by an accomplice. No. A03-1768, 2004 WL 2340059 (Minn. App. Oct. 19, 2004). Under Minn. Stat. § 609.582, subd. 1(c), an individual is liable for first-degree burglary if "the burglar assaults a person within the building." Trambell argued that the district court erred in instructing the jury that he could be found guilty based on an assault committed by another person. *Id.* at *3. We rejected the argument, reasoning that the statute does not "draw a distinction between an assault committed by a burglar and an assault committed by a burglar's accomplice." *Id.*

Although *Zenzius* and *Trambell* are unpublished and therefore not precedential, we find their reasoning persuasive. *See State v. Omwega*, 769 N.W.2d 291, 294 n.2 (Minn. App. 2009) (stating that unpublished opinions "may be considered for their persuasive value"), *review denied* (Minn. Sept. 29, 2009). The cases are consistent with the principle established in *Bates* that there is no distinction between principals and accessories in a burglary, and that all participants "are deemed principals and are charged and punished accordingly." *Bates*, 183 N.W.2d at 288-89. Based on this principle, it was not a misstatement of the law for the district court to instruct the jury that Wozna could be convicted of first-degree burglary based on his accomplice's possession of a dangerous weapon. The district court therefore did not abuse its discretion in instructing the jury.

III. Pro Se Arguments

In a one-page pro se supplemental brief, Wozna asserts that he received ineffective assistance of counsel, that his due-process rights were violated, that there was insufficient evidence to convict him, and that the prosecutor committed misconduct during closing arguments. Wozna does not cite to any legal authority or provide analysis to support his claims. "We will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority if no prejudicial error is obvious on mere inspection." *State v. Anderson*, 763 N.W.2d 9, 17 (Minn. 2009) (quotation omitted). Because Wozna's arguments lack analysis and citations to legal support and no prejudicial error is obvious on mere inspection, Wozna's pro se claims are waived.

Affirmed.