STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1046

State of Minnesota,
Respondent,

vs.

Cheryl Oby Albert,
Appellant.

Filed May 11, 2020
Affirmed
Ross, Judge

Benton County District Court
File No. 05-CR-17-1255

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Philip K. Miller, Benton County Attorney, Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Segal, Chief Judge; Ross, Judge.

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

ROSS, Judge

A man was found in his apartment dead from a gunshot wound, and a police investigation led the state to accuse an acquaintance, Cheryl Albert, of killing him and

stealing from his home. A jury found Albert guilty of second-degree murder after hearing among other things that she was sexually involved with the man, that she was with him the night before he was found dead, that she told others that she "took somebody's breath" and feared going to prison, and that she fled the state. Albert challenges her conviction, arguing that we must reverse and remand because the district court structurally erred by addressing a jury question without her attorneys present and erred by failing to clarify a separate jury question about the victim's cause of death. We affirm because the district court's error in addressing a jury question without Albert's counsel present was harmless rather than structural and because the district court did not abuse its discretion by redirecting the jury to its original instructions.

FACTS

A woman found her friend shot to death in his St. Cloud apartment in June 2015. Police investigated the killing of the man, whom we will call John Victim, and concluded that Cheryl Albert had shot and killed Victim while she committed a felony theft. The state charged Albert with two counts of second-degree murder and one count of third-degree murder. *See* Minn. Stat. §§ 609.19, subds. 1–2, .195 (2014). The case proceeded to a jury trial in 2019. This appeal raises questions about alleged irregularities in the trial.

The State's Case-in-Chief

The state presented testimony from Victim's friends and family, investigating officers, forensic experts, and Albert's associates. Because the issues on appeal focus

primarily on alleged errors occurring during jury deliberations, we merely summarize the state's evidence as follows.

In June 2015, Victim was living in a St. Cloud apartment and working as the co-owner of a St. Cloud grocery store. He told others that he was involved in a relationship with a woman nicknamed "Nigerian Princess," "Naija Princess," or "Princess," all referring to Albert. Victim told a friend that he and the woman liked to watch the film *Fifty Shades of Grey* together. On the evening of June 8, 2015, Victim, his roommate, and the other grocery-store co-owner were at Victim's apartment. The roommate saw that Victim's phone was ringing, identifying "Nigerian Princess" as the caller. Victim ignored Albert's call along with two to three more, but he answered her call sometime after 10:00 p.m. The roommate overheard part of the conversation and understood it to mean that Albert was coming to Victim's apartment. The roommate and co-owner left the apartment so Victim and Albert could be alone.

Albert's cell-phone records indicated that she placed many calls to Victim between 4:30 p.m. and midnight and that, while she was making plans to meet with Victim, she was also communicating with a man named Lonnie Austin. She sent Austin a text message saying, "Rocking the coin to sleep football style." According to a police investigator, the term "coin" refers to a targeted person, or someone from whom money or valuables could be extracted, and the term "football" refers to the drug Xanax. A few minutes later Albert sent Austin a text message from a different phone number, asking Austin if he wanted "to meet my brother when I get back?" The text referred to her brother, Anene Okolie.

Victim took a phone call from a friend shortly after midnight and said that he was busy. Beginning at 12:47 a.m., Albert began making a series of 19 phone calls, some to Austin and some to Okolie.

A friend of Victim's went to Victim's apartment at 10:00 a.m. and found the ground-level sliding door open. She entered and saw that the television was on, displaying the menu screen for the film *Fifty Shades of Grey*. Then she found Victim naked and dead, lying on the ground in his bedroom doorway with a zip tie on one wrist. The friend telephoned the co-owner of Victim's business, who came to the apartment and called police.

Police found a bullet casing and blood near Victim's body. An autopsy and forensic examination revealed that a single gunshot in the chest killed Victim and that Xanax was in his system. Investigators found two partly full beverage glasses on Victim's bedroom nightstand, one containing a cigarette butt. Albert's fingerprints were on the glasses, as well as DNA material that excluded all but a class of 0.000008 percent of the world's population. Albert is in that class. Albert's DNA was on the cigarette butt. Albert's DNA was not on the shell casing.

Valuables were missing from Victim's apartment. These included Victim's laptop computer, cell phone, and a jewelry box that Victim used to store many wristwatches. Victim's cell-phone carrier traced his cell phone to a general area along Highway 23, where police searched and found some of Victim's belongings, including the jewelry box. The box contained DNA material that excluded all but a class of 0.000008 percent of the world's population. Albert is in that class.

Two days after the killing, Albert telephoned her close friend and told her that she "took somebody's breath." Albert told another woman that she "got daddy a bunch of watches" but "would be going to prison for life and [would] not see her child." Police officers, looking for Austin as part of an unrelated investigation, stopped a truck associated with Austin and found several of Victim's missing watches, documents referencing Albert, and the cell phone Albert used to call Austin on June 8 and that also contained Victim's contact information.

Also within days after the killing, Albert arranged to travel to Louisville, Kentucky. She contacted her friend S.J., who lived in Kentucky, to obtain her address. S.J. claimed to the jury that she could not remember the details of her involvement in the investigation of Victim's death. The prosecutor showed S.J. a transcript of her statement to Louisville police, and S.J. repeatedly claimed she could not recall her statements to police. The prosecutor asked S.J. to testify about her statement to Louisville police, prying line by line, to which S.J. answered each time acknowledging only, "[T]hat's what [the transcript] says." The jury learned the substance of S.J.'s prior statements: Albert had called her crying, said she stole a box of watches from somebody, and admitted that either "one [of] her shooters came in" or "she shot him twice." At the end of the state's direct examination of S.J., because S.J. had refused to restate at trial the substance of her prior statements, the district court gave the following cautionary instruction to the jury:

> The evidence that has just been received concerning a statement that [S.J.] is alleged to have made sometime before testifying here today is admitted only for the light that it may cast on the truth of [S.J.'s] testimony at this trial. You must not

> consider the statement as evidence of the facts referred to in the statement.

On July 6, 2015, Kentucky police approached Albert to arrest her on an unrelated outstanding warrant. Albert spontaneously blurted that she "didn't kill anybody." She also expressed supposed shock at learning from Kentucky police that Victim had been killed, but her cell-phone records established that she had previously been conducting internet searches about the killing, including a KSTP-TV story about Victim, "Community Remembers St. Cloud Store Owner Found Fatally Shot." During police interrogation, Albert told officers that on June 8 she had been watching *Fifty Shades of Grey* with Victim when he received a phone call, which prompted Victim to end her visit and drop her off in "the Cities." She claimed later that Victim had dropped her off at a Greyhound bus stop.

Jury Instructions

The district court instructed the jury on the elements of second-degree murder with intent to kill, second-degree murder while committing felony theft (and corresponding instructions regarding felony theft), and, as a lesser-included offense, third-degree murder. Relevant in this appeal were the district court's instructions on causation, which as to all three crimes advised the jury that the causation element required the state to prove beyond a reasonable doubt "that the defendant caused the death of [Victim]." The district court also instructed the jury generally, "Evidence of any prior inconsistent statement should only be considered to test the believability and weight of the witness's testimony."

First Jury Question and Albert's Absentee Attorneys

The jury began deliberating at 4:12 p.m. on the last day of trial, and the district court instructed Albert's attorneys, "[I]f there are any questions while the jury is deliberating, we will contact you. If you leave the building, please leave a phone number . . . so that we can call you and have you come back." The jury soon posed a question, the district court telephoned counsel, and defense counsel failed to answer their phones. At 5:17 p.m., hearing nothing from Albert's counsel, the district court spoke with Albert and the prosecutor directly to address the jury question.

> Ms. Albert, we tried to get ahold of your attorneys, and they didn't return the call. I don't know if they're out eating or where they are, but they haven't come back. So rather than keep the jury waiting, I think I'm just going to have to proceed so that we can give them a response.
>
> The question that the jury [has] asked is, "Do we need to disregard [Witness S.J.'s] testimony or just a specific statement?"
>
> And I can only interpret this to be a reference to [the prosecutor's] cross-examination in which he elicited or offered evidence of a prior statement that [S.J.] made to police in which, as I recall at the time, she stated that she did not recall making -- did not recall whether she said it or not.

The prosecutor stated his understanding that the district court had already explained that S.J.'s statements were not substantive evidence but instead constituted only impeachment evidence under Minnesota Rule of Evidence 613. The district court confirmed the prosecutor's understanding, and, because it previously advised the jury not to consider S.J.'s prior statements "for any substantive effect," it indicated its intent to

convey in writing a substantially similar instruction to the jury. The district court and Albert had the following exchange:

> THE COURT: And, Ms. Albert, again, I'm going to -- this is all going to be in writing, so your attorneys can review it. But I -- I don't think we can wait any longer for their reappearance.
>
> ALBERT: Excuse me, Your Honor. Are you saying that what she said on the stand is not going to be -- basically, the jury should disregard it, is what you're saying?
>
> THE COURT: No, ma'am. What I'm instructing the jury is that they can consider what she testified to on the stand, but they should not consider what she allegedly told police at some other date as substantive evidence.
>
> ALBERT: So, in other words, they should consider what she said and disregard anything prior to what she said on the stand?
>
> THE COURT: Essentially, yes.

The district court gave the jury its written answer:

> In response to your question at approximately 5:00 p.m., 6-2-19, the evidence that was received concerning a statement that [S.J.] is alleged to have made sometime before testifying in court was admitted only for the light it may cast on the truth of her testimony in court. You must not consider the prior statement of [S.J.] as evidence of the facts referred to in the statement.

Later that evening, after the jury returned to its deliberating and Albert's attorneys had reappeared, the district court asked Albert's attorneys whether they had any objection to its written instruction. Counsel said that they had seen the jury's question and the court's answer and had no objection.

Second Jury Question on Causation

At about 6:00 p.m., the district court addressed a second jury question: "Does Ms. Albert have to be the shooter to cause [Victim's] death or not to be convicted of second degree?" The district court indicated it would refer the jury back to its original instructions, which the jury had in written form. Albert's counsel asked the district court to answer simply, "yes," because "the death is caused by shooting." He argued, "The cause of death was by shooting, and the confusion I think they're having is that there could be any other -- if [Albert] could have caused his death without the shooting." The district court concluded, "I think going farther would be me substituting my factual impression for them. I think that's a factual determination that they need to make given the law."

The district court gave the jury a written instruction referring to its original instructions. The jury found Albert guilty of second-degree intentional murder and second-degree murder while committing a felony theft. The district court adjudicated one conviction for second-degree intentional murder and sentenced Albert to 306 months in prison.

Albert appeals from her conviction.

D E C I S I O N

Albert asks us to grant her a new trial, arguing first that the district court committed a structural error by addressing a jury question in her attorneys' absence, and second that the district court abused its discretion by failing to offer a clarifying instruction on causation. For the following reasons, we reject Albert's assertion that she is entitled to a new trial.

I

Albert is correct that the district court violated her constitutional right to counsel when it addressed a jury question without her attorneys present. But she is incorrect that this was a structural error necessitating a new trial regardless of whether the error caused her no prejudice. There being no resulting prejudice, the error was harmless.

The district court violated Albert's right to counsel.

Albert argues that the district court violated her right to counsel when it addressed a jury question without her attorneys present. The United States and Minnesota Constitutions afford criminal defendants the right to the assistance of defense counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The purpose of the right to counsel is to protect a layperson lacking the skill and knowledge necessary to defend herself. *Friedman v. Comm'r of Pub. Safety*, 473 N.W.2d 828, 833 (Minn. 1991). The right to trial counsel extends into every critical stage of the proceeding, which are those trial-like confrontations where an attorney could assist the defendant with legal problems or in "meeting [her] adversary." *State v. Maddox*, 825 N.W.2d 140, 144 (Minn. App. 2013) (quoting *Rothgery v. Gillespie County*, 554 U.S. 191, 212 n.16, 128 S. Ct. 2578, 2591 n.16 (2008)). The district court's communications with a jury are critical stages of a trial. *State v. Nissalke*, 801 N.W.2d 82, 98 (Minn. 2011). We review de novo whether the district court violated a defendant's right to counsel. *State v. Slette*, 585 N.W.2d 407, 409 (Minn. App. 1998).

Our de novo review leads us to conclude that the district court impermissibly discussed and responded to a jury question without Albert's attorneys present. The

discussion about and response to the jury's question constituted a critical stage in Albert's trial because she was asked to address a legal problem that could have been addressed by her attorneys. *See Maddox*, 825 N.W.2d at 143; *Nissalke*, 801 N.W.2d at 98. We are unconvinced by the state's assertion that, rather than err, the district court "reasonably sought to promptly answer the jury's question" after Albert's attorneys failed to answer their phones. The state fails to develop the assertion into any actual argument or to cite any authority supporting its implicit assertion that the district court may, without violating a defendant's Sixth Amendment right to counsel, proceed at a critical stage in the absence of counsel merely because it should produce a timely response or because defense counsel were solely responsible for its absence. The assertion lacks any apparent merit. Because we conclude that the district court violated Albert's right to counsel by addressing a jury question without her attorneys present, we turn to whether the error was structural or is instead subject to harmless-error review.

The error was not structural.

Albert argues that depriving her of counsel constituted a structural error requiring automatic reversal and remand. We generally review constitutional errors for harmless error, considering the error in the context of its effect on the jury's verdict. *See State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). But certain types of "structural" errors defy harmless-error analysis because they consist of a defect in the trial mechanism itself. *State v. Dalbec*, 800 N.W.2d 624, 627 (Minn. 2011) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309–10, 111 S. Ct. 1246, 1265 (1991)). Structural errors do not require proof of prejudice. *State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997). We must determine

the nature of the error, a legal issue that we decide de novo. *See Dalbec*, 800 N.W.2d at 627 (addressing a question on an undisputed factual record).

Albert reasons that because she was denied counsel once during a critical stage of her trial, the error was automatically structural. We have said that "[t]he denial of the right to counsel is a structural error." *Maddox*, 825 N.W.2d at 147 (quotation omitted). The state seeks to qualify the denial of counsel as structural only when there is a "*complete* denial of counsel," *see Neder v. United States*, 527 U.S. 1, 8, 119 S. Ct. 1827, 1833 (1999), and it therefore argues that there was no structural error given Albert's attorneys' short absence. A nuance in the caselaw concerning when and why certain errors are structural leads us to reject Albert's position as overly formulaic.

To explain why the circumstances here do not amount to structural error, we focus first on the nature of structural error. Structural errors necessarily implicate fundamental fairness in the proceeding. They are those affecting the framework in which the trial proceeds and that call the trial's reliability and fairness into question. *Dalbec*, 800 N.W.2d at 627. The Supreme Court has characterized errors as structural when they impair a procedure *as a whole*. *See, e.g.*, *Vasquez v. Hillery*, 474 U.S. 254, 263–64, 106 S. Ct. 617, 623 (1986) (holding that "discrimination in the grand jury undermines the structural integrity of the criminal tribunal itself"); *Tumey v. Ohio*, 273 U.S. 510, 535, 47 S. Ct. 437, 445 (1927) (holding that the district court judge's interest in the action required disqualification and reversal).

Regarding the right to counsel specifically, the Court has described a series of counsel-related structural errors "that are so likely to prejudice the accused that the cost of

litigating their effect in a particular case is unjustified." *United States v. Cronic*, 466 U.S. 648, 658, 104 S. Ct. 2039, 2046 (1984). The Court identified the "complete denial of counsel" at a critical stage as the "[m]ost obvious" counsel-related structural error. *Id.* at 659, 104 S. Ct. at 2047. This sort of broad denial of the right to counsel is the type of structural defect that needs no proof of prejudice.

This concern for fundamental fairness in proceedings explains why courts classify certain errors as structural without considering actual prejudice. In *Gideon v. Wainwright*, for instance, the Court premised its recognition of the right to court-appointed counsel in part by recognizing that the right to counsel was fundamental and essential to the fairness of trials. 372 U.S. 335, 344, 83 S. Ct. 792, 796 (1963). In *Cronic*, the Supreme Court elaborated as to why the complete denial of counsel was structural, explaining, "The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of [the] trial." 466 U.S. at 659, 104 S. Ct. at 2047. In *Maddox*, we extended the right to counsel to restitution hearings and remanded because the record did not reveal whether Maddox waived his right to counsel, implying that, had he been denied his right, the error would have been structural. 825 N.W.2d at 146–47.

By contrast, the troublesome trial moment in this case does not stir even a theoretical concern over fundamental fairness. Albert's attorneys had already advocated for and twice agreed to the substance of the instruction that the district court repeated to the jurors after they posed their question. And Albert's counsel then endorsed the district court's instruction as the appropriate response, establishing that their absence was certainly

inconsequential to the district court's decision. Specifically, Albert's attorneys filed proposed jury instructions requesting that the district court advise the jury, when appropriate, as follows: "The evidence that has just been received concerning a statement that [the witness] is alleged to have made sometime before testifying here is admitted only for the light it may cast on the truth of [the witness]'s testimony at this trial. You must not consider the statement as evidence of the facts referred to in the statement." The district court followed the prosecutor's examination of S.J. with a jury instruction not to consider her prior statements "as evidence of the facts referred to in the statement[s]." It gave this instruction with Albert's counsel present without objection. And again without objection, during its final instructions to the jury the district court explained, "Evidence of any prior inconsistent statement should only be considered to test the believability and weight of the witness's testimony." These circumstances do not resemble any which the Supreme Court, or any other court to our knowledge, has designated a structural error.

Consistent with our view that this case is dissimilar to any of the customary structural-error circumstances is our understanding of whether these circumstances amounted to a "complete" denial of counsel during a critical trial stage. Here we are persuaded by the reasoning of *Sweeney v. United States*, where the Eighth Circuit Court of Appeals held that an attorney's three-minute absence during the state's direct examination of a witness was not a "complete" denial of counsel amounting to a structural error. 766 F.3d 857, 861 (8th Cir. 2014). This conclusion informs us that deciding whether a complete denial of counsel has occurred depends in part on whether the defense counsel was absent for the duration of the critical stage. And the situation here is like *Sweeney* in

that the fundamental interest at stake was eventually vindicated; Sweeney's attorney was able to conduct extensive cross-examination despite his short absence, *id.* at 861, and Albert's attorneys were able to review the jury's question and raise objections. By immediately inquiring whether or not defense counsel concurred in the district court's answer once they reappeared in court, the district court demonstrated that its answer was only preliminary and that its final decision would depend on counsels' approval. This effectively held the stage open. The episode evidenced the district court's willingness to revisit the issue and, if necessary, tailor its instruction after hearing from Albert's counsel. The record compels us to infer that the district court did not, by answering the jury, close Albert's opportunity to address the answer with the assistance of her counsel.

Albert would have us instead view the stage restrictively, beginning with the jury's question and ending with the district court's response. We think this overlooks what happened here, specifically the district court's holding the issue open until Albert's attorneys considered and responded to it. It told Albert its instruction was "going to be in writing, so [her] attorneys [could] review it." It told her that she could "talk to [her] attorneys about this." And when her attorneys reappeared, the district court asked whether her attorneys had reviewed the question and answer, and it then inquired whether they had any objection. It seems to us that the stage ended only after Albert's counsel confirmed that they had reviewed the question and instruction and responded on Albert's behalf.

We add that the error here is entirely unlike structural errors whose consequences are often "unquantifiable and indeterminate." *See United States v. Gonzalez-Lopez*, 548 U.S. 140, 150, 126 S. Ct. 2557, 2564–65 (2006) (quotation omitted) (concluding that

harmless-error review would have been speculative where the deprivation of counsel of choice affected trial decisions and negotiations). This is not a situation in which a harmless-error analysis would require a "speculative inquiry into what might have occurred in an alternate universe." *See id.* We know how Albert's attorneys would have responded to the district court's proposed instruction, because in fact they responded to the district court's instruction: "We don't have any objection."

We hold that the error was not structural because it did not implicate the fundamental fairness of the trial mechanism, because the district court held the issue open for Albert's attorneys' review and consideration, and because the error necessitates no speculative inquiry on review. Having concluded the error was not structural, we consider whether it constitutes a mere harmless error or instead requires reversal and remand.

The error was harmless beyond a reasonable doubt.

We have no difficulty discerning whether the error prejudiced Albert. It did not. "An error is harmless beyond a reasonable doubt if the jury's verdict was surely unattributable to the error." *Sanders*, 775 N.W.2d at 887. The district court properly instructed the jury to consider S.J.'s prior statements for their impeachment value and not for their actual truth, an instruction complying with Minnesota Rule of Evidence 613. Albert received the benefit of an instruction her attorneys sought, received, and impliedly (and later actually) approved. Where the instruction was both proper and favorable to Albert, the jury's verdict was surely unattributable to the district court's error.

II

Albert also challenges the district court's response to the jury's second mid-deliberation question, "Does Ms. Albert have to be the shooter to cause [Victim's] death or not to be convicted of second degree?" She maintains that the district court erred by refusing to answer "yes," and by instead referring the jury to its original instructions. The district court has broad discretion in selecting its jury instructions, and we review its instructions for an abuse of discretion. *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). Jury instructions may not misstate the law, and they must provide a fair and adequate explanation of the law of the case. *Id.* The district court's failure to give a clarifying instruction despite clear jury confusion may sometimes constitute error. *See, e.g.*, *State v. Shannon*, 514 N.W.2d 790, 793 (Minn. 1994) (holding that the district court's failure to correct the jury's confusion over a misleading argument from the prosecutor was error). Albert frames the error here as one of leaving the jury confused.

Albert argues specifically that the jury's question demonstrated the jurors' fundamental confusion about "whether Ms. Albert had to *personally* have caused [Victim's] death in order to be guilty." (Emphasis added.) A district court "may, in [its] discretion, give additional instructions in response to a jury's question on any point of law." *State v. Murphy*, 380 N.W.2d 766, 772 (Minn. 1986). The jury's question implicates either of two related but separate issues. The charged offenses and the lesser-included offense each required proof beyond a reasonable doubt that Albert "caused" Victim's death. *See* Minn. Stat. §§ 609.19, subds. 1–2, .195. The jury's question is ambiguous. The question of whether "Albert ha[d] to be the shooter to cause [Victim's] death" might have concerned

the cause-in-fact of Victim's death, presumably a gunshot wound, while it also might have concerned the shooter's identity, allegedly Albert. Albert's construction of the question overlooks the plausibility that the jury was asking the district court to link two factual issues: Albert's identity as the shooter and the shooting as the cause-in-fact of Victim's death.

Albert's narrow reading highlights our deferential abuse-of-discretion standard of review, and it overlooks the fact that we review jury instructions "as a whole to determine whether they fairly and adequately explain the law." *Huber*, 877 N.W.2d at 522. The original instructions adequately explain the law, and Albert is wrong to claim that the jury "did not request instruction on a factual matter." If the district court had answered solely "yes" to the jury's question, as Albert urged it to do, the district court would have been giving a compound instruction. The affirmative answer, without more language, would have properly clarified the state's burden to prove that Albert, and not another person, caused Victim's death. But it also would have been instructing the jury *as a matter of fact* that Victim's cause of death was a gunshot wound. The cause-in-fact of Victim's death was a factual question representing an essential element of the offense, and "[t]he court must not comment on evidence." Minn. R. Crim. P. 26.03, subd. 19(6).

In any event, Albert's theory that the jury fundamentally misunderstood the instructions is implausible when we view the instructions in their entirety, as is proper. *See Huber*, 877 N.W.2d at 522. The district court's causation instruction was contextualized by the mens rea portion of its instruction on second-degree intentional murder, which provided, in part:

> The third element of murder in the second degree is that the defendant acted with the intent to kill [Victim]. To find the defendant had an "intent to kill," you must find the defendant acted with the purpose of causing death, or believed the act would have that result.

The jury found that the state proved this element beyond a reasonable doubt. It therefore determined that Albert intended to kill Victim either by "act[ing]" with the purpose of causing Victim's death or believing her "act" would cause Victim's death.

We reject Albert's speculation that the jury would not have asked the question if it believed that the prior instructions answered it. Albert assumes that the jurors carefully read, contextualized, considered, and discussed the instructions in their entirety. But both rule and caselaw account for the reasonable possibility that some detail might escape the deliberating jurors' notice, and that referring the jurors back to their instructions might be sufficient to resolve their question. *See* Minn. R. Crim. P. 26.03, subd. 20(3)(b) (allowing the district court to reread original instructions); *Murphy*, 380 N.W.2d at 772 (recognizing that the district court is allowed to "reread previous instructions").

Because the given instructions fairly and accurately informed the jury of the state's burden of proving that Albert caused Victim's death, it was not an abuse of discretion to refuse to instruct the jury that Albert had to be the shooter to have caused Victim's death. Directing the jury to the district court's prior instructions was proper and therefore was not an abuse of discretion.

Affirmed.