STATE OF MINNESOTA

IN SUPREME COURT

A20-0756

Carlton County

State of Minnesota,

Respondent,

vs.

James Francis Montano,

Appellant.

Hudson, J.
Took no part, Chutich, J.

Filed: March 24, 2021
Office of Appellate Courts

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, Saint Paul, Minnesota; and

Lauri A. Ketola, Carlton County Attorney, Carlton, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant State Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. The district court did not abuse its discretion in denying a request for an accomplice-testimony jury instruction under Minnesota Statutes section 634.04 (2020)

where there was no evidence that the defendant and witness acted together to commit the murder.

2. Appellant's pro se claims do not merit relief.

Affirmed.

O P I N I O N

HUDSON, Justice.

We are asked to decide here whether the district court abused its discretion when it denied a request for an accomplice-testimony jury instruction under Minnesota Statutes section 634.04 (2020), and whether any of appellant James Montano's pro se claims merit relief. Montano was charged with first-degree premeditated murder of Andrew Gokee and attempted first-degree premeditated murder of Gokee's son, Hudson Gauthier. Montano requested an accomplice-testimony jury instruction under Minn. Stat. § 634.04, arguing that the jury could reasonably find that the State's witness, Gauthier, was an accomplice. The district court denied the requested instruction, reasoning that under *State v. Larson*, 787 N.W.2d 592 (Minn. 2010), the instruction was precluded as a matter of law because Montano intended to present evidence identifying Gauthier as an alternative perpetrator. The jury found Montano guilty as charged. He now appeals, arguing that the district court abused its discretion when it denied his request for an accomplice-testimony jury instruction. He also filed a pro se supplemental brief, asserting additional claims. Because there is no evidence that Montano and Gauthier worked together as accomplices to murder Gokee and because none of the pro se claims merit relief, we affirm.

FACTS

Andrew Gokee was shot in the head on the night of April 20, 2018 and died of his injuries two days later. Only three other people were present at the time Gokee was shot: Montano, Gauthier, and Montano's father. The shooting occurred at the rural property of Montano's father in Carlton County. Montano's father did not see or hear the shootings, but called 911 immediately afterwards. He told the 911 operator that his son shot Gokee and that he had taken the gun away from his son before his son ran off into the woods. The police arrived and after sending Gokee to a hospital, they took statements from Gauthier and Montano's father.

In his pretrial statements and testimony, Gauthier noted that earlier in the day, while Gokee and Montano's father were at work, Montano showed him how to load and fire a .22 caliber revolver so that they could hunt birds. After Gokee and Montano's father returned from work around 5 p.m., Gauthier spent several hours alone with Gokee catching up and telling stories. Gokee then mentioned he was planning to spend the night at his girlfriend's home and offered to drop Gauthier off at the casino if Montano's father would give him a ride home. Gokee also offered to give Gauthier some money for the casino. Gauthier said that he went out to the garage to ask Montano's father for a ride, where he found Montano's father and Montano smoking methamphetamine. Gauthier then smoked some methamphetamine with them.

Montano's father agreed to give Gauthier a ride home. Gauthier went back inside while Gokee finished packing. They then both left the house and walked to a nearby vehicle when Montano jumped out with a gun. Gauthier thought it was a joke and began

laughing, but Montano responded that this wasn't a joke and that he was going to kill Gauthier. Gauthier ducked his head, but thought a bullet grazed him. He began running away to hide from Montano when he heard another gunshot.

Gauthier stated that after he tripped and fell, Montano approached him and began hitting him with a weapon. Gauthier said that Montano's father then arrived and shouted, "What the f*** are you doing? You just shot your uncle." Gauthier ran to Gokee as Montano's father struggled with Montano. Gauthier claimed that Montano said he killed Gokee and was going to kill him next. Gauthier said that he asked Montano why he shot Gokee, to which Montano replied, "You guys don't appreciate the work I do." Gauthier stated that he retrieved the revolver from the house and, after more threats from Montano, fired a shot at Montano's feet. After Montano kept approaching, Gauthier fired a second shot that struck Montano and stopped him. Montano eventually fled to the woods before law enforcement—who were called to the scene by Montano's father—arrived.

After arriving, an officer observed an injury on the right side of Gauthier's head near his ear. The paramedic on the scene also testified about treating a graze wound on the back of Gauthier's head. Gauthier identified a nearby .22 caliber rifle lacking a stock that he claimed was the weapon used by Montano. Gauthier also identified a nearby .22 caliber revolver as the one he used in an attempt to keep Montano away from Gokee.

Montano's father also gave pretrial statements and testimony. He stated that as soon as he got home from work that afternoon, he went to work in his shop with his son. Montano's father agreed that Gauthier had come into the shop and asked for a ride, noting that "[e]verybody was in a good mood." He did note, however, that Gauthier complained

about Gokee only giving him $10 for the casino and that Gauthier asked him for money too. Montano's father also testified that he then went to work with a grinder that made "a lot" of noise. He worked on the grinder for about 20 minutes before he heard muffled hollering outside. Montano's father then left the garage, saw Gokee lying on the ground, and heard Gauthier shouting. Montano's father testified that Gauthier said that Montano had shot Gokee and tried to shoot him, too. Montano's father then went into the house to get a spotlight, and when shining the light around outside saw Gauthier on his back in the middle of the yard. He then saw Montano "quite a ways away" from Gauthier. Montano appeared "big-eyed like in shock or something." Montano's father did not see Montano holding anything at that time. Montano's father said that Gauthier indicated that he had been shot in the foot. Montano's father repeatedly told Montano to get away, then went inside to call 911. He testified that he never made physical contact with Montano, nor did he handle either of the .22 caliber weapons that night. Montano's father also stated that he had not used drugs or done any drinking that night.

After arriving at the scene, police searched the woods and located Montano several hours later. Montano suffered a bullet wound to the chest and was taken to a nearby hospital. When asked in the woods who shot him, Montano replied that he did not know. At the hospital, police asked Montano if he had shot anyone, to which he responded no. He reaffirmed that he did not know how he had been shot. Blood tests from Montano later showed that he had methamphetamine and amphetamine in his system that night. But law enforcement did not note finding any methamphetamine or paraphernalia at the property during their investigation.

Investigators recovered two .22 caliber weapons from the scene. The first was a bolt-action rifle with its stock missing that was on a flatbed trailer parked nearby on the property. The chamber was partially open with one spent case in the chamber and one cartridge remaining in the magazine. Investigators found latent fingerprints on the rifle, but they did not belong to either Montano or Gauthier. Two spent cases lying on the ground next to the vehicle where the shooting occurred came from the rifle. The second weapon was the revolver. The revolver had two spent cases and four copper-coated cartridges remaining. DNA found on the revolver belong solely to Gauthier. The siding of the house had one defect that indicated bullet damage. Additional weapons and ammunition were found in the house.

A Carlton County grand jury indicted Montano for first-degree premeditated murder of Gokee and attempted first-degree premeditated murder of Gauthier. Before trial, Montano filed a motion in limine requesting an order allowing him to offer evidence that Gauthier caused Gokee's death as an alternative perpetrator. For the alternative perpetrator theory, Montano pointed to inconsistencies in Gauthier's testimony, Gauthier's possible motive to kill Gokee, and grand jury testimony from Gokee's attending physician who believed the gunshot wound potentially came from a handgun and not a rifle.

Montano also sought a jury instruction that explained to the jury that it could not convict him based on the uncorroborated testimony of an accomplice, Gauthier. For accomplice corroboration, Montano argued that because Gauthier could have been indicted with the same crime, he was an accomplice as a matter of law, which required that the

district court give an accomplice-testimony instruction to the jury. At the very least, he argued, it was a question of fact for the jury to decide.

In support of the accomplice-testimony instruction, Montano presented the following evidence. Gauthier admitted that he was at the scene of the crime at the time it occurred. Gauthier also admitted that he had possession of the revolver—one of the potential murder weapons—and fired two shots with it. Gauthier's DNA was also found on the revolver. Gauthier further made inconsistent statements to law enforcement, the county attorney, and the grand jury regarding the night of the murder. In particular, Gauthier claimed that Montano fired the .22 caliber rifle at him, but Montano's DNA and fingerprints were not found on the rifle nor was Montano wearing gloves that night which would preclude DNA or fingerprints. Investigators were unable to determine which .22 caliber weapon killed Gokee, but Gokee's attending physician believed that the weapon was fired at close range. Finally, Montano pointed out that he believed the statement of Montano's father was inconsistent with Gauthier's in several respects; namely, that Montano's father did not hear any gunshots that night, did not hear Montano making threats, and did not know how Gauthier obtained the revolver.

The State responded that because Montano was attempting to portray Gauthier as an alternative perpetrator—that is, Gauthier was the sole person responsible for killing Gokee—Gauthier could not, as a matter of law, also be an accomplice. The State further noted that Montano had not alleged any facts that showed Gauthier and Montano were working together as accomplices. The district court agreed with the State, citing our precedent, including *State v. Larson*, 787 N.W.2d 592, 602 (Minn. 2010).

One week before trial, Montano asked the district court to reconsider its ruling on the accomplice-testimony jury instruction. The district court reviewed additional case law submitted by Montano, but reaffirmed its prior decision and reasoning.

Montano did not renew his objection to the lack of an accomplice-testimony jury instruction at trial. The jury found Montano guilty of first-degree premeditated murder of Gokee and attempted first-degree premeditated murder of Gauthier. The district court convicted Montano and imposed a sentence of life without the possibility of parole and a consecutive sentence of 180 months. Montano filed a direct appeal.

ANALYSIS

Montano's only argument in his principal brief is that the district court abused its discretion by denying his request for the accomplice-testimony jury instruction. He also asserts multiple claims in his pro se supplemental brief. We address the accomplice-testimony issue first.

I.

When a party requests a jury instruction, "trial courts must look at the evidence in the light most favorable to the party requesting the instruction." *State v. Dahlin*, 695 N.W.2d 588, 598 (Minn. 2005). District courts have "considerable latitude in selecting jury instructions" and a "refusal to give a requested jury instruction is reviewed for an abuse of discretion." *State v. Anderson*, 789 N.W.2d 227, 239 (Minn. 2010). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

Minnesota Statutes section 634.04 requires corroboration for the testimony of an accomplice. This statute codifies a long-standing common law rule that precludes a conviction based on the uncorroborated testimony of an accomplice. *See State v. Durnam*, 75 N.W. 1127, 1131 (Minn. 1898). "The rationale for this rule is that the credibility of an accomplice is inherently untrustworthy." *State v. Evans*, 756 N.W.2d 854, 877 (Minn. 2008). An accomplice is someone who "intentionally aids, advises, hires, counsels, conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2020); *see also* Minn. Stat. § 611A.52, subd. 2 (2020) (defining an accomplice as "any person who would be held criminally liable for the crime of another pursuant to section 609.05"). A district court may deny a request for an accomplice-testimony instruction if there is no evidence that the defendant and witness worked together as accomplices. *State v. Flournoy*, 535 N.W.2d 354, 359 (Minn. 1995). That is, to warrant an accomplice-testimony instruction, "there must be some evidence that the defendant and witness were accomplices." *State v. Swanson*, 707 N.W.2d 645, 653 (Minn. 2006). Accordingly, "[a] witness who is alleged to have committed the crime *instead* of the defendant is, as a matter of law, not an accomplice under section 634.04." *Id.*

Montano argues that there was "ample" evidence that Gauthier was an accomplice in Gokee's murder. First, Montano and Gauthier "spent the entire day preceding the shooting together" during which Montano taught Gauthier how to load and fire the revolver. Second, both Montano and Gauthier were angry at Gokee that day. Gauthier was angry because, after Gauthier learned to load and fire the revolver, he asked Gokee for money for the casino and only received $10. And Montano was angry because he felt that

Gokee did not appreciate him. Third, both Gauthier and Montano were present at the shooting. And fourth, both the rifle and revolver were fired.

Montano emphasizes that Gauthier admitted to firing the revolver and that his DNA was on the gun. Montano also notes that Gokee was killed with .22 caliber copper-coated ammunition that was consistent with the ammunition used in the revolver. According to Montano then, "the jury could have found that Gauthier . . . was an accomplice because he 'assisted' Montano in the commission of the crime 'as principal' by firing the fatal shot."

Montano also asserts that the district court misunderstood the rule of law in *Larson*, where we stated, "when a defendant presents evidence and argues at trial that a witness is an alternative perpetrator, that witness is not an accomplice as a matter of law." 787 N.W.2d at 602. Instead, Montano suggests that the rule discussed in *Larson* was developed in cases where "there was no evidence that the defendant and the alleged accomplice [] had committed the crime together." According to Montano, these cases only stand for the principle that there must be some evidence that the witness committed the crime with the defendant to allow the accomplice-testimony to go to the jury. And he maintains that he presented such evidence to thus warrant the instruction. Montano further argues that a literal reading of *Larson*'s clear statement would impermissibly preclude the jury from their fact-finding role. *See State v. Leinweber*, 228 N.W.2d 120, 123–26 (Minn. 1975).

The State responds that Montano's cited evidence is devoid of any indication that Montano "sought to assist Gauthier in Gokee's murder." Instead, the State contends, the evidence cited by Montano shows only that Gauthier "was a possible alternative

perpetrator—his theory of defense below." The State maintains that the evidence at best suggests that Montano and Gauthier independently sought the same objective: killing Gokee. The State also counters Montano's interpretation of *Larson* by suggesting that there *was* some evidence of cooperation between the defendant and witness in that case. *See* 787 N.W.2d at 596.

We need not resolve the parties' dispute over the scope of *Larson*. Instead, we rely on the long-held rule that a district court may deny a request for an accomplice-testimony instruction if there is no evidence that the defendant and witness worked together to commit the crime. *See Flournoy*, 535 N.W.2d at 359.

Although the evidence presented by Montano may show that Gauthier could have been charged in Gokee's murder, there is no evidence that Montano and Gauthier *worked together* to murder Gokee.[1] Instead, even when we view the evidence in a light favorable to Montano, it simply suggests that either Montano or Gauthier was merely present when Gokee was shot. *See State v. Jackson*, 746 N.W.2d 894, 898–99 (Minn. 2005) (stating that "mere presence at the scene, inaction, knowledge and passive acquiescence" does not make the witness an accomplice (citation omitted) (internal quotation marks omitted)). Although we do not require evidence of an explicit agreement between the defendant and witness when applying the test for accomplice liability, we still require some evidence that one assisted the other. We see no such evidence here.

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[1] Gauthier's testimony that he and Montano shot the .22 revolver earlier in the day does not support an inference that Montano and Gauthier planned to assist each other, partly because it occurred *before* Gokee gave Gauthier $10 for the casino—the act that allegedly provided Gauthier a motive to kill Gokee.

Under our long-standing precedent, the district court was not obligated to provide the jury an accomplice-testimony instruction because there was no evidence of Montano and Gauthier working together as accomplices. *See Swanson*, 707 N.W.2d at 653; *see also State v. Dobbins*, 725 N.W.2d 492, 506 (Minn. 2006) (concluding that defendant was not entitled to an accomplice-testimony jury instruction "[b]ecause there was no testimony that [the witness] participated in the murder"). The district court's decision to deny the request for an accomplice-testimony jury instruction was therefore not an abuse of discretion. *State v. Cox*, 820 N.W.2d 540, 550 (Minn. 2012).

II.

We turn next to the arguments raised by Montano in his pro se brief. Claims in a pro se supplemental brief that are "unsupported by either arguments or citation to legal authority" are forfeited. *State v. Reek*, 942 N.W.2d 148, 165–66 (Minn. 2020) (quoting *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008)). Such arguments will not considered unless prejudicial error is obvious on mere inspection. *Id.*

First, Montano argues that the State failed to state a claim upon which relief can be granted when the State "failed to bond the case and serve [him] with said bond required by law." Montano has not cited, nor have we found, any law requiring the State to file a bond in a criminal case. Because this is not a civil case seeking a default judgment or injunctive relief, the bond provisions of Minn. R. Civ. P. 55.01 and Minn. R. Civ. P. 65.03 do not apply. Moreover, the bond provision of Minn. R. Civ. App. P. 107.02 does not apply because this is a criminal case. Minn. R. Civ. App. P. 107.03 (cost bond may not be

required in an appeal of a criminal case). We therefore conclude that Montano is not entitled to any relief based on his bond argument.

Second, Montano argues that because the State of Minnesota prosecuted him, the United States Supreme Court possesses original and exclusive jurisdiction under Article III of the United States Constitution, which grants original jurisdiction where "a State shall be a Party." U.S. Const. art. III, § 2, cl. 1. But the United States Supreme Court's original jurisdiction is not exclusive when only one state is a party. 28 U.S.C. § 1251(a) ("The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States."); *see also Maryland v. Louisiana*, 451 U.S. 725, 735 (1981) (explaining that the Court exercises original jurisdiction only when " 'the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence.' " (quoting *Massachusetts v. Missouri*, 308 U.S. 1, 15 (1939))). Nor does the Court have original jurisdiction in cases where a state brings an action against a citizen of its own state. *See* 28 U.S.C. § 1251(b)(3). Montano is therefore not entitled to relief based on his jurisdictional argument.[2]

[2] Montano also argues that his attorney was ineffective when counsel failed to assert this jurisdictional argument. Because the jurisdictional argument lacks merit, his attorney's failure to raise the argument did not violate Montano's right to effective assistance of counsel. *See Griffin v. State*, 883 N.W.2d 282, 287–88 (Minn. 2016). We also observe that Montano was properly tried in Carlton County, which is the county where the crime occurred. *See* Minn. Stat. § 484.01, subd. 1(2) (2020); Minn. R. Crim. P. 24.01.

Third, Montano argues that because he consumed methamphetamine before the offense, he did not have the requisite mens rea for intentional murder. But "[t]he fact that a defendant consumed intoxicants prior to an offense does not raise a presumption that the defendant was incapable of premeditation." *State v. Griese*, 565 N.W.2d 419, 430 (Minn. 1997). "Rather, the burden is on the defendant to prove by a preponderance of the evidence that he was so intoxicated as to be incapable of forming the required premeditation." *Id.* Montano presented no such defense at trial, nor does the record contain any facts regarding the level of his impairment. Accordingly, his mens rea argument does not merit relief.

Finally, Montano states in his pro se supplemental brief that at one point during the trial, one of the jurors started to cough and under her breath and said, "Guilty Guilty." Although the trial transcript indicates that the district court gave water to the coughing juror, it does not include the juror's alleged statement. Because Montano's juror bias argument is "unsupported by the record," it does not merit relief.[3] *State v. Benton*, 858 N.W.2d 535, 542 (Minn. 2015) (concluding that pro se argument was meritless because it was unsupported by the record and devoid of legal authority).

Montano's remaining claims[4] lack argument and citation to legal authority or the record, nor do we see any obvious prejudicial error in those claims. Accordingly, we decline to address them. *State v. Palmer*, 803 N.W.2d 727, 741 (Minn. 2001).

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[3] Our conclusion should not be read to preclude a properly submitted post-conviction petition.

[4] Montano made the following additional claims in his pro se supplemental brief: (1) motion for autrefois conviction; (2) motion for autrefois attaint; (3) motion for acquittal;

In sum, we have carefully reviewed Montano's pro se brief and conclude that none of his claims merit relief. Because we also conclude that the district court did not err in denying Montano's request for an accomplice-testimony instruction, we affirm his conviction.

CONCLUSION

For the foregoing reasons, we affirm the judgment of conviction.

Affirmed.

CHUTICH, J., took no part in the consideration or decision of this case.

(4) motion for new trial; (5) motion to vacate judgment and sentence; (6) motion to dismiss for Stahl criminal charges or delay in charging pursuant to Minn. R. Crim. P. 30; (7) First Amendment right to redress grievances of government in a timely manner; (8) Fifth Amendment right to due process; (9) Sixth Amendment right to speedy trial; (10) Ninth Amendment rights; (11) motion for void judgment; (12) motion to apply any treaties.