

A05-1084
A05-1084

STATE OF MINNESOTA
IN SUPREME COURT

State of Minnesota,

Respondent,

v.

Michael Medal-Mendoza,

Appellant.

APPELLANT'S BRIEF

MIKE HATCH

Minnesota State Attorney General
445 Minnesota Street
1800 Bremer Tower
St. Paul, MN 55101

MELISSA SHERIDAN

Attorney at Law
Attorney Reg. No. 180269
1380 Corporate Center Curve, Suite 320
Eagan, MN 55121
(651) 686-8800

SUSAN GAERTNER

Ramsey County Attorney
50 W. Kellogg Blvd.
Suite 315
St. Paul, MN 55102

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

	PAGE
PROCEDURAL HISTORY	1
LEGAL ISSUES	3
STATEMENT OF THE CASE	5
STATEMENT OF FACTS	6
ARGUMENT	21
I. The trial court violated Medal-Mendoza’s right to present a defense by refusing to allow Medal-Mendoza to present evidence of his co-defendants’ gang affiliation with each other and with a third person.	21
II. The trial court committed prejudicial error by allowing a police officer to testify as an expert because the officer did not have sufficient foundation for her opinion and because she gave her opinion on the legal question of Medal-Mendoza’s intent.	26
III. The trial court committed prejudicial error by instructing the jury that it could consider evidence of Medal-Mendoza’s flight as proof of his guilty intent.	32
CONCLUSION	38

TABLE OF AUTHORITIES

PAGE

MINNESOTA STATUTES

Minn. Stat. § 609.17	1, 7
Minn. Stat. § 609.185(3)	1, 5
Minn. Stat. § 609.19	1, 7

MINNESOTA DECISIONS

State v. Baird, 654 N.W.2d 105 (Minn. 2002)	33
State v. Chambers, 507 N.W.2d 237 (Minn. 1993)	28, 29
State v. Deans, 356 N.W.2d 674 (Minn. 1984)	23
State v. DeShay, 669 N.W.2d 878 (Minn. 2003)	27
State v. Ferguson, 581 N.W.2d 824 (Minn. 1998)	23
State v. Flores, 418 N.W.2d 150 (Minn. 1988)	33
State v. Gebremariam, 590 N.W.2d 781 (Minn. 1999)	32
State v. Grecinger, 569 N.W.2d 189 (Minn. 1997)	26, 28
State v. Hawkins, 260 N.W.2d 150 (Minn. 1977)	3, 23
State v. Juarez, 572 N.W.2d 286 (Minn. 1997)	30
State v. Klawitter, 518 N.W.2d 577 (Minn. 1994)	27
State v. Kuhnau, 622 N.W.2d 552 (Minn. 2001)	33
State v. Litzau, 650 N.W.2d 177 (Minn. 2002)	4, 34, 37
State v. McLaughlin, 250 Minn. 309, 84 N.W.2d 664 (1957)	4, 34, 35, 36
State v. Oates, 611 N.W.2d 580 (Minn. Ct. App. 2000)	34

State v. Olson, 482 N.W.2d 212 (Minn. 1992)	33, 36, 37
State v. Persitz, 650 N.W.2d 177 (Minn. 2002)	33
State v. Post, 512 N.W.2d 99 (Minn. 1994)	24
State v. Provost, 490 N.W.2d 93 (Minn. 1992)	3, 29
State v. Reardon, 245 Minn. 509, 73 N.W.2d 192 (1955)	22
State v. Richards, 495 N.W.2d 187 (Minn. 1992)	22
State v. Saldana, 324 N.W.2d 227 (Minn. 1982)	27, 28, 30
State v. Shetsky, 229 Minn. 566, 40 N.W.2d 337 (1949)	34
State v. Townsend, 546 N.W.2d 292 (Minn. 1996)	31

FOREIGN DECISIONS

California v. Trombetta, 467 U.S. 479 (1984)	22
County Court of Ulster County v. Allen, 442 U.S. 140 (1979)	34
Sullivan v. Louisiana, 508 U.S. 275 (1993)	30
United States v. Grinage, 390 F.3d 746 (2d Cir. 2004)	31
Washington v. Texas, 388 U.S. 14 (1967)	3, 23

CONSTITUTIONAL PROVISIONS

United States Constitution	
Fifth Amendment	22
Fourteenth Amendment	22
Minnesota Constitution	
Article I, § 7	22

OTHER

5 Dunnell, Dig. (3ed.) § 2464	34
Minnesota Rules of Criminal Procedure 26.03	33
Minnesota Rules of Evidence	
403	27
404(b)	23
702	3, 27
704	3, 28
Charles R. Nesson, <u>Reasonable Doubt and Permissive Inferences: The Value of Complexity</u> 92 Harv. L. Rev. 1187 (1979)	37

A05-1084

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

v.

Michael Medal-Mendoza,

Appellant.

PROCEDURAL HISTORY

January 12, 2004: Date of alleged offense.

April 7, 2004: Indictment filed in Ramsey County District Court charging appellant Michael Medal-Mendoza with two counts of first degree felony murder, Minn. Stat. § Minn. Stat. § 609.185(3); one count of attempted first degree felony murder, Minn. Stat. §§ 609.185(3) and 609.17, subd. 1; two counts of second degree intentional murder, Minn. Stat. § 609.19, subd. 1(1) and one count of attempted second degree intentional murder, Minn. Stat. §§ 609.19, subd. 1(1) and 609.17, subd. 1.

April 9, 2004: Medal-Mendoza's first court appearance on the indictment, Judge Edward J. Cleary presiding.

May 26, 2004: Pretrial hearing, Judge Kathleen Gearin presiding.

July 1, 2004: Omnibus hearing, Judge Gearin presiding.

December 6-16, 2004: Jury trial, Judge Gearin presiding. The jury convicted Medal-Mendoza of the six counts charged in the indictment.

March 2, 2005: Sentencing hearing, Judge Gearin presiding. The court sentenced Medal-Mendoza to two consecutive terms of life in prison for the first degree murder convictions and to a consecutive prison term of 180 months for the attempted first degree murder conviction. The court also ordered Medal-Mendoza to pay \$1,439 in restitution.

May 31, 2005: Medal-Mendoza filed a notice of appeal with the Clerk of Appellate Courts.

September 12, 2005: Completed transcripts mailed to Medal-Mendoza's appellate lawyer.

LEGAL ISSUES

Issue 1: Criminal defendants have the constitutional right to present a defense, which guarantees the opportunity to introduce evidence that inculpates another person. Here, the court prohibited Medal-Mendoza from introducing evidence of his co-defendants' gang affiliation with each other and with a third person. Did this evidentiary limit violate Medal-Mendoza's right to present a defense?

Ruling below: The trial court ruled in the negative.

Authority:

Washington v. Texas, 388 U.S. 14 (1967)

State v. Hawkins, 260 N.W.2d 150 (Minn. 1977)

Issue 2: The rules of evidence allow expert testimony if it will aid the jury in understanding the evidence or in determining a fact issue. But experts may not testify without sufficient foundation or about legal questions. Here, the court allowed a police officer to testify as an expert, based only on a class she took, on the legal question of Medal-Mendoza's intent. Did the trial court commit prejudicial error by admitting this testimony?

Ruling below: The trial court ruled in the negative.

Authority:

Minn. R. Evid. 702 and 704

State v. Provost, 490 N.W.2d 93 (Minn. 1992)

Issue 3: Trial courts generally must not instruct the jury on permissive inferences that can be drawn from specific facts. Here, the trial court instructed the jury that it could

consider evidence of Medal-Mendoza's flight as proof of his criminal intent. Did the court abuse its discretion in giving such an instruction?

Ruling below: The trial court ruled in the negative.

Authority:

State v. McLaughlin, 250 Minn. 309, 84 N.W.2d 664 (1957)

State v. Litzau, 650 N.W.2d 177 (Minn. 2002)

STATEMENT OF THE CASE

Appellant Michael Medal-Mendoza was charged by indictment in Ramsey County District Court with two counts of first degree felony murder, Minn. Stat. § Minn. Stat. § 609.185(3); one count of attempted first degree felony murder, Minn. Stat. §§ 609.185(3) and 609.17, subd. 1; two counts of second degree intentional murder, Minn. Stat. § 609.19, subd. 1(1) and one count of attempted second degree intentional murder, Minn. Stat. §§ 609.19, subd. 1(1) and 609.17, subd. 1. The charges were based on the state's allegation that Medal-Mendoza and two accomplices shot and killed two men and shot and tried to kill a woman during a drug-related robbery attempt.

Medal-Mendoza pled not guilty, and Judge Kathleen Gearin presided over his jury trial. At the trial, Medal-Mendoza presented an alibi defense. Despite the defense evidence, the jury convicted Medal-Mendoza of the six charges alleged in the indictment. The court later sentenced Medal-Mendoza to two consecutive terms of life in prison for the first degree murder conviction and to a consecutive prison term of 180 months for the attempted first degree murder conviction. Medal-Mendoza filed this appeal to challenge the convictions.

STATEMENT OF FACTS

The shootings

St. Paul police dispatch received a 911 call on January 12, 2004, from a woman who said she had been shot and needed medical attention (T.540-43).¹ In response to this call, the dispatcher sent police and paramedics to [REDACTED] at about 4:30 a.m. (T.554-55, 577-79)

St. Paul Police Officers Amy Boyer and Kathleen O'Reilly were the first officers to arrive at the Burns Avenue address (T.575, 577-79, 722-24). Boyer knocked on the front door, but no one answered (T.580). Boyer walked in and knocked on the main floor apartment door (T.580). A woman who lived in the upstairs apartment came out and led Boyer to the basement apartment (T.580-81). The basement apartment door was locked, but an officer who since had arrived kicked the door open (T.581-82). At about the same time, O'Reilly and another officer kicked open the service door between the garage and the basement apartment (T.725).

As soon as the door was opened, the officers smelled gun powder (T.582, 725-26). They found a woman, later identified as A [REDACTED] C [REDACTED], lying on the floor in the kitchen near the garage entrance (T.583, 725 728). C [REDACTED] had blood on her leg, and she said she had been shot in the chest (T.585).

Officer O'Reilly asked C [REDACTED] who had done the shooting and C [REDACTED] said, "three dudes, two Mexicans and a mulatto." (T.727). C [REDACTED] said she did not know who the men

¹ "T" refers to the transcript of Medal-Mendoza's jury trial.

were, but the mulatto looked like the brother of a guy named James with whom she had gone to Harding High School (T.727-28).

The police also found two men in the living room (T.583-84). One of the men, later identified as R ■ G ■, was on a small couch along the south wall (T.584, 729). The other man, later identified as W ■ C ■, was on a longer couch along the west wall (T.584, 729).

G ■ appeared to have been shot in the forehead and he was bleeding below his right armpit (T.584). Officer Boyer determined he was dead (T.584). C ■ was on his knees on the floor, with his upper body slumped on the couch (T.584). He was breathing but unconscious (T.584-85).

C ■ told the paramedics she had been shot, and she was anxious and in a lot of pain (T.558). She had two wounds, one in her upper torso and one in her left upper thigh (T.559). The paramedics put C ■ in an ambulance and took her to Regions Hospital (T.557-59). The medics also put both men into ambulances and took them to Regions Hospital as well (T.572).

About fifteen minutes after Officer Boyer arrived at the scene, she went to the hospital to talk to C ■ (T.598). C ■ was heavily sedated when she first talked to Boyer (T.601). C ■ said the people who shot her were “two Mexican males and one mulatto male” (T.599). In addition, C ■ said all three men had guns and they took her purse (T.602).

Doctor David Dries treated A ■ C ■ in the emergency room (T.762-64, 776). C ■ was hysterical and she appeared to be high from the drugs she admitted

taking (T.781, 800). Her toxicology screen was positive for amphetamine, methamphetamine and opiates (T.791-92). C [REDACTED] had bullet wounds to her chest and one of her legs (T.776). Fortunately, none of her vital organs or arteries was injured and there was no risk that she would bleed to death from the gunshot wounds (T.790-91, 796-97). C [REDACTED] was well enough to go home after a couple of days (T.795).

Dries also treated C [REDACTED] in the emergency room on January 12th (T.768). According to Dries, C [REDACTED] was in grave condition when he arrived at the hospital (T.769). C [REDACTED] had a bullet wound to his head that caused massive injury to his brain (T.770-71).

Dries concluded that C [REDACTED] had "injuries which were not going to be associated with any meaningful level of life" (T.774). C [REDACTED]'s family decided to discontinue medical intervention, and C [REDACTED] died shortly after the medical support was withdrawn (T.774-76).

Michael McGee, the Ramsey County medical examiner, performed an autopsy on W [REDACTED] C [REDACTED] (T.827-28, 837). C [REDACTED] had a gunshot entrance wound at the top of his head and an exit wound above his left ear (T.845). He also had a gunshot entrance wound and an exit wound on his neck (T.848-49). In addition, C [REDACTED] had a gunshot graze wound on the back of his right hand (T.849). According to McGee, the cause of C [REDACTED]'s death was cerebral laceration destruction due to the gunshot wound to his head (T.857).

Paul Nora, an assistant medical examiner, performed an autopsy on R [REDACTED] G [REDACTED] (T.1049-50, 1055-56). The toxicology screen Nora did on G [REDACTED] was positive for amphetamine and methamphetamine (T.1057). G [REDACTED] had a gunshot wound to his left

forehead and a gunshot wound to his chest (T.1060). According to Nora, G [REDACTED] died as a result of the gunshot wounds (T.1074).

Police investigation

St. Paul Police Sergeants Jane Laurence, Janet Dunnom and Neil Nelson were assigned to investigate the shootings (T.970-71, 980). Sergeant Dunnom went to the hospital and spoke with A [REDACTED] C [REDACTED] in the emergency room shortly after the incident (T.910-12, 914-15). According to Dunnom, C [REDACTED] was in pain and very frightened (T.915).

C [REDACTED] told Dunnom that G [REDACTED] was her boyfriend and C [REDACTED] was her friend (T.915-16). She said the apartment they were in was C [REDACTED]'s and that a friend of C [REDACTED]'s had come to the apartment with two other people to buy some methamphetamine (T.916). All three men had guns and one of them told G [REDACTED] they were "jacking him" (T.916). When G [REDACTED] refused to be robbed, the man shot him in the head (T.916).

Dunnom returned to the hospital the next day to speak with C [REDACTED] again (T.916). C [REDACTED] told Dunnom that the man who shot G [REDACTED] had a silver or shiny handgun with a long barrel and the other men's guns were black or gray and not as shiny (T.917). C [REDACTED] described the man who knew C [REDACTED] as "mixed race" with curly hair (T.917). C [REDACTED] also said this person seemed familiar to her, as if he was the brother of someone she knew from Harding High School, and she thought his name was James (T.920). She said the man who shot G [REDACTED] was Mexican and she thought the third man was white (T.917).

Dunnom followed up on C [REDACTED]'s information by obtaining some yearbooks from the years C [REDACTED] attended Harding High School (T.920-21). C [REDACTED] and Dunnom went through the yearbooks looking for a picture of C [REDACTED]'s friend (T.921-22). In a 1997 yearbook, C [REDACTED] saw someone she recognized named James Green, who she said was the man who had come to C [REDACTED]'s apartment to buy drugs (T.922-23, 954).

When Dunnom returned to the police department, she prepared a six-person photographic lineup that contained a photograph of James Green (T.924-25). Dunnom showed the lineup to C [REDACTED], and C [REDACTED] identified Green (T.926).

Sometime during the morning in the hours just after the shootings, an officer told Sergeant Laurence that an informant told him he knew the three people who had committed the murders: J.G., Danny V. and Brooklyn (T.989). The informant also said that the three men were at an apartment in Maplewood (T.989). Laurence discovered that Danny Valtierra was a "long time associate" of James Green and that both men were members of the Brown for Life, or BFL, gang (T.989-90). Sergeant Dunnom prepared a separate six-person photographic lineup that contained a picture of Valtierra and she showed that lineup to C [REDACTED] (T.928). C [REDACTED] identified Valtierra from the lineup (T.928).

Based on the informant's information, Laurence obtained a warrant to search the Maplewood apartment (T.993-94). The police executed the warrant at about 3:00 p.m. on January 12th (T.994). Three people were in the apartment: Alison Kinsel, Hilder Medal-Mendoza and Kristine Martinez (T.994). Kinsel and James Green had rented the apartment two days earlier (T.995).

Laurence talked to Kinsel, who said that Hilder Medal-Mendoza was known as Lucky and that Lucky had a brother she knew as Brooklyn (T.996). Kinsel said that Green and Valtierra were at her apartment when she woke at about 6:00 that morning (T.1031-32). Medal-Mendoza arrived later, after she had been to the airport and then returned home (T.1032). She said that Green and Valtierra left together and Medal-Mendoza left sometime later (T.1032).

Laurence later ran the name Medal-Mendoza through the Department of Motor Vehicles web site and found two people with that surname: Hilder Medal-Mendoza and Michael Medal-Mendoza (T.997). Laurence prepared a photographic lineup that contained a picture of Michael Medal-Mendoza (T.999-1001). Laurence and Dunnom showed C [REDACTED] the lineup that contained Medal-Mendoza's picture (T.930-31). When C [REDACTED] saw the lineup, she identified Medal-Mendoza (T.931).

C [REDACTED] also told the police that the people who came to C [REDACTED]'s apartment to buy drugs had been at a Perkins restaurant on Robert Street (T.1007). Laurence sent an officer to the restaurant to obtain security videotapes of the interior and exterior from the evening of January 12th (T.1007). Laurence watched those tapes several months after the shootings (T.1013-16). One of the tapes showed three men entering the restaurant (T.1016-17). Laurence believed those men were Green, Valtierra and Medal-Mendoza (T.1017-18).

Based on all this information, Laurence drafted complaints and obtained warrants to arrest Green, Valtierra and Medal-Mendoza on January 13th (T.1006, 1010).

The arrest

During the day on January 13th, informants told the police that Green, Valtierra and Medal-Mendoza had driven to Chicago, but then turned around to come back to St. Paul (T.1010).

At about 4:00 p.m. on January 13th, Randy Bartelt, the police chief in Elk Mound, Wisconsin, responded to a multi-car accident call on Interstate 94 on the outskirts of Elk Mound (T.732-34, 740). The dispatcher said three people had run north from the accident scene toward Highway 12 (T.734). As Bartelt approached the scene on Highway 12, he saw three people near a pickup truck (T.735-36).

Bartelt stopped and got out of his car, and the three people walked toward him (T.737). Bartelt told them to stop and put their hands on the truck (T.737-38). Bartelt handcuffed the three men, one of whom identified himself as Bobby Green (T.742). The second man identified himself as Michael Medal-Mendoza (T.742). The third man said his name was Jason Costillo (T.745, 750). The men said they had been in an accident and were trying to get a ride to a telephone (T.744-45). The driver of the pickup said he was not with the other men (T.741). Medal-Mendoza was arrested for DWI, but the other two men were released (T.746-47). Later that day, Bartelt discovered that all three men had warrants for their arrest (T.747-48).

Jason Maes, the driver of the pickup, had been driving east on Highway 12 on January 13th when a man waved at him (T.753-54). Maes pulled over and saw that an accident had occurred (T.754-55). The man asked Maes if he would give him a ride to the nearest phone (T.755). Maes said yes, and the man said he had a couple of buddies who

needed to go with them (T.755). Maes did not see anyone, but when he said yes, two men came out of the ditch and climbed into the bed of Maes' pickup and laid down (T.755-56).

Maes became suspicious and said he would not give them a ride (T.756-57). Just then, Chief Bartelt approached from the west and Maes flagged him down (T.757). Later, Maes found a wallet in the bed of his truck (T.758). The wallet contained identification in the name of Valtierra (T.758, 760). Maes took the wallet to the Elk Mound Sheriff's Department (T.759).

At about 4:30 p.m. on January 13th, Sergeant Laurence received information that Green, Valtierra and Medal-Mendoza had been in an accident somewhere along Interstate 94 and that Medal-Mendoza had been arrested for DWI (T.1010-11). Laurence later obtained a warrant to search Medal-Mendoza's car (T.1012). When the police searched the car, they did not find any blood (T.1012-13).

Trial testimony -- state's witnesses

A [REDACTED] C [REDACTED] testified at Medal-Mendoza's trial that W [REDACTED] C [REDACTED] was one of her best friends and that R [REDACTED] G [REDACTED] was her boyfriend (T.617, 620-21). C [REDACTED] testified that she and G [REDACTED] both used methamphetamine and she used marijuana as well, and she said she and G [REDACTED] sold drugs to support themselves (T.622-23). She also testified that C [REDACTED] used methamphetamine and marijuana (T.626).

C [REDACTED] said that around midnight or 1:00 a.m. on January 12, 2004, she was at a hotel with G [REDACTED] and C [REDACTED] (T.626-28). While there, she took some

methamphetamine and smoked some marijuana and G [REDACTED] and C [REDACTED] used methamphetamine (T.627).

At some point, a friend of C [REDACTED]'s called C [REDACTED] and asked if he knew where to get some methamphetamine (T.628). C [REDACTED] asked if they had any methamphetamine and C [REDACTED] and G [REDACTED] said they did, and it would cost \$1,500-1,600 (T.629). C [REDACTED], however, told the caller the methamphetamine would cost \$1,800 or \$1,900 so he could make some extra money (T.629-30). According to C [REDACTED], the caller wanted the methamphetamine for some girls in Ham Lake (T.630).

They originally planned to meet the buyer at a gas station near White Bear Lake and Suburban Avenue (T.630). The buyers were coming from a Perkins restaurant on Roberts Street (T.630). C [REDACTED] later told the buyer to come to C [REDACTED]'s apartment on Burns Avenue so they would not have to wait at the gas station (T.630-31). C [REDACTED], G [REDACTED] and C [REDACTED] went to C [REDACTED]'s apartment and waited for the buyer to show up (T.631-32). G [REDACTED] had the package of drugs they were going to sell (T.632).

After about half an hour, a man C [REDACTED] recognized from high school arrived (T.632-33). C [REDACTED] described the man as tall, skinny, and "mulatto" with freckles and reddish brown hair (T.633). She later learned the man's name was James Green (T.634). G [REDACTED] gave Green a couple of pieces of methamphetamine for Green to take to the girls so they could sample it (T.634).

Green had some friends waiting outside, and after fifteen or twenty minutes, C [REDACTED] told Green to have his friends come in so they would not have to sit in the cold (T.635). Two other men then came in the apartment (T.635). One of the men was taller

than the other and C [REDACTED] described him as “a Mexican white” (T.635-36). She thought he was “really high” because his eyes were pitch black and he did not say anything at all (T.636). The man sat on the couch next to G [REDACTED] and stared at him with no expression (T.636).

The other man was shorter with dark brown hair and C [REDACTED] described him as “Mexican” (T.636-37). C [REDACTED] said he looked “more preppy” because he was wearing a polo shirt that was tucked in, nice boots and a leather jacket (T.637). He also had a mustache and “maybe like fuzz” (T.637).

The shorter man talked to G [REDACTED] about the drugs and C [REDACTED] talked to Green (T.638). The shorter man then made a telephone call and spoke to someone in Spanish (T.638-39). Green asked the shorter man who he was calling, and the man replied, “Lucky” (T.639).²

After about fifteen minutes, the three men left (T.640). The shorter man took a sample of the drugs to bring to the girls, who were supposed to meet him at a gas station (T.640-41). At the trial, C [REDACTED] identified Medal-Mendoza as the shorter man (T.640-41).

A half hour later, the three men returned unannounced and kicked in the door (T.641-42). C [REDACTED] claimed Medal-Mendoza was in the front and the other two men were behind him in a “V”, “like Charlie’s Angels” (T.642). All three men had handguns (T.642).

² C [REDACTED] did not remember that the shorter man had used the name Lucky while he was on the phone until the day before she testified at Medal-Mendoza’s trial (T.651).

C [REDACTED] and G [REDACTED] were sitting next to each other on a couch and Medal-Mendoza allegedly stood in front of them (T.643). C [REDACTED] was sitting on another couch across the room (T.643). According to C [REDACTED], Medal-Mendoza said, "I am robbing you, m---er f---er." (T.644). G [REDACTED] responded, "You ain't robbing me." (T.644). Medal-Mendoza then allegedly threatened to shoot G [REDACTED] (T.644). G [REDACTED] said, "You are going to have to shoot me then because you sure as hell ain't robbing me." (T.645).

According to C [REDACTED], Medal-Mendoza then shot G [REDACTED] in the middle of his head (T.645). C [REDACTED] screamed and then felt she had been shot (T.645). She fell to the ground with a burning in her chest and a warm feeling in her leg (T.645). After that, she heard "lots" of other shots and then the three men ran out (T.645-46). C [REDACTED] saw that C [REDACTED], who was partly on the couch and partly on the floor, had been shot as well (T.646).

Someone came back in the apartment (T.647). C [REDACTED] believed it was Green because she saw an arm with darker skin and freckles (T.647). The person kicked her and then grabbed her purse and left (T.647).

C [REDACTED] yelled and ran up the stairs to get help (T.648). No one answered her cries, so she went back downstairs and called 911 (T.648-49). The police and ambulance crews arrived shortly, and C [REDACTED] was taken to Regions Hospital (T.649).

At the time of Medal-Mendoza's trial, LeRoy DeMeules was serving a fifty-seven-month prison sentence for first degree felony DWI (T.802-803). He also had prior convictions for drug and sex offenses (T.819). DeMeules testified that he met Medal-Mendoza when they were both housed in the same unit at the Ramsey County jail from

April to August of 2004 (T.803-804). At one point, James Green told DeMeules that if Medal-Mendoza did not “take the charge” he was going to make sure Medal-Mendoza’s life “wasn’t too healthy up in prison” (T.805). Green also wanted Medal-Mendoza to know he would be well provided-for if he agreed to “take the heat” (T.814).

DeMeules relayed this information to Medal-Mendoza, who asked DeMeules if he would tell his attorney what Green had said (T.805). DeMeules agreed to do so (T.805-806).

After DeMeules testified at Green’s trial about Green’s comment, he remembered that Mendoza had said, “When you talk to my attorney, don’t tell her that I popped them other two.” (T.806, 817-18). Medal-Mendoza then added that he was just joking (T.809). DeMeules testified that he came forward with this information because he did not “believe in” murder (T.807). He also testified, however, that he was afraid Green or his fellow gang members would hurt him while he was in prison (T.819).

At the trial, DeMeules testified that Green told him where the bodies were positioned after they were shot and that two were shot twice and one was shot once (T.812). Green also said he went back to make sure the girl was dead (T.813).

DeMeules testified that Medal-Mendoza said he and the “other two guys” went to C [REDACTED]’s apartment to “hit them” for drugs and money (T.809). Medal-Mendoza allegedly said that they would not be able to place him at the scene because one of his girlfriend’s friends, someone named Rachel, was going to testify that he was at her house taking a shower and in bed with her when the crimes occurred (T.810-11). DeMeules

testified that Medal-Mendoza asked if DeMeules' girlfriend would call Rachel to confirm that Rachel would support his alibi (T.810-11).

James Green's girlfriend, Alison Kinsel, testified that on January 12, 2004, she and Green lived together in an apartment in Maplewood (T.866-68). Kinsel testified that Green and Daniel Valtierra were at the apartment when she woke at about 6:00 a.m. on the 12th (T.871). Joe Seals arrived, and she and Seals took Valtierra to the airport so he could leave for Seattle (T.868, 871-72). Valtierra could not get a flight, so the three returned to Kinsel's apartment (T.872). Green was at home, and later, Medal-Mendoza (who she knew as Brooklyn), his brother Lucky and Lucky's girlfriend arrived (T.868-70, 872). At some point, Seals left with someone called "D" (T.873). Then Valtierra and Green left together (T.870-71).

Kinsel testified that she left the apartment at about 12:30 p.m. to go to the police station to report that her car had been stolen (T.870, 873-74). Kinsel claimed that Joe Seals had borrowed her car two days earlier, and he told her it was stolen while he had it (T.874). Kinsel did not report the car was stolen, however, until after everyone had left her apartment on January 12th (T.873-74).

St. Paul Police Officer Ronald Whitman worked in the police crime laboratory (T.693). Whitman processed over thirty items taken from C [REDACTED]'s apartment for fingerprints, including chip bags, pop cans, plastic drink bottles, lottery tickets, cigarette packages, cigarette butts and cell phones (T.695-96, 698-99). On all those items, Whitman found only three identifiable fingerprints (T.699). None of the fingerprints belonged to Medal-Mendoza (T.699).

In addition, the police found two plastic baggies near the end of C█████'s driveway (T.702). According to Whitman, the baggies contained some type of powdered controlled substance (T.702). The police also found a bullet in the cushion of one of C█████'s sofas and a bullet on the floor under G█████'s foot (T.703-704). Finally, the police saw several shoeprints in the backyard, but they could not match them to any shoes submitted to the crime lab for comparison (T.706).

Suzanne Birkholz-Maniak, a forensic scientist in the firearms section of the Bureau of Criminal Apprehension, examined five bullets related to the Burns Avenue shooting (T.877-79, 888). Three of the bullets were recovered from G█████'s body and two were found in the apartment (T.888-89). Birkholz-Maniak concluded from her examination that all five bullets had been fired from the same gun (T.890).

Trial testimony -- defense evidence

Rachel Verdaja testified that she knew Medal-Mendoza through his girlfriend, Antoinette Molinar (T.1086-87). According to Verdaja, she was in her apartment sleeping on January 12th (T.1088). At the time, Medal-Mendoza was staying with her because he and Molinar were fighting (T.1090).

She woke at about 4:00 or 5:00 a.m. and heard her shower running (T.1088). She went back to sleep, but she woke again sometime between 4:00 and 5:00 a.m. when she heard Medal-Mendoza come into the bedroom (T.1088). He got into bed with her (T.1088-89). Medal-Mendoza stayed at Verdaja's apartment until about noon that day (T.1089).

Antoinette Molinar testified that she and Medal-Mendoza, her boyfriend, have two children together (T.1079). Molinar testified that Medal-Mendoza came to visit her at her mother's house at around noon on January 13th and they spent the afternoon together (T.1079-80). Medal-Mendoza got a telephone call that afternoon and said he had to go pick up somebody (T.1080). He left then and never came back (T.1080).

Jury verdict

Despite Medal-Mendoza's alibi, the jury convicted him of first degree felony murder, second degree intentional murder, attempted first degree felony murder and attempted second degree intentional murder (T.1193-94).

ARGUMENT

I.

The trial court violated Medal-Mendoza's right to present a defense by refusing to allow Medal-Mendoza to present evidence of his co-defendants' gang affiliation with each other and with a third person.

The state's theory at trial was that Medal-Mendoza, Valtierra and Green tried to rob C [REDACTED], G [REDACTED] and C [REDACTED] and that Medal-Mendoza shot the three when G [REDACTED] resisted the robbery. Medal-Mendoza's theory was that C [REDACTED] misidentified him as the shooter and that Joe Seals, who belonged to the same gang as Valtierra and Green, was the man who did the shooting.

To support his theory, Medal-Mendoza filed a pretrial motion asking the court to permit him to present evidence that the charged accomplices, James Green and Daniel Valtierra were members of the Brown for Life gang (Motion filed December 6, 2004). The trial court did not rule on this motion before the trial started, stating it would have to "see that in context" before deciding whether to admit the evidence (T.12). During cross-examination of Alison Kinsel, Green's girlfriend, defense counsel tried to introduce evidence that Green, Valtierra and Joseph Seals belonged to the same gang (T.874-75).

The prosecutor objected, arguing that the evidence was irrelevant (T.874-75). The defense responded that the evidence, which the police used in identifying Green and Valtierra as suspects, was relevant to Medal-Mendoza's defense that someone other than Medal-Mendoza, possibly fellow gang member Joseph Seals, participated with Green and Valtierra in the Burns Avenue shootings (T.893-94). In addition to the gang evidence, defense counsel noted the evidence that Seals was at Green's house with Valtierra and

Green shortly before the crimes at a time when Mendoza was not there, evidence that Seals had Kinsel's car shortly before the crimes and evidence that Kinsel reported the car stolen shortly after the crimes (T.896). Thus, counsel argued, the co-defendants' gang affiliation with each other and with Seals, combined with the evidence that Seals was with Valtierra and Green before the crime occurred, would show that Medal-Mendoza was misidentified as the person with Green and Valtierra at the time of the shootings (T.894, 896-97).

The court sustained the state's objection, ruling that the relationship between Seals, Valtierra and Green was not relevant (T.874-76, 897).³ This ruling was wrong, and it unfairly restricted Medal-Mendoza's right to present a defense. Because this error was not harmless beyond a reasonable doubt, Medal-Mendoza's convictions must be reversed.

Due process, as guaranteed by Article I, § 7 of the Minnesota Constitution and the Fifth and Fourteenth Amendments to the United States Constitution, includes the right to a fair trial. State v. Reardon, 245 Minn. 509, 513-14, 73 N.W.2d 192, 195 (1955) (citations omitted). This right to a fair trial in turn includes the right to present a complete defense. California v. Trombetta, 467 U.S. 479, 485 (1984); State v. Richards, 495 N.W.2d 187, 191 (Minn. 1992) (citation omitted).

The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the

³Kinsel did testify that Medal-Mendoza was not a gang member (T.875).

purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Washington v. Texas, 388 U.S. 14, 19 (1967).

The right to present a defense includes the right to present evidence tending to prove that another person committed the charged crime. State v. Hawkins, 260 N.W.2d 150, 158 (Minn. 1977). Evidence of other crimes, wrongs or acts is admissible when the conduct of a third party is at issue and the evidence is not offered to prove the third party's character as a basis for an inference as to his conduct but instead is offered to prove the conduct of the third party without any need to infer his character. State v. Deans, 356 N.W.2d 674, 676 (Minn. 1984) (citation omitted). See also Minn. R. Evid. 404(b). But when a defendant implicates a third party in a murder and calls that person's character into question, the third party's character becomes a central point of the defense and is not a collateral issue so long as the defense lays proper foundation for the evidence. Hawkins at 158-59 (citations omitted).

Here, the trial court's ruling that Medal-Mendoza's offered evidence had no foundation and was not relevant was erroneous. There obviously was ample foundation connecting Green and Valtierra to the charged crimes as they themselves had been charged and convicted as aiders and abettors. Medal-Mendoza's defense theory was that the shootings were gang-related and that Green and Valtierra committed the crimes with a fellow gang member. Thus, evidence of Green's and Valtierra's gang affiliation with a third person who had the opportunity to commit the crime was essential to the defense's proof of motive. See State v. Ferguson, 581 N.W.2d 824, 834 (Minn. 1998) (evidence of

the defendant's gang affiliation was not collateral because it was essential to the state's proof of motive).

Medal-Mendoza offered the evidence of his co-defendant's gang affiliation to corroborate his alibi and to support his theory of defense. Because that evidence was relevant and had adequate foundation, the trial court erred in excluding it.

The remaining issue is whether the trial court's erroneous exclusion of Medal-Mendoza's offered evidence entitles Medal-Mendoza to a new trial.

The correct inquiry is . . . whether, assuming that the damaging potential of the [excluded evidence] were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt. In other words, the reviewing court must be satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, an average jury (*i.e.*, a reasonable jury) would have reached the same verdict. Only then can it be said that the erroneous exclusion of the evidence was harmless. If, on the other hand, there is a reasonable possibility that the verdict might have been different if the evidence had been admitted, then the erroneous exclusion of the evidence is prejudicial.

State v. Post, 512 N.W.2d 99, 102 (Minn. 1994) (citations, footnotes and internal quotation marks omitted).

There is more than a reasonable possibility that the jury's verdict would have been different if the excluded evidence had been admitted. Although one police officer made a passing reference to Green's and Valtierra's membership in the BFL gang (T.989), the court did not allow defense counsel to present independent evidence of their gang affiliation or explore how that affiliation provided a motive for the co-defendants to commit the crime with a fellow gang member rather than with Medal-Mendoza. Without

that evidence, the defense theory lacked corroboration and prevented Medal-Mendoza from presenting a credible defense.

Under these circumstances, there is more than a reasonable possibility that the verdict would have been different if the offered evidence had been admitted. Moreover, Medal-Mendoza had the constitutional right to present relevant evidence that inculpated other people and that had adequate foundation to further his defense theory. Accordingly, the erroneous exclusion of the gang affiliation evidence was prejudicial and Medal-Mendoza's convictions must be reversed and the case remanded for a new trial.

II.

The trial court committed prejudicial error by allowing a police officer to testify as an expert because the officer did not have sufficient foundation for her opinion and because she gave her opinion on the legal question of Medal-Mendoza's intent.

During the state's case, the prosecutor admitted the testimony of St. Paul Police Sergeant Janet Dunnom (T.910). Over Medal-Mendoza's relevancy objection, the court allowed Dunnom to testify as an expert about the violent character of the "drug community" and the phenomenon of "triangulation" (T.933, 937). Dunnom explained that triangulation occurs when a drug buyer brings additional people, who "split and go into a formation where they have now – you can't watch all of them, the exits or entrances are now covered and you have someone to your left, to the right and in front of you" (T.938-39). Dunnom testified that triangulation "is a danger signal because that can mean either robbery, at best, or a murder, at worst." (T.938).

The trial court erred by allowing the state to introduce this evidence because Dunnom did not have sufficient foundation for her opinion and because Dunnom improperly testified about the legal question of Medal-Mendoza's intent. This erroneous ruling violated Medal-Mendoza's right to a fair trial and, accordingly, Medal-Mendoza's convictions must be reversed and the case remanded for a new trial.

The decision to admit expert testimony generally is within the trial court's discretion. State v. Grecinger, 569 N.W.2d 189, 194 (Minn. 1997) (citation omitted). But the rules of evidence limit the admission of expert testimony with certain conditions: "If scientific, technical, or other specialized knowledge will assist the trier of fact to

understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Minn. R. Evid. 702.

When determining whether expert testimony should be admitted, the primary criterion the trial court should consider is whether the opinion testimony would be helpful to the factfinder. State v. Saldana, 324 N.W.2d 227, 230 (Minn. 1982). Moreover, expert testimony may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. Id. at 229 (citing Minn. R. Evid. 403). “[E]specially in criminal cases, district courts should exercise caution in admitting expert testimony because of the potential for experts with specialized knowledge to unduly influence the jury.” State v. DeShay, 669 N.W.2d 878, 885 (Minn. 2003) (citation omitted).

In this case, the first problem with Dunnom’s “triangulation” testimony was that it lacked sufficient foundation. To give expert testimony, the witness must be “sufficiently qualified” in her field. Comment, Minn. R. Evid. 702. An officer is allowed to give an opinion based on the officer’s training and experience as long as there is “sufficient foundation for the specific opinion expressed.” State v. Klawitter, 518 N.W.2d 577, 586 (Minn. 1994).

Dunnom’s testimony about “triangulation” and its alleged indication of criminal, perhaps even homicidal, intent was unreliable because it lacked foundation. Despite her training and experience as an undercover narcotics officer, Dunnom did not testify that she had any actual, firsthand knowledge about or experience with triangulation. Rather,

she testified only that triangulation was a term she “learned” and then taught about undercover officer safety tactics (T.938). Moreover, Dunnom did not testify when, where or how she learned the term or what basis she had for her knowledge.

Because Dunnom was an experienced officer specializing in narcotics investigations, her testimony that triangulation indicated an intent to rob or kill probably impressed the jury. Her opinion appeared to be backed by her training and experience when, in fact, her opinion was not supported by any authority. Thus, the state did not present sufficient foundation for Dunnom’s testimony and the testimony, therefore, was both unreliable and irrelevant. Accordingly, the trial court erred by allowing Dunnom to testify as an expert with respect to the phenomenon of triangulation.

The second problem with Dunnom’s testimony was that it expressed an expert opinion about Medal-Mendoza’s intent. The Minnesota Rules of Evidence provide that an otherwise admissible opinion “is not objectionable because it embraces the ultimate issue to be decided by the trier of fact.” Minn. R. Evid. 704. See also State v. Chambers, 507 N.W.2d 237, 238 (Minn. 1993). But Rule 704 distinguishes between an expert offering an opinion on a question of fact, which may be helpful to the jury, and on a legal question or a mixed question of fact and law, which is “not deemed to be of any use to the trier of fact.” Comment, Minn. R. Evid. 704. See also Saldana, 324 N.W.2d at 230 (citation omitted).

Moreover, where there is doubt about whether an expert opinion is admissible, the issue should be resolved in favor of allowing the jury to draw its own conclusions. See Grecinger, 569 N.W.2d at 198 (“[W]e look to the jury to apply its experience and

common sense in the search for truth, and we are loath to allow testimony that in any way interferes with its responsibility to resolve these ‘ultimate issues.’” (Stringer, J., concurring specially) (citation omitted)).

Because expert opinion evidence involving a legal question or a mixed question of law and fact does not help the jury, and may in fact interfere with its responsibility to resolve the questions, courts have no discretion to admit it. Chambers, 507 N.W.2d at 238. See also State v. Provost, 490 N.W.2d 93, 101-102 (Minn. 1992) (footnote omitted). The Minnesota Supreme Court has identified the question of a criminal defendant’s intent as a mixed question of law and fact that calls for legal analysis and thus is not admissible. Provost, 490 N.W.2d at 101.

For example, in Provost, the supreme court affirmed the exclusion of a psychiatrist’s expert opinion testimony on the legal questions of whether the defendant premeditated and intended the victim’s death. Id. The court held that it is improper for medical experts to give opinions on legal issues because jurors can review evidence and determine whether a defendant’s act was intentional as easily as a psychiatrist can: “[I]ndeed, it is the fact-finder’s job to do it, not the expert’s as a thirteenth juror.” Id. at 101-102 (footnote omitted).

Likewise, in Chambers, the court held that a pathologist could not give an expert opinion that the defendant intended to kill the victim. Chambers, 507 N.W.2d at 238. The court explained:

A pathologist may appropriately testify to things such as the number and extent of the wounds, the amount of bleeding, whether the wounds were caused by a knife or blunt instrument, whether a gunshot wound is a contact

wound, whether the wounds could or could not have been the result of accident, the cause of death, and so forth, but the pathologist should not be allowed to make an “expert inference” of intent to kill from these matters. That is for the jury to do.

Id. at 239. See also Saldana, 324 N.W.2d at 231 (reversible error to admit expert medical opinion that complaint was “raped”).

In this case, Dunnom testified that when “triangulation” occurred during a drug deal, the buyers were going to either rob or kill the sellers, conveying the not particularly subtle implication that Medal-Mendoza and his co-defendants, by participating in “triangulation,” intended to rob and kill C [REDACTED], G [REDACTED] and C [REDACTED]. But because the question of Medal-Mendoza’s intent was one of mixed fact and law, Dunnom’s conclusion interfered with the jury’s duty to decide it. Accordingly, the trial court erred by admitting her testimony.

The trial court’s error requires that Medal-Mendoza’s convictions be reversed unless this court finds that the error was harmless beyond a reasonable doubt. State v. Juarez, 572 N.W.2d 286, 291 (Minn. 1997) (citation omitted). In making this determination, the court must examine the basis upon which the jury rested its verdict and may find the error harmless only if the verdict was “surely unattributable” to the error. Id. at 292 (citing Sullivan v. Louisiana, 508 U.S. 275, 279 (1993)).

The trial court’s error in admitting Dunnom’s triangulation testimony was not harmless. With this testimony, the state introduced “expert” evidence that Medal-Mendoza had the criminal intent to rob and kill, thereby invading the jury’s province and giving an unwarranted stamp of legitimacy to the state’s theory of the case. See United

States v. Grinage, 390 F.3d 746, 751 (2d Cir. 2004) (opinion testimony by a law enforcement agent was unduly prejudicial because the agent had an aura of expertise and authority that increased the risk the jury would be swayed by his testimony). Given the capacity of the expert testimony to persuade in this improper manner, the state gained an unfair advantage, thereby prejudicing Medal-Mendoza's ability to receive a fair trial.

State v. Townsend, 546 N.W.2d 292, 296 (Minn. 1996) (citations omitted). Under these circumstances, this court cannot conclude that the verdict was surely unattributable to the erroneously admitted evidence. Accordingly, Medal-Mendoza's convictions should be reversed and the case remanded for a new trial.

III.

The trial court committed prejudicial error by instructing the jury that it could consider evidence of Medal-Mendoza's flight as proof of his guilty intent.

Over Medal-Mendoza's objection, the trial court gave the following jury instruction at the end of the trial:

It is for you alone to decide whether or not the defendant fled after the alleged crimes. If you determine that he did flee, then you may take such flight into consideration as an inference of guilty intention at the time of the incident giving rise to these charges.

Flight, in itself, is not conclusive evidence of a guilty intent; but if you find such flight existed, then you may consider it, along with all of the other pertinent evidence in this case in determining whether or not the State has established that the defendant possessed the requisite intent at the time and place of the alleged crimes.

(T.1102-04, 1109, 1121).

The trial court abused its discretion by giving this permissive inference instruction. Because this error violated Medal-Mendoza's right to due process, Medal-Mendoza is entitled to a new trial.

The state and federal constitutions guarantee to criminal defendants the right to have their juries receive clear and complete instructions: "Elementary to a fair trial and due process is that the jury is fully and accurately instructed as to the elements of the charged offense in a context of sufficient clarity and rationality that the jury can apply them to achieve a fair result." State v. Gebremariam, 590 N.W.2d 781, 783 (Minn. 1999) (citation omitted). Thus, in a criminal trial the court must state all matters of law that are

necessary for the jury's information in rendering its verdict. Minn. R. Crim. P. 26.03, subd. 18(5).

Trial courts generally have "considerable latitude" in choosing jury instructions. State v. Baird, 654 N.W.2d 105, 113 (Minn. 2002) (citation omitted). Jury instructions must be viewed in their entirety to determine whether they fairly and adequately explain the law of the case. State v. Flores, 418 N.W.2d 150, 155 (Minn. 1988) (citation omitted). "An instruction is in error if it materially misstates the law." State v. Kuhnau, 622 N.W.2d 552, 556 (Minn. 2001) (citation omitted). And an appellate court will reverse the trial court's decision on jury instructions if the trial court abused its discretion. State v. Persitz, 518 N.W.2d 843, 848 (Minn. 1994) (citation omitted).

This court has held that "as a general rule, jury instructions advising that a particular fact may be inferred from other particular facts, if proved, should be avoided." State v. Litzau, 650 N.W.2d 177, 185-86 (Minn. 2002) (citing State v. Olson, 482 N.W.2d 212, 215 (Minn. 1992)). Such permissive inference instructions are undesirable for several reasons:

- (1) They tend to inject argument into the judge's charge and lengthen it unnecessarily;
- (2) They improperly influence the jury not only by isolating particular facts but also by giving a particular step of logic "the official legal imprimatur of the state";
- (3) They are unnecessary in that, if the rational connection between facts presented and facts inferred is derived from common sense and experience, the matter can normally be left to the jury's judgment upon general instructions; and

(4) They single out and unfairly emphasize one factor, one piece of the circumstantial evidence, bearing on that determination, thereby suggesting to the jury that in the court's opinion this factor was of greater importance than other relevant factors.

Litzau, 650 N.W.2d at 186 (citations and footnote omitted).

For these reasons, a defendant's right to due process is violated if the trial court gives an improper permissive inference instruction. Id. at 187. The test for whether such an instruction has deprived a defendant of a fair trial is whether the inference undermined the jury's responsibility to find the ultimate facts beyond a reasonable doubt. County Court of Ulster County v. Allen, 442 U.S. 140, 156 (1979) (citations omitted). See also Litzau, 650 N.W.2d at 186-87.

Several decades before this court voiced its strong disapproval of permissive inference instructions, it offered minimal support for the giving of an instruction on evidence of flight:

When the proof is sufficient the trial court may instruct the jury that inference of guilt from the evidence of flight, in connection with other proof, may form the basis from which guilt may be inferred, but this should be qualified by a general statement of the countervailing considerations incidental to a comprehensive view of the question.

State v. McLaughlin, 250 Minn. 309, 319, 84 N.W.2d 664, 671-72 (1957) (citing State v. Shetsky, 229 Minn. 566, 40 N.W.2d 337 (1949) and 5 Dunnell, Dig. (3 ed.) § 2464)).⁴

This holding arguably was overruled by this court's holding in Litzau that permissive inference instructions generally are improper. Nevertheless, the trial court

⁴ The court of appeals, citing McLaughlin, has recognized that there is "only limited support in Minnesota for giving an instruction on evidence of flight." State v. Oates, 611 N.W.2d 580, 585 (Minn. Ct. App. 2000).

erred by giving the permissive inference instruction about flight in this case because the court did not follow the requirements outlined in McLaughlin and Shetsky.

First, the state did not present sufficient evidence that Medal-Mendoza fled the jurisdiction. St. Paul police officers testified that unidentified informants had said Medal-Mendoza had gone to Chicago with Green and Valtierra at some unspecified time after the shootings, but the state did not present any evidence that Medal-Mendoza actually had gone to Chicago. Moreover, even if Medal-Mendoza had gone to Chicago, the state did not present any evidence that he knew what crime he was suspected of committing. In addition, at the time of his alleged trip out of town, Medal-Mendoza had not been arrested or charged or advised to keep the police notified of his location. See McLaughlin, 250 Minn. at 321-22, 84 N.W.2d at 673 (no evidence of flight where defendant had not been arrested, charged or advised to apprise police of his movements).

St. Paul police officers also testified that their informants had said Medal-Mendoza, Green and Valtierra were on their way back to St. Paul from Chicago on January 13th, and the three men were arrested following a car accident in Wisconsin as they were driving back to St. Paul. Thus, rather than evidence of flight, the state presented evidence that Medal-Mendoza was on his way back to the jurisdiction. Because there was not sufficient evidence from which flight could be inferred, the trial court should not have given the permissive inference instruction. McLaughlin, 250 Minn. at 323-24, 84 N.W.2d at 674.

Second, the trial court did not explain in its permissive inference instruction that flight was only one circumstance for the jury to consider in determining whether the state

had met its burden of proving guilt beyond a reasonable doubt. Although the court told the jury to consider flight along with all other “pertinent evidence,” the court did not tell the jury what evidence other than flight was pertinent to its assessment of Medal-Mendoza’s intent. Accordingly, even if the court had not abused its discretion by giving a permissive inference instruction on flight in the first place, the court did abuse its discretion by giving an inadequate instruction.

Third, the trial court completely ignored this court’s requirement that a flight instruction “should be qualified by a general statement of the countervailing conditions incidental to a comprehensive view of the question.” McLaughlin, 250 Minn. at 319, 84 N.W.2d at 671-72. Medal-Mendoza adamantly asserted that he had nothing to do with the charged crimes, which would have made his short trip out of town completely innocent and, accordingly, an important “countervailing condition” that the court should have used to qualify the permissive inference instruction. The court’s failure to instruct on the countervailing considerations relevant to the issue of flight rendered the permissive inference instruction completely improper. Id. See also State v. Olson, 482 N.W.2d 212, 216 (Minn. 1992) (permissive inference instruction on drug possession improper because it was not a balanced instruction on the various relevant factors bearing on the determination of disputed possession issue but rather was one that singled out and unfairly emphasized one factor bearing on that determination, thereby suggesting that factor was of greater importance than other relevant factors).

This erroneously given and improperly drafted permissive inference instruction was highly prejudicial because it focused the jury on one fact rather than all the facts and

allowed the jury to “avoid assessing the myriad facts” that made Medal-Mendoza’s case unique. Litzau, 650 N.W.2d at 186-87 (quoting Charles R. Nesson, Reasonable Doubt and Permissive Inferences: The Value of Complexity, 92 Harv. L. Rev. 1187, 1192 (1979)). The instruction also was confusing. On the one hand, the court instructed the jury that it could take “flight into consideration as an inference of guilty intention.” But on the other hand, the court instructed that “flight is not conclusive evidence of a guilty intent.” These sentences are inherently contradictory, but left the jury with the definite impression that flight, more than any other factor, was worthy of special consideration. Clearly, then, the manner in which the trial court instructed the jury on flight had significant potential to mislead Medal-Mendoza’s jury.

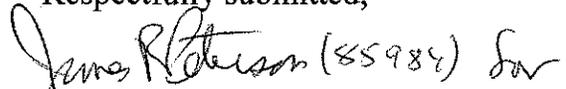
“[O]ne of the primary or core functions of this court is to ensure that each criminal defendant receives a fair trial.” Olson, 482 N.W.2d at 215. Given the circumstances of this case, the permissive inference instruction on flight deprived Medal-Mendoza of a fair trial. Accordingly, his convictions should be reversed and the case remanded for a new trial.

CONCLUSION

The trial court deprived Medal-Mendoza of his constitutional right to a fair trial by improperly prohibiting the defense from introducing crucial testimony, by improperly admitting expert police testimony and by improperly instructing the jury on the issue of flight. Accordingly, this court should reverse Medal-Mendoza's convictions and remand the case for a new trial.

Dated: 11/14/05

Respectfully submitted,

 (85984) Sw

Melissa Sheridan

Attorney at Law

License No. 180269

1380 Corporate Center Curve, Suite 320

Eagan, MN 55121

(651) 686-8800

ATTORNEY FOR APPELLANT