

A05-919

**STATE OF MINNESOTA
IN SUPREME COURT**

State of Minnesota,

Respondent,

Vs.

Daniel James Valtierra,

Appellant.

RESPONDENT'S BRIEF

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LEGAL ISSUES

- I. A trial court's choice of appropriate jury instructions will not be reversed absent a showing of abuse of discretion and proof of prejudice. The trial judge instructed the jury that if they found evidence of flight they could consider that as evidence of intent to commit the crimes, and instructed the jury on accomplice liability under the jury instruction guide rather than the statute. Were the instructions an abuse of discretion and prejudicial?

Judge Gearin gave a permissive inference from evidence of flight instruction and instructed the jury pursuant to the jury instruction guide rather than the accomplice liability statute.

Authority: State v. Earl, 702 N.W.2d 711 (Minn. 2005)
State v. Gray, 456 N.W.2d 251 (Minn. 1990)
State v. Olson, 482 N.W.2d 212 (Minn. 1992)

- II. Evidentiary rulings are reviewed for abuse of discretion; errors that do not rise to a constitutional level will not warrant reversal if they had no significant impact on the verdict and were thus harmless. A police officer was allowed to give an expert opinion about an aspect of the case and Appellant was impeached with the facts underlying an earlier conviction. Has Appellant shown an abuse of discretion and denial of a fair trial?

Judge Gearin allowed opinion testimony before an objection and overruled the late objection; no further testimony on that subject was elicited. Appellant was impeached with some of the facts of an earlier robbery conviction.

Authority: State v. Klawitter, 518 N.W.2d 577 (Minn. 1994)
State v. Richardson, 670 N.W.2d 267 (Minn. 2003)

III. A person may be held liable as an accomplice either for active participation in the crimes or because the crimes were reasonably foreseeable as a consequence of the crimes intended. The testimony showed that Appellant was present when his accomplice announced that it was a robbery and that he would shoot if there was resistance. Was Appellant liable for the murder as an active participant or because the murders were reasonably foreseeable?

The jury found Appellant guilty on all charges.

Authority: Minn. Stat. § 609.05
State v. Pierson, 530 N.W.2d 784 (Minn. 1995)

STATEMENT OF THE CASE AND FACTS

This direct appeal after a jury trial is from the District Court in the Second Judicial District, Ramsey County, with the Honorable Kathleen Gearin presiding. The jury found Appellant Daniel James Valtierra guilty of six charges: two counts of first degree murder during a robbery, two counts of second degree murder, one count of attempted first degree murder during a robbery, and one count of attempted second degree murder. Judge Gearin adjudicated and sentenced Appellant to concurrent life terms for the first-degree murder convictions and to a consecutive presumptive sentence of 180 months for the attempted first-degree murder conviction. Appeal is directly to the Supreme Court pursuant to Rule 29.01, subd. 1, Minn. R. Crim. P.

FACTS

W [REDACTED] C [REDACTED] arranged to buy an ounce of methamphetamine from R [REDACTED] G [REDACTED] and A [REDACTED] C [REDACTED] to sell to Michael Medal-Mendoza (Mendoza) through C [REDACTED]'s acquaintance James Green. Transcript pages 671-72, 675, 678. (Hereafter "T <x>.") Green, Mendoza, and Appellant Daniel James Valtierra came to C [REDACTED]'s apartment at [REDACTED] in St. Paul, Minnesota, in the early morning of January 12, 2004. T 674-77. They had gone to a Perkins restaurant before going to the apartment. T 1299. After some discussion about the terms of the sale, they left purportedly to get the money for the purchase from some others. T 681.

Appellant testified that when the three men returned to their car outside of C█████'s apartment, Mendoza said that C█████, G█████, and C█████ were charging too much for the methamphetamine and suggested that they go back in and try to "talk them down in price a little bit." T. 1305. After some time they returned and burst into the apartment with guns drawn. T 681-83.

C█████, G█████, and C█████ were sitting down scratching off gambling tickets. T 681, 683-84. C█████ was sitting next to G█████ on a love seat; C█████ was seated on a couch across from them. T 683-84. They did not have any weapons. T 674.

Mendoza came right in front of the coffee table and pointed his gun directly at G█████; Green came in and was near C█████; Appellant was by C█████. T 683, 685. Mendoza's gun was silver; Green's and Appellant's were dark, like black. T 683.

Mendoza said to G█████, "I am robbing you, mother fucker." T 685.

G█████ replied, "You ain't robbing me, mother fucker." Id.

Mendoza said, "I will shoot you." Id.

G█████ said, "Well, you are going to have to shoot me then because you sure the hell ain't going to rob me." Id.

Mendoza then shot G█████ in the middle of his head. T. 686. Appellant told Commander Neil Nelson that he heard G█████ say, "Shoot me." T 1195. Appellant saw R█████ G█████ and A█████ C█████ get shot, but did not yell at Mendoza to stop, did not help either of them, and did not call 911. T 1362.

G [REDACTED] was also shot in the chest and died at the scene; C [REDACTED] was shot in the head and the neck and died in the hospital after life support was withdrawn; C [REDACTED] was shot in the torso and through her left leg, but survived to testify. T 600, 895, 1159, 1166. All recovered bullets had been fired from the same weapon. T 933.

C [REDACTED] fell or dropped to the floor when she was shot. T 686. She felt one of them come back into the apartment after a bit and nudge her as if to check to see that she was dead. T 688. She saw a hand reach down and take her purse. Id. After she was sure they were gone, she was able to call 911. T 689-90.

A police dog followed a scent track from the apartment to the side of the street about 50-70 feet west, where it lost the scent. T 948. The K-9 officer concluded that the suspects might have gotten into a car at that point. Id.

Appellant testified that he ran from the apartment where the murders took place all the way to the apartment of James Green's girlfriend, where he immediately took a shower and changed clothes to remove anything that reminded him of what happened. T 1310, 1315, 1363. Appellant claimed that he did not participate in any robbery and never aided and abetted, but also thought that he could not be identified because he was wearing a hat. T 1196, 1334, 1331.

Appellant was visiting from Seattle, where he had moved in with his parents after his release from prison following an aggravated robbery conviction. T 1255, 1283. He moved away from St. Paul to get away from the "negativity" in the neighborhood where he grew up. T 1283. He extended this visit in St. Paul

because he was having a good time, and hung out with his old buddies. T 1251. One of those buddies was James Green, who Appellant knew was a drug dealer. T 1354. Appellant told Sgt. Nelson that he had only a minimal amount of sleep—twelve hours total—in the 15-20 days before his interview because he had been doing a lot of “shit” constantly. T 1198.

Appellant was to return to Seattle on the morning of January 12, after the murders. T 1290. He consumed some methamphetamine on the way to the airport with Green’s girlfriend, but claimed in his testimony that he had gotten away from drugs and only took them after he witnessed the murders. T 1197, 1318, 1352. He was not able to board an airplane because there was some mix-up with his ticket and returned to the apartment, stopping on the way to buy a bottle of brandy to “deal with the situation.” T 1320, 1380.

After Appellant returned to the apartment where Green was, Mendoza showed up. T 1322. Appellant testified that he decided to go to Chicago with Green and Mendoza, but Appellant told Sgt. Nelson that he insisted that they had to get into a car and leave. T 1200. Appellant told Sgt. Nelson that his plan was to go to New York where he would switch his identity, get a new Social Security number, get a job and live until he was caught. T 1200, 1373. He thought he would be free, that nobody would know about him if the others hadn’t talked. T 1201. Appellant told Sgt. Nelson, “If someone does a murder, you are not supposed to tell anybody. I kept my part, but people around me did not.” Id.

Appellant, Green, and Mendoza drove together to Chicago and stayed overnight. T 1324-25, 1368-69. After Mendoza got up and told them to get ready to leave for New York, Appellant and Green told him to drive them back to St. Paul. T 1325, 1370. Green was in telephone contact with Kevin Moore, an officer with the Gang Strike Force. T 1325. Id.

They all drank on the way and Mendoza started driving crazily. T 1327. They crashed into the back of a minivan and caused an accident that resulted in a semi-truck flipping. T 1370. Appellant, Green, and Mendoza left the scene of the accident on the interstate and went to a road nearby, Appellant claiming that they went to get help. Id. Mendoza flagged down Jason Maes, who was driving a pickup truck on the road, and asked for a ride into town to telephone for help. T 842. When Maes agreed to give him a ride, Mendoza told him to hold on because a couple of his friends were coming and were not yet out of the woods. Id. When they came out of the ditch and got into the back of the pickup, they laid down in the bed right away. Id. Maes was surprised by their actions and could see a group of people by the accident scene looking his way. T 843. Maes concluded that something was wrong and told the three that he would not give them a ride. Id.

At about the same time that Maes was telling them that he would not give them a ride, he saw a police car coming and signaled for it to stop. T 843. When the three saw the police officer they all acted as if they were hiding, the two in back lying down in the bed of the truck and the one outside crouching down. T 844.

Elk Mound, Wisconsin, police chief Randy Bartelt was going to the scene of the accident and had been told that three people were leaving the scene and running towards another highway. T 819, 821. He saw the three next to Maes's pickup truck directly across from the accident scene and stopped. T 821. One of them was hiding at the front of the pickup. T 825. All three admitted that they had been drinking, but Mendoza was the only one who cooperated by giving his first name and producing identification. T 826.

Mendoza also admitted driving the car and was taken into custody for operating under the influence. T 826. James Green at first claimed to be "Bobby" Green, but was released from custody after the police learned his correct identification, that he was not the driver, and after he was treated at a hospital. T 829-31.

Appellant first identified himself as Jason Andrew Castillo. T 829, 1371. Appellant hid his wallet in Jason Maes's truck under some plywood, where it was later found by Maes and turned into the police. T 826, 832, 844-45; 1372. He also was identified, treated at the hospital, and released. T 830-31. Appellant returned to St. Paul with James Green and was arrested about two and one-half hours afterwards. T 1329, 1372.

ARGUMENT

Appellant Daniel James Valtierra was with James Green and Michael Mendoza before, during, and after a robbery of drug dealers that turned into murders when Mendoza shot the dealers. The surviving eye-witness testified that all three had guns; Appellant admitted that he did nothing to stop the shooting and did nothing to aid the victims after the shooting. Appellant told the others that they had to leave town, and they drove east to Chicago rather than west towards Seattle where Appellant was supposed to go by airplane that morning. Appellant was arrested after he returned to St. Paul, and a jury found him guilty on all charges after a trial. He now claims that he should be given a new trial due to trial errors. Respondent State of Minnesota asks this Court to affirm his convictions.

I. The jury instructions were proper.

Appellant's first claim of error is that he should be given a new trial because errors in the final instructions denied him his right to a fair trial. He claims that the trial court should not have instructed the jury that evidence of his flight could be taken into consideration as leading to an inference of guilty intention at the time of the crimes, and that the trial court should have instructed the jury under the "subjective" standard of the accomplice statute rather than the "objective" standard of the jury instruction guides. He is not entitled to relief.

Trial courts are allowed considerable latitude in how they instruct the jury in a criminal case. State v. Gray, 456 N.W.2d 251, 258 (Minn. 1990). The parties are allowed to request that the judge instruct the jury on particular matters of law. Rule 26.03, subd 18 (1). The judge must instruct the jury on all matters of law that are necessary that are necessary for the jury's information in rendering their verdict. Rule 26.03, subd. 18(5). An appellate court will not reverse the trial court's choice of instructions absent an abuse of discretion. Any error in instructing the jury in a criminal case is harmless if it can be said beyond a reasonable doubt that the error had no significant impact on the verdict. State v. Olson, 482 N.W.2d 212, 216 (Minn. 1992).

A. The “flight” instruction.

The wicked flee when no man pursueth; but the righteous are bold as a lion.

Proverbs 28:1.

Our culture has recognized the validity of the inference of guilty knowledge that may be drawn from evidence of flight after the offense since Biblical times. Appellant does not challenge the validity of the inference itself, but asserts that the jury instruction should not have been given because it unduly emphasized a particular fact and injected argument into the judge's instructions. But Judge Gearin's instruction did not emphasize any particular fact or facts, and did not impermissibly give credibility to the state's evidence.

This Court has criticized “permissive inference” instructions—including flight instructions—primarily when the instructions are not balanced but focus on

a particular piece of circumstantial evidence without allowing consideration of other factors that bear on the issue. E.g., State v. Olson, 482 N.W.2d 212, 215 (Minn. 1992). Judge Gearin did not instruct the jury that evidence of flight was conclusive proof of guilty intention at the time of the crime, but rather merely instructed the jury that *if* they decided that the defendant did flee, *then* they could take that into consideration as evidence of guilty intention at the time of the crimes.

Judge Gearin's instruction did not focus the jury impermissibly on any particular fact, but merely informed the jury that it was legitimate to draw a legal conclusion of guilty knowledge from a factual conclusion that they were not required to draw. It may seem to lawyers and judges to be merely common sense to draw such an inference, but to a jury instructed to determine whether a defendant at a particular time and place did a particular act it may not be so obvious that they may also consider flight as evidence of the defendant's intent at the time of the crime. This instruction was not error.

If the instruction is considered error, then it was harmless beyond a reasonable doubt. The instruction did not focus on any particular fact, but there were many separate acts by Appellant after the offense that may be considered to lead to the conclusion that he had guilty knowledge.

Appellant testified that he did nothing to aid the victims, that he ran from the scene, that the first thing he did upon reaching shelter was to take a shower to remove any memory of what had happened, that he insisted that the three leave

town, that he left town going east rather than west where he was living, that he concealed his wallet when it would have revealed his true identity, that he gave a false name—"Castillo", when one of the victim's names was C [REDACTED]—and planned to go to New York to assume a new identity.

The "flight" instruction did not focus the jury on any particular piece of circumstantial evidence, and did not require the jury to find that there even was evidence of flight that they should consider. The instruction that the jury could consider evidence of flight as leading to an inference of guilty intention at the time of the crime was clearly not error in this case. Any error did not have a significant impact on the verdict and is therefore harmless beyond a reasonable doubt.

B. The standard accomplice instruction was not error.

Appellant's second complaint about the jury instructions comes from his request at trial that the jury be instructed pursuant to the liability statute rather than the standard jury instruction. In support of his argument on appeal, he cites the recent decision in State v. Earl, 702 N.W.2d 711 (Minn. 2005), where the Court "suggest[ed] that all future instructions on accomplice liability use the entire statutory phrase 'reasonably foreseeable to the person.'" Id. at 722.

This Court in Earl repeated its earlier holdings that the statute imposes an objective rather than a subjective standard. Id. at 721. Because the instruction that used the objective standard was not erroneous in Earl and is the same instruction used in this case, it was not error.

As in Earl, Appellant cannot complain that he was prejudiced by the use of the objective rather than the subjective standard. The evidence of Appellant's past association with Green and his association with both Green and Mendoza before, during and after these crimes showed that Appellant himself could have foreseen the murders.

Appellant testified that James Green was a good friend, that he knew that Green was a drug dealer, and that Appellant and Green spent time together before the murders. Appellant testified that he allowed Mendoza to come into his sister's home on the evening before the murders. The three went to a Perkins so that Mendoza could eat something before going to C█████'s apartment to procure the drugs. A█████ C█████ testified that Appellant came into the apartment with Green and Mendoza before the murders and left with them.

Appellant testified that after they left the apartment and returned to their car, Mendoza said that they should return to the apartment to try and get a low price for the drugs. C█████ testified that when the three returned, they all returned together, and all three were holding guns. Appellant admitted that he heard G█████ say "Shoot me," and therefore had the opportunity to take some steps to prevent the shootings of C█████ and C█████, if not of G█████. Appellant admitted that he did nothing to stop the shooting.

It is reasonable to conclude that the only reason for Appellant, Green, and Mendoza to return to the apartment "to try and get a lower price" was to steal the drugs. Their first entry into the apartment would have allowed them to observe

the lack of security precautions being taken by G [REDACTED], C [REDACTED], and C [REDACTED], and would have given them the ability to plan their attack. C [REDACTED] testified that Appellant was present during the entire conversation between Mendoza and G [REDACTED]. Since Mendoza announced that he was robbing G [REDACTED], and said that he would shoot G [REDACTED] if he did not cooperate, Appellant cannot complain that he could not have subjectively foreseen that Mendoza would murder G [REDACTED].

Because the facts show that Appellant could subjectively have foreseen that the murders were likely outcomes of the robbery, and since he was actively participating, he cannot be heard to complain that the instruction on accomplice liability from the jury instruction guides was error.

The jury instructions were proper in the context of this case. Any error in the instructions had no significant impact on the verdict in this case and was therefore harmless beyond a reasonable doubt. Appellant is not entitled to relief.

II. Evidentiary rulings were not an abuse of discretion.

Appellant's next area of complaint is that evidentiary rulings were prejudicial to his right to have a fair trial. He complains that there was inadequate foundation for testimony by a police officer concerning "triangulation" in drug sale situations, and that allowing such testimony constituted improper evidence implying Appellant's intent. The other evidentiary error he claims was allowing the prosecution to impeach Appellant with the facts of an underlying earlier conviction, rather than simply the date, place, and name of the prior conviction. Appellant is not entitled to relief on these claims.

Trial courts have broad discretion in the admission of evidence and will not be reversed absent an abuse of discretion. State v. Richardson, 670 N.W.2d 267, 277 (Minn. 2003). For evidentiary rulings that do not rise to a Constitutional level, reversal will not be warranted unless the error substantially influenced the jury's verdict. Id.

A. The "expert" testimony was not error.

Police Officer Janet Dunnom testified from her training and experience that there was "triangulation" in this case. Transcript page 1121. A police officer with appropriate training and experience may testify as an expert if sufficient foundation is established. State v. Klawitter, 518 N.W.2d 577, 585-86 (Minn. 1994). Dunnom testified that triangulation occurred when there are multiple sellers or buyers in a drug deal so that your attention is split between them. She testified that the situation was dangerous and that when it occurred the people were there either to rob you of the drugs of money, or at worst to kill you and take the drugs and the money. Id. Appellant objected after she gave her opinion that there was a lack of foundation for the conclusion. Id. Although Judge Gearin overruled the (late) objection, the prosecution did not ask any other questions about triangulation and the matter was dropped.

Appellant argues that allowing this testimony was error because it raised the inference that he, Green, and Mendoza were engaged in triangulation and were therefore planning to rob or kill G [REDACTED], C [REDACTED], and C [REDACTED]. But Appellant

stretches the evidence beyond its context. In context, the evidence merely highlighted that there were multiple sellers and buyers involved in the transaction.

If triangulation is dangerous because the victim's attention is diverted by the splitting of the perpetrators into separate groups, then there was no triangulation in this case. C█████'s testimony was that all three men came in together and that all three were directly in front of her and the others. Their attention was not split, but concentrated.

The evidence also showed, however, that Mendoza and Green claimed to be engaged in buying the drugs for some girls from out of town. To the extent that this case involved multiple buyers who were not together, then there was triangulation. But it was not the dangerous sort of triangulation that might occur when the buyers split into groups in the presence of the sellers to divert attention from one to the other. Because Dunnom was not asked to distinguish between the meanings of triangulation, the evidence was harmless at most.

Because Appellant's objection came after the testimony was given, because the evidence was ambiguous, and because there was no follow-up or attention given to the testimony, there was at most harmless error in this testimony.

B. Appellant was properly impeached with the facts of a prior conviction.

Appellant's next evidentiary challenge concerns the ruling that he could be impeached not only with the fact that he had been convicted of an aggravated robbery, but that the state could elicit the facts of the underlying conviction. This was not error because Appellant in his direct examination testimony attempted to

cast himself in a favorable light that was belied by the similarities between his claims in this case and his claim in the earlier case.

In both cases Appellant was accused of possessing a firearm during the commission of the crime. Appellant claimed when he was prosecuted for the robbery that his accomplice had a firearm but he did not, and in this case he claimed that his accomplice had a firearm but he did not. In each case the victim testified that Appellant himself possessed a firearm.

But the evidence was not only offered and received because of the similarities in Appellant's stories. When Appellant testified in this case he attempted to claim that he took full responsibility for all of his past misdeeds, but was not responsible for this crime because he didn't know it was going to happen. T 1282-83, 1309, 1334, 1378-79. Even though he admitted that he had been convicted of the robbery, and even though the jury in the earlier case necessarily found that the robbery was committed with a dangerous weapon, Appellant claimed that he did not possess a firearm. Judge Gearin held that the similarities in the stories made the facts of the underlying conviction relevant for the jury to evaluate Appellant's credibility in this case and that Appellant's testimony opened the door. T 1350. Her ruling was not error.

Appellant does not contend that it was error to allow him to be impeached with his robbery conviction. His complaint is that the details of the conviction were so prejudicial that they should not have been allowed. But the details of his earlier story were not so inherently prejudicial as to deny him a fair trial. There

was nothing in the facts of the earlier case that would have caused the jury in this case to base their decision on some improper ground. There was no inherent emotional aspect to the facts of the earlier conviction, and the prosecutors did not attempt to show that there was anything egregious about the earlier incident. The only use of the facts of the earlier conviction was to point out the similarities of Appellant's stories when accused of a crime. Appellant has not shown that admission of the facts of his earlier conviction was unfairly prejudicial once he was properly impeached with the conviction.

If there was any evidentiary error, it had no significant impact on the jury's verdict and was therefore harmless beyond a reasonable doubt. There is no reasonable possibility that the verdict might have been more favorable to Appellant had the evidence not been admitted. State v. Richardson, 670 N.W.2d 267, 277 (Minn. 2003).

III. There was sufficient evidence of accomplice liability.

Appellant's last claim is that there was insufficient evidence introduced to show that he could be held guilty as an accomplice because it was not reasonably foreseeable that murder would be an outcome of the robbery. Appellant concedes that the evidence showed that he intended to aid in the commission of a robbery. Appellant's Brief, page 35.¹ But he claims that was insufficient evidence for the jury to conclude that the murders were foreseeable to Appellant. *Id.*, page 36.

Accomplice liability is imposed under Minn. Stat. § 609.05. Liability follows under subdivision 1 if there is proof that the person played "some knowing role in the commission of the offense and took no steps to thwart its completion." State v. Pierson, 530 N.W.2d 784, 788 (Minn. 1995). "Presence, companionship, and conduct before and after the offense are circumstances from which a person's participation in the criminal intent may be inferred." *Id.* (Citation deleted.)

Appellant's active participation in the murders leads to his liability as a principle and also as an aider and abetter. A [REDACTED] C [REDACTED] testified that Appellant came in at the same time as Green and Mendoza and that all three men had guns. She testified that Mendoza said it was a robbery and said that he would shoot G [REDACTED] when G [REDACTED] refused to cooperate. Appellant admitted that he heard G [REDACTED] say, "Shoot me," and took no action to prevent the murders. The

¹ It is not clear what Appellant means by "...believing the inconsistent and suspect testimony of an accomplice..." Neither Green nor Mendoza testified against Appellant, and none of their statements were introduced against Appellant.

evidence is sufficient for the jury to conclude that Appellant was guilty as an active participant in the robbery and murders under Minn. Stat. § 609.05, subd. 1.

Appellant, however, concentrates on subdivision 2, and claims that the evidence that the murders were “reasonably foreseeable” to him was insufficient. But his argument bears weight only if his testimony is believed and A [REDACTED] C [REDACTED]’s testimony is not believed. The question of the foreseeability is for the jury. State v. Pierson, 530 N.W.2d at 789. Viewed in the light most favorable to the verdict, the jury has already determined that her testimony is more credible than Appellant’s.

A [REDACTED] C [REDACTED] testified that Appellant was present when Mendoza announced that it was a robbery, and that he would shoot if G [REDACTED] did not cooperate. Appellant did nothing to stop Mendoza. Appellant not only could reasonably foresee that a murder was the likely outcome of the robbery, he could not possibly believe that it was not possible.

The evidence was sufficient to impose accomplice liability upon Appellant either as an active aid to Mendoza in the commission of the robbery and murders or because the murders were reasonably foreseeable to Appellant when they occurred.

CONCLUSION

Appellant Daniel James Valtierra was found guilty by a jury after a fair trial. Judge Gearin's evidentiary rulings and instructions to the jury were not a clear abuse of discretion or were harmless beyond a reasonable doubt. The evidence supporting Appellant's guilt as an accomplice was overwhelming. Respondent State of Minnesota asks the Court to affirm the convictions.

Dated: 31 October 2005

Respectfully submitted;



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