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Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0621

State of Minnesota,
Respondent,

vs.

Willie B. Brown, Jr.,
Appellant.

Filed June 5, 2023
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-CR-18-10755

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant argues his conviction for second-degree murder must be reversed and remanded because the district court abused its discretion by admitting *Spreigl* evidence of a drive-by shooting committed shortly after the murder. In a pro se supplemental brief,

appellant also argues that there was insufficient evidence to sustain his conviction and that the district court abused its discretion by denying appellant's motions and admitting challenged evidence. We affirm.

FACTS

In April 2018, respondent State of Minnesota charged appellant Willie B. Brown Jr. with the second-degree murder of D.H. Shortly after, the state charged Brown with a drive-by shooting and second-degree assault that occurred on the same date as D.H.'s murder and at a location nearby. This is the second appeal related to these charges.

First Trial and First Appeal

The district court granted the state's motion to join the two complaints for trial. A jury found Brown guilty of all three charges, and Brown was sentenced to 386 months for the second-degree murder and 48 months for the drive-by shooting, to be served consecutively. Brown appealed. On appeal, this court reversed the convictions and remanded for a new trial. Relevant to an issue in this appeal, we concluded that joinder was improper because it would be "error [to] admit[] the evidence of the drive-by-shooting/second-degree assault in the trial for D.H.'s murder." *State v. Brown*, No. A19-0409, 2020 WL 4932785, at *11 (Minn. App. Aug. 24, 2020) (*Brown I*).

Second Trial and Second Appeal

On remand, the state first proceeded on the drive-by-shooting and second-degree-assault charges. After an April 2021 trial, a jury found Brown guilty of both charges.

In July 2021, the state moved to admit *Spreigl* evidence[1] of Brown's drive-by shooting and second-degree assault in the upcoming trial of the second-degree-murder charge. The district court granted the state's motion in part and allowed the state to offer limited evidence of the drive-by shooting.

During the second-degree-murder trial, the state called 20 witnesses. Brown represented himself and testified on his own behalf, denying that he shot D.H. The following summarizes the evidence received during the second trial on the murder charge.

Around 4:00 a.m. on April 26, 2018, T.F. woke up when she heard an argument outside her Minneapolis home. T.F. stepped outside and saw her cousin, D.H., get into D.H.'s car, a black Chevrolet Impala. D.H. was driving and Brown was in the passenger's seat when the car drove away. T.F. knew D.H. and Brown; they visited her home almost every day.

At 5:06 a.m., police responded to a ShotSpotter[2] alert about one mile from T.F.'s home. The responding officer discovered D.H.'s body with three gunshot wounds; D.H. was pronounced dead at the hospital. An autopsy revealed D.H.'s death resulted from a

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[1] "*Spreigl* evidence" refers to evidence of the defendant committing "another crime, wrong, or act" as defined in Minn. R. Evid. 404(b), which states that such evidence may not be used to prove character or propensity but may be used for other limited purposes. *See also State v. Spreigl*, 139 N.W.2d 167, 168 (Minn. 1965) (requiring the state to submit notice of intent to offer evidence of prior crimes at trial).

[2] ShotSpotter is a "gunshot-detection technology employed by police departments, including the Minneapolis Police Department." *State v. Harvey*, 932 N.W.2d 792, 797 n.2 (Minn. 2019).

gunshot wound to his neck, where a bullet struck his carotid artery. Law enforcement recovered three casings in proximity to where the officer found D.H.'s body.

Also during the early morning of April 26, 2018, T.F. dropped a family member off, returned home at about 5:20 a.m., and saw Brown with an "extended clip hanging out" of his pocket on the porch of her home. T.F. left and returned home again at 6:00 a.m., when she saw Brown near D.H.'s black Impala.

Around 6:50 a.m., a car-wash surveillance camera recorded Brown in D.H.'s black Impala. Brown used a "hose sprayer" to wash D.H.'s black Impala. The video recording, which was received into evidence and played for the jury, showed Brown with a jacket and carrying black shoes and, later, without a jacket. The shoes and jacket in the car-wash recording were later found at the car wash and determined to have traces of D.H.'s blood.

At about 7:00 a.m., T.F. saw Brown drive D.H.'s car on the street outside her home; Brown was holding a gun. T.F. testified that Brown fired the gun. T.F. dialed 911, as she had earlier that morning to report seeing Brown with an extended clip. Police responded, and, while officers were present, Brown approached T.F.'s home on foot from the backyard. Police arrested Brown. Two witnesses reported seeing Brown arrive near T.F.'s home in a black Impala, park the car, and exit it. When police followed Brown's path from the parked Impala to T.F.'s home, officers found two guns, including a .40 caliber Smith and Wesson.

The jury received forensic evidence of several items. First, forensic analysis matched the bullet that killed D.H. with a bullet casing found outside T.F.'s home; both were fired by the Smith and Wesson gun found near T.F.'s home. Second, Brown's

thumbprint was found on the extended clip of the Smith and Wesson gun. Third, forensic testing of swabs taken from blood at the car wash matched D.H.'s blood, which was admitted as evidence.

The jury found Brown guilty of second-degree murder. The district court sentenced Brown to 386 months' imprisonment. Brown appeals.

DECISION

I. The district court did not abuse its discretion by admitting *Spreigl* evidence that Brown fired a gun outside T.F.'s home shortly after D.H. was murdered.

Brown contends that the district court abused its discretion for two reasons: (1) this court's decision in *Brown I* determined that evidence of the drive-by shooting was inadmissible *Spreigl* evidence in the second-degree-murder trial; and (2) the *Spreigl* evidence of the drive-by shooting admitted in the murder trial was not relevant, and any probative value was outweighed by the danger of unfair prejudice.

A. Law of the Case

Brown contends that the law-of-the-case doctrine barred the district court from admitting the *Spreigl* evidence during the second trial and argues that *Brown I* held *Spreigl* evidence was inadmissible on retrial. "The law of the case doctrine functions to bar issues that were previously considered and denied in the same case." *Smith v. State*, 974 N.W.2d 576, 581 (Minn. 2022).

In *Brown I*, we determined that the district court improperly joined the charges for drive-by shooting and second-degree assault with the charge for second-degree murder. 2020 WL 4932785, at *9-11. In reaching this decision, we analyzed the "admissibility of

hypothetical *Spreigl* evidence," which we also called "other acts evidence," and we considered whether joinder was prejudicial. *Id.* at *10-11. "[J]oinder is not prejudicial if evidence of each offense would have been admissible *Spreigl* evidence in the trial of the other." *State v. Fitch*, 884 N.W.2d 367, 379 (Minn. 2016) (quotation omitted).

In assessing whether the joinder of charges caused prejudice, we first determined it would be error to admit evidence of D.H.'s murder in a trial for the drive-by shooting/second-degree assault. *Brown I*, 2020 WL 4932785, at *11. After considering T.F.'s testimony about the drive-by shooting, we first determined that "the added probative value of the other acts evidence is outweighed by its potential for prejudice." *Id.* Second, we determined that it would be error to admit evidence of the drive-by shooting/second-degree assault in a trial for D.H.'s murder. *Id.* After considering the eyewitness and forensic evidence linking Brown to D.H.—including T.F.'s testimony, the car-wash recording, and ballistics—we concluded that T.F.'s testimony "that Brown was still driving the black Impala 30 minutes later would be of limited probative value" in a murder trial. *Id.* We also determined that the *Spreigl* evidence "is almost certainly going to influence the jury's deliberation." *Id.* After analyzing other issues not relevant here, we reversed and remanded for a new trial. *Id.* at *13, *16.

Brown relies on our probative-value/prejudicial-effect analysis in *Brown I* to argue that law of the case prevented the district court from admitting *Spreigl* evidence during the second trial. In *Brown I*, however, we considered the improper joinder of charges and analyzed the prejudice of "[h]ypothetical *Spreigl* [e]vidence" of the drive-by shooting; we did not review a district court's decision to admit limited *Spreigl* evidence, as occurred

during the second trial. *Id.* at *10-11. Our remand instructions in *Brown I* highlight that the remand included the possibility that *Spreigl* evidence would be offered and received during the second trial. The opinion stated: "On remand, should the state seek to introduce evidence of other acts in the second-degree murder trial or in the drive-by shooting/second-degree assault trial, it must make clear what specific other acts it seeks to introduce and under what specific legal basis. In addition, for each other act, the state must satisfy the respective standards of proof and the applicable balancing tests for *Spreigl* evidence . . . ." *Id.* at *15.

During the second trial, the district court limited the *Spreigl* evidence to Brown firing "one shot" and did not allow evidence that Brown fired at T.F.'s home. The district court also limited the evidence in other ways, as explained below. Because the district court limited the *Spreigl* evidence during the second trial, and because our decision in *Brown I* reviewed a decision to join charges based on "[h]ypothetical *Spreigl* [e]vidence," the law-of-the-case doctrine did not prevent the district court from admitting the *Spreigl* evidence in the second trial. *Id.*

B. *Spreigl* Analysis

Brown alternatively argues the district court abused its discretion by admitting the *Spreigl* evidence of the drive-by shooting because the evidence was not relevant and its probative value was outweighed by the danger of unfair prejudice to Brown. "A district court's decision to admit *Spreigl* evidence [under Minn. R. Evid. 404(b)] is reviewed for an abuse of discretion." *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). An appellant

who claims that "the trial court erred in admitting evidence bears the burden of showing an error occurred and any resulting prejudice." *Id.*

The district court allowed, over Brown's objection, T.F.'s testimony that she saw Brown drive D.H.'s black Impala and discharge a firearm outside her home about two hours after D.H. was found dead. The state sought to introduce this testimony along with forensic evidence that the bullet casings found outside T.F.'s home matched the murder weapon and were fired by the Smith and Wesson gun that had Brown's thumbprint. The district court agreed with the state that the *Spreigl* evidence of the drive-by shooting tended to prove that Brown "possessed the murder weapon shortly after the murder" and "fired the murder weapon," which "establish[es] identity and opportunity."

The district court observed that "[w]hile the evidence is obviously prejudicial to [Brown], the Court took steps to minimize that prejudice," including limiting the evidence to one shot being fired "for the sole purpose of identifying" Brown. The district court also precluded testimony that the shot was fired at T.F.'s home and cautioned the attorneys not to refer to "drive-by" shooting. The district court read a limiting instruction to the jury when the evidence was received and again before closing arguments.

Spreigl evidence, or "[e]vidence of another crime, wrong, or act," cannot be admitted "to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b)(1); *see State v. Smith*, 932 N.W.2d 257, 266 (Minn. 2019) (stating that *Spreigl* evidence "is not admissible to demonstrate that the defendant (a) has a propensity to commit crimes and (b) acted in accord with that propensity"). *Spreigl* evidence may be admitted to prove "motive, opportunity, intent, preparation, plan,

knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b)(1). To admit *Spreigl* evidence, prosecutors must satisfy five factors:

> (1) prosecutors must give notice they intend to use evidence of other bad acts; (2) those bad acts must be proved by clear-and-convincing evidence; (3) prosecutors must say what the evidence will be used to prove; (4) the evidence must be relevant and material to the case; and (5) prosecutors must show that the probative value of the evidence is not outweighed by its potential for prejudice.

Smith, 932 N.W.2d at 267. On appeal, Brown challenges the district court's conclusions on factors four and five.

1. *Spreigl* Factor Four

Brown argues that the *Spreigl* evidence of the drive-by shooting was not admissible because "[t]he evidence was not relevant to the State's case." Relevant evidence has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. While implicitly acknowledging the *Spreigl* evidence has some relevance, Brown contends that the *Spreigl* evidence was unnecessary because the state had other evidence linking Brown to the gun used to shoot D.H. *See State v. Gomez*, 721 N.W.2d 871, 879 (Minn. 2006) (stating that in balancing probative value and potential prejudice, the district court should consider the state's "need for the evidence" (emphasis omitted) (quotation omitted)). According to Brown, the *Spreigl* evidence was unnecessary because police found the Smith and Wesson gun nearby after they arrested Brown, the Smith and Wesson gun ballistically matched the gun that shot D.H., the Smith and Wesson gun had

an extended clip with Brown's thumbprint, and other evidence tended to prove that Brown drove D.H.'s car after the murder.

We disagree that the *Spreigl* evidence was unnecessary. Although Brown correctly points out that his thumbprint on the extended clip is probative of his possession of the Smith and Wesson gun, the thumbprint does not prove the time of his possession. As the district court stated, "no one knew *when* [Brown's] fingerprint got on the murder weapon. It could have happened long before the murder. In addition, the fingerprint was on the extended magazine, not the firearm itself. It therefore does not establish that [Brown] ever used the firearm." Though there is other evidence in the record connecting Brown to the Smith and Wesson gun, his possession of the gun and D.H.'s black Impala shortly after the murder is still highly probative. The district court therefore did not abuse its discretion in determining that the *Spreigl* evidence was needed by the state to "establish identity and opportunity."

2. *Spreigl* Factor Five

Brown contends that the district court abused its discretion by determining that the probative value of the *Spreigl* evidence outweighed its potential for unfair prejudice. *See* Minn. R. Evid. 404(b)(2) (stating that *Spreigl* evidence is inadmissible unless "the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant"). "[U]nfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005).

We have already discussed the probative value of T.F.'s testimony about Brown possessing and shooting the murder weapon. Even though other evidence also linked

Brown to the murder weapon, no other evidence showed that Brown possessed and shot the murder weapon on the morning D.H. was shot.

Brown argues the potential for unfair prejudice is high because T.F.'s testimony "suggested that [Brown] had a general propensity for violence and using a gun." We acknowledge the challenged evidence carries the potential for unfair prejudice—the district court considered that potential and limited the scope of the *Spreigl* evidence. The district court ruled that the evidence was limited to Brown firing one gunshot, did not allow T.F. to testify that the gunshot was fired at T.F.'s home, and instructed the attorneys that there be no mention of a "drive-by" shooting. Second, the district court gave a limiting instruction to the jury before T.F.'s testimony and repeated a similar instruction before closing arguments. We assume that the jury heeded the cautionary instruction. *See Smith*, 932 N.W.2d at 268 (concluding that *Spreigl* evidence was not unfairly prejudicial, in part because "the district court gave a proper limiting instruction" and the state reminded the jury during closing argument of the limited use of the *Spreigl* evidence). Finally, the prosecuting attorney reminded the jury during closing arguments that Brown was not charged with any crime based on the events at T.F.'s home.

For these reasons, we conclude that the district court did not abuse its discretion in determining that the probative value of the *Spreigl* evidence was not outweighed by the potential for unfair prejudice. Thus, the district court did not abuse its discretion by admitting the *Spreigl* evidence.

II. Pro Se Arguments

In a pro se supplemental brief, Brown argues (A) there was insufficient evidence to sustain his conviction, (B) the district court erred in denying his motion to present alternative-perpetrator evidence, (C) the district court abused its discretion by denying a motion to dismiss based on lack of jurisdiction, (D) the district court abused its discretion by failing to dismiss the case for an illegally conducted search, (E) the district court erred in admitting certain evidence, and (F) the district court erred in not removing the trial judge. These issues will be addressed in turn.

A. There was sufficient evidence to sustain the conviction.

Brown correctly points out that much of the evidence against him is circumstantial. The supreme court has defined circumstantial evidence as "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). "[C]ircumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence." *Id.*

In reviewing the sufficiency of circumstantial evidence to sustain convictions, appellate courts use a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013). The first step is to determine the circumstances proved, deferring to the "jury's acceptance of the proof." *Id.* (quotations omitted). Appellate courts assume the jury believed the state's witnesses and disbelieved any evidence to the contrary. *Id.* at 599. Second, an appellate court determines "whether the circumstances proved are consistent

with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotations omitted). The circumstances proved are described in the factual overview.

In arguing that the circumstances proved a rational hypothesis other than guilt, Brown relies on his own testimony that he was present when D.H. was shot and fled the scene. We reject Brown's alternative hypothesis because it is not based on the circumstances proved by the state's evidence. *Silvernail* established that we defer to the jury's acceptance of proof. *Id.* at 598-99. The state's evidence included matching the ballistics of the murder weapon to the Smith and Wesson gun Brown discharged from D.H.'s black Impala when near T.F.'s home, Brown's thumbprint on the extended clip of the Smith and Wesson, the car-wash video recording of Brown with D.H.'s car shortly after the murder, and the recovery of D.H.'s blood-stained clothes from the car wash. Examining the circumstances proved in the light most favorable to the verdict, the circumstances proved do not support a rational hypothesis inconsistent with Brown's guilt.

B. The district court did not err in denying Brown's motion to present alternative-perpetrator evidence.

Before trial, Brown moved to admit evidence of an alternative perpetrator based on his own testimony that D.H. pointed a gun at someone just hours before his murder. The district court denied the motion, a decision Brown challenges on appeal.

Appellate courts review the denial of a motion to present alternative-perpetrator evidence for an abuse of discretion. *State v. Woodard*, 942 N.W.2d 137, 141 (Minn. 2020). In considering alternative-perpetrator evidence, a district court follows a two-step process. *Id.* First, the district court determines whether the foundation for the evidence has been

properly laid. *Id.* at 141-42. In so doing, the district court analyzes whether the evidence has "an inherent tendency" to connect the alleged perpetrator to the commission of the crime. *Id.* at 142 (quotation omitted). Second, the district court considers the admissibility of the evidence. *Id.* If the first step is not satisfied, the district court need not consider the second step. *Id.*

Brown's motion stated he would testify that D.H. pointed a gun at someone hours before his murder. Brown's motion, however, did not allege he would offer evidence that the person at whom D.H. pointed a gun killed D.H. The district court denied Brown's motion for lack of foundation, reasoning that Brown was "not actually offering . . . alternative perpetrator evidence. Instead, this is more consistent with a simple not guilty plea." At trial, Brown was allowed to testify that D.H. pointed a gun at someone else and that he fled after an unknown third party murdered D.H.

On appeal, Brown repeats his pretrial motion but does not contend that he was prejudiced by the district court's ruling. For example, Brown does not allege that he was not allowed to offer other evidence that another person murdered D.H. We conclude the district court did not abuse its discretion by denying Brown's motion because the proffered evidence did not tie the alternative perpetrator to D.H.'s murder. Even if we assume error, any error was harmless beyond a reasonable doubt because Brown presented the proffered evidence through his own testimony. *See State v. Davis*, 820 N.W.2d 525, 533 (Minn. 2012) ("An error is harmless beyond a reasonable doubt if the jury's verdict was surely unattributable to the error." (quotation omitted)).

C. The district court had jurisdiction.

For the first time on appeal, Brown argues that the district court lacked jurisdiction because "there was no indictment issued nor was there a grand jury summoned." Generally, we do not consider issues raised for the first time on appeal. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). A jurisdictional challenge, however, may be raised at any time. *State v. Losh*, 739 N.W.2d 730, 732 n.1 (Minn. App. 2007), *aff'd*, 755 N.W.2d 736 (Minn. 2008). We conclude Brown's argument lacks merit. Although an offense punishable by life imprisonment must be prosecuted by indictment, "[a]ny other offense defined by state law may be prosecuted by indictment or by a complaint." Minn. R. Crim. P. 17.01, subd. 1. The state charged Brown by complaint with second-degree murder, which is punishable by a sentence of "not more than 40 years." *See* Minn. Stat. § 609.19, subd. 1 (2016). Because Brown was charged by complaint with an offense that is not punishable by life imprisonment, we conclude the district court had jurisdiction.

D. The district court did not err by denying Brown's motion to dismiss.

Before the second trial on the second-degree murder charge, Brown moved to dismiss because "the state engaged in an illegal search of [Brown's] body." Brown relied on *Brown I*, in which we concluded that evidence from blood drawn from Brown should have been suppressed because the search warrant lacked probable cause. 2020 WL 4932785, at *13. On remand, the district court suppressed the evidence obtained from the blood draw but denied Brown's motion to dismiss because the search did not "rise to the level [of] dismissing the case." Although Brown did not cite Minn. Stat. § 631.21 (2022) in arguing to the district court that the second-degree murder charge should have been

dismissed, we construe his argument as seeking dismissal "in furtherance of justice." We review a district court's decision on a dismissal in furtherance of justice for an abuse of discretion. *State v. Hart*, 723 N.W.2d 254, 259-60 (Minn. 2006).

In arguing the district court should have dismissed his case, Brown relies on *Winston v. Lee*, which held that it was "unreasonable under the Fourth Amendment" to require the suspect in an attempted robbery to undergo surgery under general anesthesia to remove a bullet for forensic analysis. 470 U.S. 753, 767 (1985) (quotation marks omitted). The Supreme Court also noted that without the forensic analysis, there was still "substantial additional evidence that the [defendant] was the individual who accosted the victim." *Id.* at 754. Brown's comparison of his case to that in *Winston* is unpersuasive. In *Winston*, the Supreme Court did not dismiss the charges against the defendant.

Brown cites no other caselaw for the proposition that the district court abused its discretion when it denied his motion to dismiss the second-degree murder charge. We conclude that the district court did not abuse its discretion when it suppressed the evidence from the blood draw and determined the invalid search did not "rise to the level [of] dismissing the case."

E. The district court did not err in admitting challenged evidence.

Brown argues that the district court erred by admitting five pieces of evidence over his objection: a photograph of a handgun, D.H.'s blood-stained clothing recovered from the car wash, photographs of the crime scene and bullet casings, recordings of 911 calls from the day of D.H.'s shooting, and D.H.'s watch, which Brown was wearing when he

was arrested. Brown argues the evidence was not admissible under Minnesota Rules of Evidence 401, 402, and 403.

Minnesota Rule of Evidence 401 defines relevant evidence as "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable." Minnesota Rule of Evidence 402 states that relevant evidence is generally admissible, and "[e]vidence which is not relevant is not admissible." Minnesota Rule of Evidence 403 excludes relevant evidence if the "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or . . . needless presentation of cumulative evidence."

"Evidentiary rulings rest within the sound discretion of the district court, and [appellate courts] will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). "[A]n appellant who alleges an error in the admission of evidence that does not implicate a constitutional right must prove that there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016) (quotation omitted).

In challenging the admission of the five pieces of evidence, Brown contends that each item "cause[d] an unfair prejudice against" him and therefore should have been excluded. Brown does not articulate the nature of the alleged unfair prejudice. Four pieces of evidence tend to prove that Brown was connected to the murder—the handgun, D.H.'s blood-stained clothing, photographs of the crime scene and bullet casings, and D.H.'s watch. The 911 recordings tend to corroborate T.F.'s testimony about events on April 26,

2018. Based on our review, we discern no abuse of discretion in admitting the five pieces of evidence. Even if we assume error, Brown fails to argue that there is a reasonable possibility that any of the challenged evidence, which is cumulative of other evidence, significantly affected the verdict. For these reasons, we reject Brown's challenge to the five pieces of evidence.

Brown also challenges the admission of the car-wash recording. Brown, however, did not object to the admission of the car-wash recording at trial. We therefore review this challenge for plain error. Appellate courts review unobjected-to error under the "plain error test." *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). "In order to meet the plain error standard, a criminal defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant's substantial rights." *Id.* "An error is plain if it is clear and obvious; usually this means an error that violates or contradicts case law, a rule, or an applicable standard of conduct." *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010). "When an appellant failed to object to the evidence at trial, and on appeal fails to prove that the error affected his substantial rights, the claim . . . is not properly before us." *State v. Drew*, 889 N.W.2d 323, 330 (Minn. App. 2017) (quotation omitted). Brown cites no legal authority supporting a claim of plain error. Thus, this argument fails on the first two steps of the plain-error test, and we need not consider it further. *See Myhre*, 875 N.W.2d at 804 (stating that a criminal defendant must satisfy each step of the plain-error test).

F. No error occurred in denying Brown's motion to remove the trial judge.

Brown argues that it was error to deny his motion to remove the trial judge for cause. "A motion to remove for cause is committed to the discretion of the trial court and [appellate] court[s] will reverse only for an abuse of that discretion." *Hooper v. State*, 680 N.W.2d 89, 93 (Minn. 2004). Brown claims removal was required because the trial judge was the same judge who presided in the proceedings leading to his first conviction, which was reversed in *Brown I*. On remand after the appeal, Brown moved to remove the trial judge for cause before his second trial for drive-by shooting and second-degree assault. Brown did not seek to remove the trial judge before his second trial for second-degree murder. Thus, we review the removal issue for plain error, as already described above. *See Myhre*, 875 N.W.2d at 804. But Brown cites no legal authority supporting a claim of plain error. This challenge therefore fails on the first two steps, and we need not consider it further. *See id.* (stating that a criminal defendant must satisfy each step of the plain-error test).

Affirmed.