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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0128**

State of Minnesota,
Respondent,

vs.

Ronald Scott Reed,
Appellant.

**Filed December 31, 2012
Affirmed
Ross, Judge**

Dakota County District Court
File No. 19HA-CR-11-1644

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Tricia A. Loehr, Assistant County
Attorney, Hastings, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Richard Schmitz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Appellant Ronald Reed was convicted of possession of a firearm by an ineligible
person and second-degree assault after he shot out the back window of a car that

belonged to a man he was arguing with. Reed appeals, arguing that the district court committed plain error when it failed to instruct the jury that it had to unanimously agree on which specific firearm Reed possessed and when it allowed the state to introduce evidence of a gun found in Reed's car in addition to the one that he discharged. Because the district court's failure to provide a specific instruction about the guns did not affect Reed's substantial rights, and because admitting evidence of both guns was not error, we affirm.

FACTS

The shooting that precipitated this case followed a dispute involving Ronald Reed and two of his son's friends, S.R. and D.S. Reed and an unidentified man drove to the apartment complex of S.R. and D.S. in Dakota County because Reed was angry that S.R. had introduced his son to drugs. Reed found S.R. and D.S. in the parking lot and argued with them. The argument escalated and Reed got a silver handgun from the unidentified man and used it to strike S.R. several times in the head. During the tussle, S.R. grabbed Reed's arm and the gun discharged, shattering the back window of D.S.'s Ford Explorer. Friends of S.R. and D.S. told Reed to leave and that they were calling the police. Reed pleaded with them to not call the police, and left in his car.

Police arrived and interviewed S.R., D.S., and their friends. They used cellular technology to track Reed to a house in Ramsey County, where they arrested him. They obtained a warrant to search the trunk of Reed's car and found a black pellet gun. They never found the silver handgun.

The state charged Reed with possession of a firearm by an ineligible person, second-degree assault, and making terroristic threats. Before trial, the state dismissed the terroristic threats charge. At trial, the state introduced the black pellet gun into evidence without objection. The court instructed the jury that each juror must agree with the verdict and that the verdict “must be unanimous,” but it did not instruct the jury that it needed to unanimously agree as to which of Reed’s acts—hitting S.R. in the head with the gun and having it discharge or having a black pellet gun in the trunk of his car—constituted illegal possession of a firearm. Reed did not object to the instructions or request any others. The jury found Reed guilty of possession of a firearm by an ineligible person under Minnesota Statutes section 624.713, subdivision 1(2) (2010), and second-degree assault under Minnesota Statutes section 609.222, subdivision (1) (2010). The district court sentenced Reed to two 60-month prison terms to be served concurrently. This appeal follows.

D E C I S I O N

I

Reed first argues that the district court committed plain error by not providing a specific jury instruction stating that, to convict him on the charge of possession of a firearm by an ineligible person, the jurors must unanimously agree on which of the two guns Reed actually possessed. Reed maintains that the failure to give this instruction violated his constitutional right to a unanimous verdict. The argument fails.

Reed correctly asserts that criminal defendants have a constitutional right not to be convicted except by unanimous verdict. *State v. Pendleton*, 725 N.W.2d 717, 730 (Minn.

2007); Minn. R. Crim. P. 26.01, subd. 1(5). *Cf.* Minn. Const. art I, § 4. To follow this rule, the jury must reach a guilty verdict only if it unanimously finds that the state has proved each element of the charged offense. *Pendleton*, 725 N.W. 2d at 730–31. But by failing to propose a specific jury instruction seeking a finding as to which of the two guns Reed possessed or to object to the instructions given, Reed effectively waived his right to challenge the instructions on appeal. *See State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998).

Despite Reed’s failure to object, we have discretion to review unobjected-to jury instructions for plain error. *State v. Gustafson*, 610 N.W.2d 314, 318–19 (Minn. 2000). Under this standard, we determine whether there was error that was plain and that affected the defendant’s substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If this standard is met, we then assess whether we should “address the error to ensure fairness and the integrity of the judicial proceedings.” *State v. Jenkins*, 782 N.W.2d 211, 230 (Minn. 2010) (quotation omitted).

We do not address whether the instructions were erroneous because it is clear that, even if they were, the error could not have affected Reed’s substantial rights. The defendant has the “heavy burden” of showing that an error was prejudicial, meaning that it results in a “reasonable likelihood that the error substantially affected the verdict.” *State v. Burg*, 648 N.W.2d 673, 677 (Minn. 2002). Reed does not explain why the verdict would have been different had the jury been given the instruction he now urges. And it is clear that he could not. In addition to finding Reed guilty of possession of a firearm by an ineligible person, the jury also found Reed guilty of second-degree assault under section

609.222, subdivision 1. Convicting Reed on this crime required the jury to find that Reed assaulted another person with a dangerous weapon. Minn. Stat. § 609.222. subd. 1. The facts supporting the assault conviction included Reed's striking S.R. with the silver pistol. S.R. and D.S. both testified that Reed used a small silver gun to commit this assault and no argument or evidence suggested that the black pellet gun was used in the assault. So when the jury unanimously found Reed guilty of the assault charge, it implicitly also unanimously found that he also possessed the silver pistol. The jury's implicit finding that Reed handled the silver pistol belies the notion that the lack of a more specific jury instruction distinguishing between the guns had any impact on the possession verdict. In other words, the conviction does not depend on whether the jury unanimously found that Reed possessed the pellet gun. Because Reed was not prejudiced by the lack of a jury instruction requiring unanimity as to which gun he possessed, his argument fails the plain-error analysis.

II

Reed also argues that the district court committed plain error by allowing the state to introduce evidence of the black pellet gun. He contends that this evidence was inadmissible character evidence because it was irrelevant to the charges on which he was tried and portrayed him as engaging in unrelated bad acts. Reed similarly argues that the state never moved to admit this alleged prior bad act. He contends that the prosecutor attempted to tie the alleged assault with the finding of the pellet gun so that the jury would conclude he committed the assault after learning that he is connected to guns. The argument is not convincing.

Evidentiary decisions rest within the sound discretion of the district court, and we will overturn a district court's evidentiary ruling only if it reflects an abuse of discretion. *Griller*, 583 N.W.2d at 742–43. Reed has the burden of demonstrating an abuse of discretion and resulting prejudice. *See State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981). Because Reed failed to object to the admission of the pellet gun, he is correct that we review only for plain error. *See State v. Vance*, 734 N.W.2d 650, 655 (Minn. 2007). But Reed does not present any error. As the state persuasively argues, the pellet gun was not admitted as evidence of another crime or bad act to taint the assault charge; it was instead evidence of the separate charge of possession of a firearm by an ineligible person. The state argued at trial that the jury should find that Reed possessed the pellet gun illegally, contending that he must have had it at the scene of the altercation in Dakota County based on the brevity of the period between the altercation and the arrest in a different county. The prosecutor's closing rebuttal argument supports the state's position:

Well, the reasonable inference is that in addition to the little silver gun that was used to shoot out the window and hit Mr. Renner upside the head and swing it around and basically terrifying people about what he's going to do with this, is that a reasonable inference from that evidence is based on where it was located in the trunk of his vehicle, and the relatively short period of time that he had between the incident occurring and his apprehension, that it was in his vehicle the entire time; that he didn't stop along the way after having just discharged one weapon and discarding it, getting rid of all that evidence. The reasonable inference is also that he forgot about the other one he hid in there, and that that black gun, the CO₂ powered gun, was in the trunk of his vehicle the entire time, including when he was in West St. Paul in Dakota County. So that is the relevance of that piece of evidence.

Contrary to Reed's contention, the prosecutor did not rely on the pellet-gun evidence to show Reed's propensity to possess firearms. The state had the right to emphasize all relevant facts and circumstances establishing each element of the offense charged "even though such facts and circumstances may prove or tend to prove that the defendant committed other crimes." *State v. Wofford*, 262 Minn. 112, 118, 114 N.W.2d 267, 271 (1962). Because the pellet-gun evidence was an alternative theory supporting the charge of possession of a firearm by an ineligible person, the district court did not abuse its discretion by admitting it at trial.

Affirmed.