STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1201

State of Minnesota,
Respondent,

vs.

Anton Leo Schloegl,
Appellant.

Filed July 20, 2020
Affirmed
Connolly, Judge

Washington County District Court
File No. 82-CR-18-2947

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

Peter J. Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges his conviction for threats of violence, arguing that the district court committed reversible error by not providing a self-defense jury instruction. Because appellant did not object to the absence of a self-defense jury instruction and has not met his burden under the plain-error doctrine, we affirm.

FACTS

Respondent State of Minnesota charged appellant Anton Lee Schloegl in July 2018 with one count of threats of violence under Minn. Stat. § 609.713, subd. 1 (2016). This charge stemmed from an incident where appellant knocked on the door of a residence, told the person who answered the door that appellant was going to "beat his ass," and threatened to kill that person. Appellant then ran to another residence. When confronted by family members from the first residence, appellant threatened to kill an individual and that individual's entire family while holding a small, wooden baseball bat. The state later amended the complaint to add a charge for second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2016).

Before trial, appellant provided notice of his intent to rely on self-defense. The district court instructed the jury on self-defense only for the second-degree assault charge, not for the threat-of-violence charge. The jury acquitted appellant of assault but found him guilty of threats of violence.

Appellant now argues that the district court's failure to provide a self-defense instruction for the threat-of-violence charge constitutes reversible error.

D E C I S I O N

I. Standard of review

The parties disagree on the standard of review. Appellant argues that the correct standard is abuse of discretion under a harmless-error review. The state argues that, because appellant never requested the instruction, review is under the plain-error standard.

To preserve a jury-instruction issue for appeal, a party must place its objection to a court ruling on the record and state its position. Minn. R. Crim. P. 26.03, subd. 19(4). A proper and timely objection to a jury instruction preserves a defendant's right to receive a complete review of the challenged instruction on appeal. *State v. Kuhnau*, 622 N.W.2d 552, 555 (Minn. 2001); *see also* Minn. R. Crim. P. 31.01 (explaining harmless error review). But when a defendant does not object to a jury instruction, an appellate court reviews the issue under the plain-error doctrine. *State v. Laine*, 715 N.W.2d 425, 432 (Minn. 2006); *see also* Minn. R. Crim. P. 31.02 (explaining plain error review). "A defendant's failure to object to instructions before they are given generally results in forfeiture of the issue on appeal." *State v. Goodloe*, 718 N.W.2d 413, 420 (Minn. 2006).

When appellant provided pretrial notice of his intent to rely on self-defense, he had been charged only with threats of violence, not with second-degree assault. In the discussion of jury instructions during the trial, the state objected to any self-defense instruction, arguing that the evidence did not support such an instruction. The district court stated that it would instruct the jury on self-defense.

The district court gave a self-defense instruction for the second-degree assault charge, but not for the threats-of-violence charge. There was no objection to the absence

of a self-defense instruction for the threats-of-violence charge, and appellant cites no caselaw supporting his contention that his pretrial notice of self-defense preserved his objection to the jury instructions. Moreover, appellant did not raise the alleged instructional error in a new-trial motion. *Cf. State v. Glowacki*, 630 N.W.2d 392, 402-03 (Minn. 2001) (holding that a new-trial motion preserves a jury-instruction error involving fundamental law or controlling principles). For these reasons, we conclude that appellant did not preserve the issue of whether the district court should have instructed the jury on self-defense for the threats-of-violence charge, and our standard of review is plain error. *See* Minn. R. Crim. P. 31.02.

II. The district court did not commit plain error

Before an appellate court will review an unobjected-to error, the appellant must show (1) an error, (2) that the error was plain, and (3) that this plain error affected the appellant's substantial rights. *State v. Hughes*, 749 N.W.2d 307, 315 (Minn. 2008). "If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (citing *Johnson v. United States*, 520 U.S. 461, 467, 117 S. Ct. 1544, 1550 (1997)).

Therefore, the issue is whether the district court committed plain error by failing to instruct the jury on self-defense for the threats-of-violence charge sua sponte. When reviewing jury instructions in the plain-error context, we consider whether the district court's instructions accurately state the law in a manner that the jury can understand. *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014). An "error" represents a departure from a

rule of law, unless that rule has been waived. *Id.* The record reflects that the district court here did not commit any error. *See State v. Gustafson*, 610 N.W.2d 314, 320 (Minn. 2000) (holding that a defendant who gave no notice of self-defense and did not mention that theory at trial could not argue that the district court had plainly erred by failing to provide a self-defense jury instruction sua sponte, even though the evidence may have supported a self-defense claim).

Like the defendant in *Gustafson*, appellant neither argued self-defense at trial for the threats-of-violence charge nor objected to the district court's jury instructions. Because appellant never argued self-defense at trial for the threats-of-violence charge, the district court did not commit any error by not giving a self-defense instruction for that charge sua sponte. Our conclusion reflects the general principle that a district court normally does not commit plain error by failing to sua sponte give a jury instruction. *State v. Vance*, 714 N.W.2d 428, 442 (Minn. 2006). Thus, the district court did not err.

Even if we accepted appellant's argument and concluded that the district court's failure to provide a self-defense jury instruction sua sponte was plain error, that error did not affect appellant's substantial rights. Appellant has a "heavy burden" of showing a reasonable likelihood that the alleged error significantly affected the jury's verdict. *See Griller*, 583 N.W.2d at 741.

Under Minnesota law, persons may use reasonable force to defend themselves in certain situations. Minn. Stat. § 609.06, subd. 1 (2018). A viable self-defense claim has four elements: "(1) the absence of aggression or provocation by the defendant, (2) the defendant's actual and honest belief that he or another was in imminent danger of death or

great bodily harm, (3) the existence of reasonable grounds for the belief, and (4) the absence of a reasonable possibility of retreat to avoid danger." *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). Once a defendant meets the burden of producing some evidence to support these elements, the burden shifts to the prosecution to disprove one or more of the elements beyond a reasonable doubt. *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997).

The evidence, viewed in the light most favorable to appellant, shows that he had no viable self-defense claim for the threats-of-violence charge. When appellant confronted the individuals outside the second residence, he threatened to kill one of them and that person's entire family while holding the wooden bat. No evidence suggests that appellant did not act as the aggressor, and he did not testify that he had a belief of imminent death or great bodily harm. While he did yell at two individuals to get off the property, they were not armed and did not threaten bodily harm or death to appellant.

Appellant notes that the jury did acquit him on the second-degree assault charge, which was accompanied by a self-defense instruction. But the record shows that self-defense was not at issue for that charge; the focus was on inconsistencies in testimony from the state's witnesses.

There is no reasonable likelihood that the district court's failure to instruct the jury on self-defense for the threats-of-violence charge sua sponte influenced the verdict.

Affirmed.