STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1259

State of Minnesota,
Respondent,

vs.

Deonte Darnell Lawson,
Appellant.

Filed August 17, 2020
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-CR-18-5059

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Slieter, Judge.

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

SLIETER, Judge

Appellant challenges his conviction of two counts of first-degree criminal sexual conduct, arguing that the district court plainly erred by instructing the jury about the venue

element of the offense and erred in imposing a life-without-release prison sentence.[1] Because the district court did not plainly err in its venue instruction and the record supports the jury's verdict regarding two or more heinous elements, which support the life-without-release sentence, we affirm.

FACTS

Respondent the State of Minnesota charged appellant Deonte Darnell Lawson with two counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subds. 1(c), (f)(i) (2016), and one count of kidnapping, in violation of Minn. Stat. § 609.25, subd 1(2) (2016). The state sought a life prison sentence on the two criminal-sexual-conduct counts based on the presence of two or more heinous elements pursuant to Minn. Stat. § 609.3455, subd. 2(1) (2016). The following facts derive from Lawson's jury trial.

Three men kidnapped K.T. as she retrieved groceries from her car parked outside of her Minneapolis apartment. K.T. did not know these men, and she described them as three African Americans who were "about [her] age, maybe a little bit younger." The man in the middle, later identified as Lawson, looked slightly older than the other men, carried a gun, and "seemed like he was kind of the leader."

K.T. woke up not knowing where she was. She testified, "I had a really bad feeling in the back of my head like I had been hit with something. It was just a very sharp pain

[1] Lawson also argues in his *pro se* brief that the outcome of his case should have been different due to evidence that was not presented. Lawson's arguments are conclusory, without reference to the record, and he does not cite any supported legal authority. The arguments are therefore forfeited. *See State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) (holding that conclusory arguments that cite no applicable law are forfeited).

that I hadn't felt before. I was confused." She eventually remembered the encounter in the parking lot. Lawson drove the car while one man sat in the passenger seat and the other man in the back seat by K.T. Though she was unsure of the exact location, she thought the car was traveling somewhere in south Minneapolis.

At some point, Lawson parked the car at a wooded park off a residential road, and one of the men pulled K.T. out of the car. After walking ten feet into the woods, Lawson told K.T. to get on her knees, and she was forced to perform oral sex on "two of the boys, but it could have [been] three." She was then forced to her stomach, held down, and vaginally raped. She testified that everything was blurry, but she believes that all three men took turns penetrating her. She screamed in pain when one man attempted to anally penetrate her. She testified, "I can't remember if they were successful or not, but I remember that being the worst part." She also testified that during the sexual assault Lawson "was talking to the younger boys kind of telling them what to do." K.T. shut her eyes during the assault. After the rape, Lawson told the boys to knock her out, and K.T. felt "really sharp blows to the left side of [her] head and [her] face." She "was knocked unconscious at that point a little bit." She was pushed back in the car without her vest, shoes, or underwear.

K.T.'s company credit card electronic statement showed that the men later stopped at the White Castle on Rice Street in St. Paul. K.T. recognized a St. Paul landmark and watched their car get on I-94 East and later onto a north-bound interstate. K.T. noticed what looked like an old farmhouse that was converted into a gas station and convinced Lawson that they needed to get gas.

K.T. got out of the car while it was still slowly moving and one of the men jumped out with her. She pretended to check if the store was open while she looked for ways to escape. K.T. started to walk around the store and saw a back staircase leading to a residential door. K.T. "ran up the rest of the stairs and started banging on the door." At some point, the car drove away.

An officer arrived and told K.T. that it was 4:00 a.m. and she was several miles north of Stillwater. K.T. was interviewed by several officers and brought to the hospital for a sexual assault exam.

Law enforcement identified and arrested the three perpetrators, including Lawson. DNA taken from the three men matched DNA on K.T. One of the perpetrators testified that Lawson had two guns on his lap while driving the car.

The jury found Lawson guilty on all three counts. For sentencing purposes, the jury found that the following three heinous elements listed on the special-verdict forms were present: (1) "defendant was armed with a dangerous weapon . . . and defendant used or threated to use the dangerous weapon or article to cause the victim to submit," (2) "more than one perpetrator engage[d] in sexual penetration with the victim," and (3) "the defendant, without the victim's consent, remove[d] the victim from one place to another and [did] not release the victim in a safe place." These findings correlate to Minn. Stat. § 609.3455, subds. 1(d)(5), (7), and (8) (2016), respectively. The district court sentenced Lawson to life without the possibility of release on the first two counts based on the existence of two or more heinous factors of Minn. Stat. § 609.3455, subd. 2(1).

D E C I S I O N

I. Any purported error with the venue element jury instruction is not plain.

Lawson argues that the district court plainly erred in its instruction to the jury on the venue element of the offense.[2] For all three charges, the jury instruction provided by the district court to the jury regarding venue was as follows: "Venue in Hennepin County is established when any element of the offense was committed in Hennepin County or where the crime was set in operation and/or triggered, in Hennepin County."[3]

Lawson did not object to the jury instructions at trial. "A defendant generally forfeits the right to contest jury instructions on appeal when the defendant fails to object at trial." *State v. Davis*, 864 N.W.2d 171, 176 (Minn. 2015). But an unobjected-to jury instruction can be analyzed on appeal under the plain-error standard. Minn. R. Crim. P. 31.02; *State v. Taylor*, 869 N.W.2d 1, 15 (Minn. 2015). In a plain-error analysis, appellate courts review the jury instruction to determine (1) whether there was error, (2) whether the error was plain, and (3) whether the error affected appellant's substantial rights. *State v. Kelley*, 855 N.W.2d 269, 273-74 (Minn. 2014). Even if an appellant meets these requirements, appellate courts "may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 274 (quotation omitted). An

[2] Lawson separately argues that the state provided insufficient evidence to establish venue. The attorneys expressed agreement during oral argument that the determination whether the district court erred by its jury instruction regarding the venue element necessarily resolves this alternative argument.

[3] While the written jury instructions on all three counts include this language, the transcript shows that the district court read the quoted portion for the two sexual assault counts, though not when reading the instructions for the kidnapping count.

appellant fails to meet the standard when any of the requirements are not met. *See State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017).

We need not address all the plain-error requirements because, assuming without deciding that the jury instruction was in error, the error was not plain. "An error is plain if it was clear or obvious. Usually this is shown if the error contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted). "An alleged error does not contravene caselaw unless the issue is 'conclusively resolved.'" *State v. Hollins*, 765 N.W.2d 125, 133 (Minn. App. 2009) (quoting *State v. Jones*, 753 N.W.2d 677, 689 (Minn. 2008)).

Our constitution provides every defendant the right to be prosecuted in "the county or district wherein the crime shall have been committed," Minn. Const. art. 1, § 6, and our legislature codified this constitutional right as an essential element of every criminal offense, Minn. Stat. § 627.01, subd. 1 (2018). This has been interpreted to mean that venue must be proved beyond a reasonable doubt as an element of every crime. *State v. Pierce*, 792 N.W.2d 83, 85 (Minn. App. 2010). Additionally, "[i]f a person commits an act in one county causing injury or death in another county, the offense may be prosecuted in either county. If doubt exists as to where the act, injury, or death occurred, the offense may be prosecuted in any of the counties." Minn. R. Crim. P. 24.02, subd. 3.

The district court did not commit plain error by providing the instruction because it did not contravene conclusively resolved caselaw. The venue language in the jury instructions was the same language used to define venue in *State v. Daniels*—a factually similar case involving a kidnapping in Stearns County, robbery in Hennepin County, and

sexual assault in an unknown county and for which offenses Daniels was prosecuted in Stearns County. 765 N.W.2d 645, 648 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009).

In *Daniels*, this court stated that the location of a "triggering event" or "operative event" of the criminal offense is an appropriate venue for prosecution. *Id*. at 650-51. Lawson argues that *Daniels* ought not to direct our analysis because it dealt with venue solely as an appropriate location for the trial and not as an element of the crime. Our review of *Daniels*, along with other precedential caselaw, does not convince us that such a distinction establishes clear error in the instructions.[4] And nothing in the *Daniels* analysis or its holding suggests it was making a distinction between venue as to the location of trial contrasted with venue as an element of the offense that must be proved by the state.

Our supreme court addressed this issue in *State v. Norton*, a Hennepin County child-kidnapping case in which, despite the presence of sufficient evidence, the state chose not to charge the defendant with criminal sexual abuse. 328 N.W.2d 142, 144 n.1 (Minn. 1982). The *Norton* court stated, "[T]he fact the victim had no idea in which county the sexual abuse occurred was not a valid reason for not charging defendant with criminal sexual conduct." *Id.* The supreme court included a reference to the child abuse venue statute, Minn. Stat. § 627.15 (1980), and Minn. R. Crim. P. 24.02, subd. 3, which stated,

[4] A thorough reading of *Daniels* reveals this court was considering all venue purposes in reaching its decision: venue as it relates to its geographical place, *id.* at 649, venue as an element of the crime to be proved by the prosecutor, *id.* (citing *State v. Larsen*, 442 N.W.2d 840, 842 (Minn. App. 1989)), and venue as to subject matter jurisdiction, *id.* at 650 (citing to *State v. Simion*, 745 N.W.2d 830, 839 (Minn. 2008)).

"If it is doubtful in which one of two or more counties the act was committed or injury or death occurred, the offense may be prosecuted and tried in any one of such counties."[5] *Id.* This unequivocal statement does not suggest any material distinction between venue as an element and venue as trial location.

We recognize that the two concepts of venue are established by different levels of proof so that "venue determination relating to where a trial may be held . . . is distinct from venue as an element of the offense." *State v. Eibensteiner*, 690 N.W.2d 140, 150 (Minn. App. 2004), *review denied* (Minn. Mar. 15, 2005); *see also Pierce*, 792 N.W.2d at 85. However, that difference is not relevant here.

The sole question before us is whether the district court plainly erred by instructing the jury that the venue element of the crime is met when a triggering or operative event occurred in Hennepin County. Because we cannot say the district court's venue instruction was contrary to clearly established law, we cannot conclude the district court committed plain error. *See Hollins*, 765 N.W.2d at 133.

II. The state provided sufficient evidence to prove two heinous elements supporting Lawson's life sentence.

Lawson argues that his lifetime sentence without parole pursuant to Minn. Stat. § 609.3455, subd. 2., should be reversed because (1) the state did not provide sufficient facts to prove the dangerous weapon element, and (2) the removal element is invalid

[5] The rule now states, "If doubt exists as to where the act, injury, or death occurred, the offense may be prosecuted in any of the counties." Minn. R. Crim. P. 24.02, subd. 3.

because it relies on the facts used in the kidnapping conviction.[6] A person convicted of first-degree criminal sexual conduct shall be sentenced to life without the possibility of release if "the factfinder determines that two or more heinous elements exist." Minn. Stat. § 609.3455, subd. 2(a)(1). Because there is sufficient evidence to support the dangerous weapon heinous element, we need not analyze the removal element.

Minn. Stat. § 609.3455, subd. 1(d)(5) includes as an heinous element that "the offender was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be dangerous weapon and used or threatened to use the weapon or article to cause the complainant to submit." Appellate courts review questions of statutory interpretation *de novo*. *State v. Overweg*, 922 N.W.2d 179, 182-83 (Minn. 2019). We conclude this statute is unambiguous. *See State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017) ("A statute is ambiguous only if it is subject to more than one reasonable interpretation." (quotation omitted)).

Lawson argues that the state provided insufficient evidence that he used a dangerous weapon to force K.T. to submit because there was no evidence that Lawson had a gun during the criminal sexual conduct. However, to conclude there is insufficient evidence to support the jury's heinous element verdict would require us to insert the phrase "during the sexual assault" into the unambiguous statute.[7] This we cannot do. *See Walsh v. U.S. Bank*,

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[6] Lawson does not challenge the third heinous element the jury found—that "more than one perpetrator engage[d] in sexual penetration" with the victim. Minn. Stat. § 609.3455, subd. 1(d)(7).

[7] We previously reached the same conclusion in *State v. Elmi*, No. A16-1692, 2017 WL 5663491 (Minn. App. Nov. 27, 2017), *review denied* (Minn. Jan. 24, 2018).

N.A., 851 N.W.2d 598, 604 (Minn. 2014) ("[W]e do not add words or phrases to unambiguous statutes or rules.").

K.T. and Freeman testified that Lawson used a gun when originally approaching K.T. Freeman also testified that Lawson had two guns on his lap in the car both before and after K.T. was raped. K.T. testified that she did not yell until the men tried to anally penetrate her because she "was so scared." She also testified that she did not initially run away from the men because she was worried they would shoot her. Lawson's guns are the only guns mentioned in the case. The jury could reasonably infer that K.T. was scared for her life because Lawson had a gun. There was sufficient evidence to support the dangerous weapon heinous element involving multiple perpetrators, which, along with the uncontested heinous element, supports the life-without-release sentence.

Affirmed.