STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0361

State of Minnesota,
Respondent,

vs.

Rarity Shemeire Abdul Lampkin,
Appellant.

Filed July 25, 2022
Affirmed
Ross, Judge

Dakota County District Court
File No. 19HA-CR-18-2641

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

Kathryn M. Keena, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Ross, Judge.

SYLLABUS

The general self-defense authorization expressed in Minnesota Statutes section 609.06, subdivision 1(3) (2018), permits a person to use reasonable force to resist "an offense against the person" even if the offense does not involve an assault or threaten bodily harm. In a case in which a defendant claims self-defense in resisting a noninjurious offense,

the district court errs by instructing the jury that the defendant could be justified in using force only to resist "an assault."

OPINION

ROSS, Judge

Rarity Lampkin responded to his girlfriend's attempt to physically prevent him from leaving their shared apartment building by pulling her from the exit door and causing her to fall. The jury found Lampkin guilty of domestic assault, rejecting his self-defense claim. Lampkin appeals from his conviction, arguing that the state failed to prove all the elements of the assault charge and that the district court incorrectly instructed the jury on self-defense. We hold that the evidence supports the assault elements. But we also hold that the district court erroneously instructed the jury that Lampkin could use reasonable force to "resist an *assault* against the person" because the law of self-defense justifies a person to use force more broadly to resist any "*offense* against the person" and the facts could support Lampkin's contention that he used reasonable force to resist his girlfriend's unlawful attempt to detain him—arguably false imprisonment. We nevertheless affirm Lampkin's conviction because the error was not plain in light of caselaw.

FACTS

Rarity Lampkin lived in an Inver Grove Heights apartment with his pregnant girlfriend, whom we will call Jane for her privacy. Jane was eight months' pregnant in October 2018, when the two argued. Lampkin left the apartment but returned the next morning to collect his safe. Fearing that Lampkin would never return if he left with the safe, Jane physically prevented him from leaving. The confrontation escalated and Jane's

12-year-old daughter dialed 9-1-1 to report, "My dad is fighting my mom . . . . He came here to get his safe and then they just started, like, fighting." Lampkin forced his way out of their third-floor apartment, and Jane followed him down the stairs to the building's exit door.

A surveillance camera captured the struggle on video beginning when the couple approached the exit door. It depicts Jane physically preventing Lampkin from leaving. It shows her pulling at him, pushing him, and using her body to block him from getting out the door with the safe. Jane finally grabbed the door's crossbar, pulling it to keep the door closed and latched while she maintained her blocking position between the door and Lampkin, who was behind her and still struggling to get out.

The video then shows the moment that became the primary focus of the trial. Lampkin took hold of Jane's shoulders from behind and pulled her backwards, wresting her hands from the crossbar and causing her to fall to the floor. Lampkin picked up the safe and left the building.

Inver Grove Heights police officers arrived, and paramedics took Jane to the hospital. She told one officer that "she had been pushed down by her boyfriend." She told her physician that Lampkin pushed her down twice, once in the apartment and once at the door. Neither Jane nor her unborn child suffered significant injury. The state charged Lampkin with domestic assault under Minnesota Statutes section 609.2242, subdivision 1(2) (2018), which was a felony because he had been previously convicted of domestic assault. Minn. Stat. § 609.2242, subd. 4 (2018).

At trial Jane took "all responsibility for what happened to [her] child's father." Despite her earlier statements that Lampkin pushed her to the floor, she testified that her fall was an accident. She said that she hit Lampkin first, trying to keep him from leaving, and that Lampkin did not fight back but was just "trying to . . . run out the door" with the safe. She told the jury that she was hanging onto the crossbar of the door to keep Lampkin from opening it when she "just went down."

The district court instructed the jury on self-defense, defining the term to mean "that the person used reasonable force . . . to resist an assault against the person . . . ." The jury rejected Lampkin's self-defense argument and found him guilty. The district court convicted Lampkin and sentenced him to 21 months in prison.

Lampkin appeals.

ISSUES

I. Is the evidence sufficient to prove Lampkin's guilt beyond a reasonable doubt?

II. Did the district court plainly err by incorrectly instructing the jury on self-defense?

ANALYSIS

Lampkin asks us to reverse his assault conviction. He argues first that the state offered insufficient evidence to prove his guilt. He argues second that the district court incorrectly instructed the jury on self-defense. For the following reasons, we hold that the evidence was sufficient to prove his guilt but that the district court erroneously instructed the jury. The improper instruction was not a plain error, however, and so we will not reverse Lampkin's conviction.

I

We first address Lampkin's assertion that the state failed to prove his guilt. We consider claims of insufficient evidence by reviewing the evidence in the light most favorable to the guilty verdict. *State v. Hayes*, 831 N.W.2d 546, 552 (Minn. 2013). We review evidence supporting the verdict to decide whether a reasonable jury could conclude that the evidence establishes the defendant's guilt beyond a reasonable doubt as to each element of the offense. *State v. Hokanson*, 821 N.W.2d 340, 353 (Minn. 2012). Lampkin focuses only on the mental-state element of his domestic-assault conviction. To prove that Lampkin committed domestic assault, the state had to prove that Lampkin "intentionally inflict[ed] or attempt[ed] to inflict bodily harm" on Jane. Minn. Stat. § 609.2242, subd. 1(2). Intent is almost always proved by circumstantial rather than direct evidence. *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015). And we review circumstantial evidence in a two-step inquiry: we first identify the circumstances proved, assuming the jury believed the inculpatory evidence and disbelieved any exculpatory evidence; and second, we determine whether the rational inferences from those circumstances are consistent only with guilt. *Hayes*, 831 N.W.2d at 552–53. The evidence of Lampkin's mental state meets that standard.

The evidence sufficiently supports the jury's finding that Lampkin intended the act that caused bodily harm. The intent element of the statute requires that the state prove that Lampkin did not act accidentally or involuntarily. *State v. Dorn*, 887 N.W.2d 826, 830–31 (Minn. 2016); *State v. Fleck*, 810 N.W.2d 303, 309–10 (Minn. 2012). Two witnesses testified that Jane reported soon after the incident that Lampkin pushed her down. Although

Lampkin's argument focuses on the part of the incident captured in the video recording, the jury also received evidence that Lampkin pushed Jane to the floor inside their apartment. Jurors observed both Lampkin and Jane during the trial and were free to draw inferences of intent from Jane's daughter's contemporaneous description of the event in her emergency call to police, the size and strength disparity between the two, and the fact that the pregnancy was eight months along. Lampkin does not offer any rational inference from any evidence showing that he accidentally or involuntarily pushed or pulled Jane to the floor inside the apartment, or even at the door. Lampkin's assertion that he acted only to defend himself and that his level of force was reasonable bears only on his self-defense argument and is irrelevant to whether the evidence supports all elements of the crime charged.

We also reject Lampkin's assertion that the evidence reasonably implies that Jane consented to being pulled from the door. Jane testified that she fell while "[f]ighting, just trying to fight for the door to keep from getting the door open." Rather than consenting, Jane was resisting Lampkin's efforts to wrest her from the door.

The state provided sufficient evidence to prove that Lampkin acted volitionally. We decline to reverse his conviction on this ground.

II

We next address Lampkin's contention that the district court improperly instructed the jury on self-defense. The district court has broad discretion in instructing the jury, and we typically review allegedly improper instructions for an abuse of that discretion. *State v. Shane*, 883 N.W.2d 606, 613 (Minn. App. 2016). But Lampkin failed to object to the

self-defense instruction and therefore forfeited the right to challenge the instructions on appeal. *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). We will nevertheless review the unobjected-to jury instruction, but only to consider whether the instruction constitutes a plain error. *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). Under a plain-error review, we may reverse only if we spot an error, determine that the error was plain, and conclude that the error affected Lampkin's substantial rights. *Id.* An error is "plain" when it is "clear" or "obvious." *Id.* at 807. And an error affects substantial rights if it was prejudicial and affected the outcome of the case. *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). Under our plain-error review, even if Lampkin could establish that a plain error occurred, we have discretion to correct the error only if it seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* at 740; *Pulczinski v. State*, 972 N.W.2d 347, 356 (Minn. 2022). Lampkin's self-defense jury-instruction challenge clears only the first hurdle of our plain-error review by identifying an error.

A. Self-Defense Instruction with an Assault or Bodily-Harm Element Was Erroneous

Lampkin sought to convince the jury that he used reasonable force in self-defense under Minnesota Statutes section 609.06, subdivision 1(3) (2018). Under that subdivision, a person is justified in using reasonable force when he "reasonably believes" that he is "resisting or aiding another to resist an offense against the person." The district court did not instruct the jury to consider broadly whether Lampkin was resisting "an offense" against himself, but narrowly whether he was resisting "an assault" against himself. He argues on appeal that, because Jane's conduct arguably constituted false imprisonment or

attempted false imprisonment by her physically preventing him from leaving the building, she was engaging in "an offense" that he was justified in resisting with force. The state defends the district court's instruction by maintaining that, because the alleged false imprisonment did not threaten to cause Lampkin bodily harm, and threatened bodily harm is always an element of self-defense, the instruction correctly stated the law. The state is correct that false imprisonment does not include any bodily-harm component either in the statute or as implied by the evidence presented in this case. *See* Minn. Stat. § 609.255, subd. 2 (2018) (defining false imprisonment as "intentionally confin[ing] or restrain[ing] . . . any other person without the person's consent"). But Lampkin has the better argument because, for the reasons that follow, self-defense is not limited to resisting an offense that threatens bodily harm.

1. *Plain Language of Subdivision 1(3) Undermines State's Position*

The unambiguous statute on its face does not limit justified self-defense to resisting only assault or other offenses that result in bodily harm, as the state maintains. It instead permits a person to forcefully resist "an offense against the person" with no express requirement that the resisted offense involve bodily harm. Minn. Stat. § 609.06, subd. 1(3). The language of the subdivision by itself is therefore enough for us to reject the state's position. But there is more.

2. *Subdivision 1(3) in Context Undermines State's Position*

The subdivision's context corroborates our understanding. The context of section 609.06, subdivision 1(3), informs us that the legislature was mindful of the concept of bodily harm when it enacted section 609.06 and that the omission of bodily harm as a

prerequisite was therefore intentional. While subdivision 1(3) allows for the use of reasonable force to resist "an offense against the person" without mentioning bodily harm of any degree and without defining the triggering offense at any particular level, the next section of the statute, section 609.065, expressly relates to section 609.06 and identifies the two types of personal offenses that would justify intentionally using deadly force during an act of self-defense—the first type being "an offense which the actor reasonably believes exposes the actor or another to great bodily harm or death," and the second being "the commission of a felony in the actor's place of abode." Minn. Stat. § 609.065 (2018). So we see that one of these two parallel and interdependent sections refers only to a generic "offense against the person" without mentioning harm and without specifying whether the predicate offense must be a felony or misdemeanor. And in contrast, the other refers specifically to a personal offense that risks great bodily harm or is an in-home felony. This difference confirms our conclusion that the legislature deliberately omitted a harm prerequisite from section 609.06, subdivision 1(3).

3. *Related History of Self-Defense Statute Undermines State's Position*

We find additional support for our understanding in the legislature's placement of the false-imprisonment statute in the category of crimes. Statutory law has long recognized a distinction—rooted in the common law—between crimes "against the person" and other types of offenses. The supreme court in 1925 documented this, for example, as it reviewed a conviction of carrying concealed weapons with intent to cause harm, relying in part on "the fact that the [concealed weapons] statute is a part of the chapter dealing with crimes against public safety—not of the chapter dealing with crimes against the person." *State v.*

Simon, 203 N.W. 989, 989 (Minn. 1925). And in the same law that the legislature enacted to codify the right to use self-defense to resist offenses against the person, it also directed that the crime of false imprisonment be placed in the statutory category of "Crimes Against the Person." 1963 Minn. Laws ch. 753, art. 1, § 609.255, at 1202–03; *see also* Minn. Stat. § 609.02 1963 cmt. by Maynard Pirsig (West 2018) ("The terms 'offense' and 'criminal offense' are occasionally used in the new Criminal Code. They are used in the same sense as the term 'crime.'"). Relevant here, the legislature did so knowing that the crime of false imprisonment involves only confinement against the victim's will with no element of bodily harm or even threat of bodily harm. 1963 Minn. Laws ch. 753, at 1, § 609.255, at 1203. If the legislature meant for an offense "against the person" in section 609.06 to include only offenses that involved bodily harm, it would not have also placed the non-bodily-harm offense of false imprisonment in the crimes "against the person" category.

Early supreme court caselaw on the self-defense statute puts it in its historical context and illuminates its meaning by emphasizing its relationship to common-law self-defense. Construing the term "an offense" in section 609.06 for the first time in 1967 as "part of the [then-]new Criminal Code," the supreme court recognized that "the statute states the present Minnesota law" of self-defense as developed in the common law. *State v. Johnson*, 152 N.W.2d 529, 532 (Minn. 1967). This is significant to our analysis because the supreme court then observed that, under the common law, a person could use deadly force in self-defense to resist not only an act of potential "great bodily harm" but also "some felony" without any express harm qualifier. *Id.* Two years later, the supreme court repeated the connection between the common law and the two statutory self-defense

provisions in *State v. Boyce*, 170 N.W.2d 104 (Minn. 1969). The *Boyce* court cited both sections 609.06 and 609.065 in the context of articulating the common-law self-defense elements, again including "some felony" without any harm qualifier as one of the predicate bases for using deadly force to defend oneself. *Boyce*, 170 N.W.2d at 112. In other words, under the common law, a defendant could use even deadly force to resist not only an offense that involved the risk of bodily harm but also to resist "some felony" offense that did not.

Although the concept of using deadly force to thwart nondangerous felonies may be unanimously unconscionable and unreasonable today, it was not yet so in 1963 when the legislature enacted sections 609.06 and 609.065. As Justice Stevens observed, "Under the common law capital punishment was mandatory for *all* felonies, and even through the last century it was mandatory for large categories of offenses." *Spaziano v. Florida*, 468 U.S. 447, 483 (1984) (Stevens, J., concurring) (emphasis added). In fact, it was not until 1985—more than 20 years after Minnesota codified the elements of self-defense—that the United States Supreme Court in *Tennessee v. Garner* finally held unconstitutional state statutes authorizing the killing of unarmed fleeing felons who posed no risk of harm to anyone. 471 U.S. 1, 11 (1985). It was in the period that states were moving away from harsh common-law consequences that the Minnesota legislature refined the elements of self-defense statutorily. The 1963 text, which continues unchanged today, shows that the legislature refined the common-law elements in two ways. First, while it continued to permit intentionally *lethal* force to resist great bodily harm, it no longer authorized lethal force against *all* felonies—only those personal-offense felonies that occur in one's home.

Minn. Stat. § 609.065. And second, it both expanded and contracted the type of conduct that justifies the *nonlethal* use of force, allowing reasonable force to resist even nonfelony offenses but limiting it to offenses "against the person." Minn. Stat. § 609.06. While our holding rests on the statutory language in its plain terms, this historical context readily supports it.

4. *Supreme Court Dictum Undermines State's Position*

We also see support for our holding in the supreme court's response to a self-defense argument involving sexual groping. Taking the state's interpretation of subdivision 1(3) to its logical conclusion, a person has no right to use reasonable force to resist the personal offense of nonconsensual sexual contact unless the groping also happens to involve that person's physical pain or injury. *See* Minn. Stat. §§ 609.02, subd. 7 (2018) (defining bodily harm), 609.341, subd. 11 (2018) (defining sexual contact without bodily-harm element). The state's notion is not only intuitively untenable, the supreme court implicitly rejected it in a case involving similar conduct but a different, now-repealed, criminal statute. In *State v. Morgan*, a convicted murder defendant claimed that the district court improperly failed to give a self-defense instruction, alleging that, before he killed the victim, the victim had fondled the defendant's genitals and caused him to believe that force was necessary to resist the felony of sodomy. 296 N.W.2d 397, 402–03 (Minn. 1980). The supreme court rejected the argument on grounds immaterial here. *Id.* Most relevant, it did not base its holding on the idea that self-defense is available to resist only those personal offenses that involve bodily harm. And equally instructive, it construed the same language of subdivision 1(3) that we are discussing and stated that self-defense requires only an "actual and honest belief

of the slayer that he was in imminent danger *of some felony* and that it was necessary to take the action he did." *Id.* at 402 (emphasis added). By correlating "an offense against the person" in subdivision 1(3) with "some felony" in which the victim's alleged conduct did not involve any bodily harm, the supreme court implied the same understanding that we state expressly today.

5. State v. Soukup *Limited by Context*

It is true, as the state emphasizes, that our discussion of the self-defense statute in *State v. Soukup* appears on the surface to suggest a bodily-harm element. 656 N.W.2d 424, 429 (Minn. App. 2003), *rev. denied* (Minn. Apr. 29, 2003). In *Soukup*, we said that an "offense against the person" is "an offense of a physical nature, carrying the potential to cause bodily harm." *Id.* The state infers from this statement that an "offense against the person" is essentially synonymous with an "assault against a person" and that, consequently, the non-assaultive offense of false imprisonment is not an offense that triggers the right to use force in self-defense. But *Soukup* should not be construed as having introduced a bodily-harm requirement into the defense because it is never our prerogative to add words to a statute. *See Rohmiller v. Hart*, 811 N.W.2d 585, 590 (Minn. 2012). Our holding today clarifies rather than conflicts with *Soukup*, because "a court's expressions that go beyond the facts before the court are dicta and are deemed to be merely the individual views of the author of the opinion and not binding in subsequent cases." *Dahlin v. Kroening*, 784 N.W.2d 406, 410 (Minn. App. 2010) (quotation omitted), *aff'd*, 796 N.W.2d 503 (Minn. 2011). For the following reasons, we read *Soukup* as confined to circumstances that we do not face.

In *Soukup* we did not analyze or purport to decide today's issue. We were deciding only whether a defendant could rely on self-defense to prevail against a charge of disorderly conduct when the nature of the disorderly conduct included the potential for physical harm, akin to assault. *Soukup*, 656 N.W.2d at 429. And the bodily-harm element was properly incorporated in that case because, like most self-defense situations, the specific harm that naturally results from the alleged predicate offense was indeed physical, *bodily* harm. *See id.* at 429–30. ("Here, [the alleged attacker] undeniably started the fight by grabbing the back of appellant's coat, and plainly committed an offense against appellant's person—namely, assault."). We therefore emphasize that our broad statement in *Soukup* applies to those circumstances like the one we addressed in that case (and in most cases), in which the personal offense on which the defendant bases his self-defense claim is an offense that threatens bodily harm. It does not apply to cases in which the predicate offense against the person involves a harm other than physical pain or injury.

Unlike *Soukup*, in this rare case the offense on which the self-defense theory arguably rests—false imprisonment—involves no risk of physical pain or injury. This distinguishes this case not only from *Soukup* but also from the long line of self-defense cases that involve an alleged act of potential bodily harm. Other than *Morgan*, discussed above and decided on other grounds, this is the first time the circumstances squarely present the issue. In every precedential opinion where a Minnesota appellate court has referenced a threat-of-bodily-harm prerequisite to the use of nonlethal force in self-defense under section 609.06 subdivision 1(3), the predicate alleged offense has always involved potential bodily harm. *See State v. Zumberge*, 888 N.W.2d 688, 693 (Minn. 2017) (victim said, "I'm

going to kill that [woman]"); *State v. Devens*, 852 N.W.2d 255, 256 (Minn. 2014) (victim tried to punch defendant); *State v. Johnson*, 719 N.W.2d 619, 623–24 (Minn. 2006) (victim kicked and shot defendant); *State v. Glowacki*, 630 N.W.2d 392, 396 (Minn. 2001) (victim hit defendant); *State v. Basting*, 572 N.W.2d 281, 283 (Minn. 1997) (victim punched defendant); *State v. Bland*, 337 N.W.2d 378, 380 (Minn. 1983) (victim kicked defendant in the head); *State v. Carlson*, 268 N.W.2d 553, 555 (Minn. 1978) (victim police officer pushed defendant's friend); *State v. Jones*, 271 N.W.2d 534, 535–36 (Minn. 1978) (victim fired shots); *State v. Love*, 173 N.W.2d 423, 425 (Minn. 1970) (victim hit defendant with umbrella); *State v. Baker*, 160 N.W.2d 240, 241 (Minn. 1968) (victim punched and kicked defendant); *State v. Norlander*, 152 N.W.2d 774, 776 (Minn. 1967) (victim grabbed and kicked defendant); *State v. Pollard*, 900 N.W.2d 175, 177 (Minn. App. 2017) (victim tried to hit and strangle defendant); *Soukup*, 656 N.W.2d at 427 (victim in fistfight with defendant); *State v. Andrasko*, 454 N.W.2d 648, 651 (Minn. App. 1990) (victim brandished baseball bat), *rev. denied* (Minn. June 25, 1990); *State v. Witucki*, 420 N.W.2d 217, 219 (Minn. App. 1988) (victim raised his fist and threatened punch), *rev. denied* (Minn. Apr. 15, 1988); *State v. McKissic*, 415 N.W.2d 341, 343 (Minn. App. 1987) (victim tried to punch defendant); *State v. Buchmann*, 380 N.W.2d 879, 881 (Minn. App. 1986) (victim shoved defendant's head into a truck); *State v. Oden*, 385 N.W.2d 420, 421 (Minn. App. 1986) (victim engaged in large fight); *State v. Johnson*, 392 N.W.2d 357, 357–58 (Minn. App. 1986) (victim shoved defendant); *State v. Pita-Iglesia*, 393 N.W.2d 524, 525 (Minn. App. 1986) (victim beat up defendant), *rev. denied* (Minn. Nov. 17, 1986); *State v. Pacholl*, 361 N.W.2d 463, 464 (Minn. App. 1985) (victim fighting); *State v. Smith*, 374 N.W.2d

520, 522 (Minn. App. 1985) (victim punched defendant), *rev. denied* (Minn. Nov. 26, 1985); *State v. Soine*, 348 N.W.2d 824, 825 (Minn. App. 1984) (victim broke bottle and threatened defendant), *rev. denied* (Minn. Sept. 12, 1984). Neither *Soukup* nor the extensive caselaw applying self-defense in nonlethal, bodily-harm cases conflicts with our holding.

6. *Erroneous Instruction Here*

Based on our holding that section 609.06, subdivision 1(3), permits a person to use reasonable force to resist a personal offense that does not involve or threaten bodily harm, we conclude that the district court's instruction to the jury in this case constituted error. "[W]hen instructing on self-defense, courts must use analytic precision." *State v. Hare*, 575 N.W.2d 828, 833 (Minn. 1998) (quotation omitted). The instructions also should not mislead the jury or misstate the law. *State v. Taylor*, 869 N.W.2d 1, 14–15 (Minn. 2015). The district court's reference only to an "assault against the person" erroneously understated the statutory allowance for self-defense to resist any "offense against the person" and imprecisely described the circumstances of the alleged offenses that arguably justified Lampkin's use of force.

Although Lampkin did not request an instruction that directed the jury to decide generally whether his conduct was a reasonable use of force to resist "an offense against [his] person" or to decide specifically whether his conduct was a reasonable use of force to resist the offense of false imprisonment, both his rationale for the self-defense instruction and his argument to the jury implicated those bases for the instruction. In arguing to the district court why he was entitled to the self-defense instruction, Lampkin maintained,

"There was evidence that she assaulted him *and* that she was attempting to prevent him from leaving the building, and that he was acting in self-defense." (Emphasis added.) Likewise in arguing to the jury why it should find that the state failed to disprove that he was acting in self-defense, Lampkin did not mention "assault" or any concern about bodily harm, arguing only, "And if you see what she's doing at the time that this is going on, she's holding the door shut so he can't leave." By instructing the jury to consider whether Lampkin was acting in self-defense only to resist "an assault," the district court failed to frame the issue as expressed by the statute or to tailor it to fit the evidence and argument to the jury. This was error.

We are not persuaded otherwise by the fact that, at one point during the row, Lampkin made it out the door momentarily but reentered quickly to retrieve the safe while continuing to resist Jane's attempts to keep him inside. The self-defense statute does not expressly or implicitly withhold the defense from those who resist an offense while also attempting to retain their personal property. And the statute separately authorizes the use of reasonable force "by any person in lawful possession of . . . personal property . . . in resisting . . . [the] unlawful interference with such property." Minn. Stat. § 609.06, subd. 1(4). Lampkin's brief exit did not disqualify him from the right to use self-defense to resist an offense against his person.

B. Error in Framing of Self-Defense Instruction Was Not Plain

In this case of first impression, we hold the district court's error in instructing the jury was not plain. An error is plain if it so clear or obvious at the time of the appeal that "the trial court should be able to recognize and correct the error without the parties' help."

State v. Kelley, 855 N.W.2d 269, 286 (Minn. 2014). The district court's error was its failure to include false imprisonment as a predicate self-defense offense and its focusing the jury instead only on assault. But this error occurred because the district court failed to adopt an approach that, before today, had not been clarified in caselaw interpreting and applying Minnesota Statutes section 609.06, subdivision 1(3). In a somewhat similar circumstance we said, "[T]his is a case of first impression. Even if the district court erred in giving the requested instruction, the error was not plain." *State v. Sam*, 904 N.W.2d 463, 468 (Minn. App. 2017). It is true that we have rested our holding on the subdivision's plain language. But in doing so we have found it necessary to wade through and distinguish a sizable pool of judicial opinions that, on a surface reading, imply a standard of self-defense that universally includes a bodily-harm element. It takes considerable sifting to recognize that this standard does not always fit. Indeed, caselaw so commonly restated the bodily-harm element without the qualification for other types of offenses against the person that the jury instruction guide relied on by district judges and practitioners recommended the unqualified vernacular. *See* 10 Minnesota Practice, CRIMJIG 7.13 (2021). Without prompting by a careful and thorough trial attorney, we do not presume that a district judge would have looked beyond such a frequently repeated maxim in the caselaw. Because the error was not plain, we do not take our plain-error review further.

DECISION

The evidence is sufficient to prove that Lampkin had the requisite intent to support the assault conviction. Although the district court erroneously described the predicate

offense for which Lampkin claimed self-defense, the error was not plain, and the unobjected-to erroneous instruction therefore does not support reversal.

Affirmed.