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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1044**

State of Minnesota,
Respondent,

vs.

Rick James Carlson,
Appellant.

**Filed May 14, 2018
Affirmed
Schellhas, Judge**

Chippewa County District Court
File No. 12-CR-16-474

Lori Swanson, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

David Gilbertson, Chippewa County Attorney, Montevideo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Stauber,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his convictions of threats of violence, arguing that the district court erroneously admitted unobjected-to recorded statements. We affirm.

FACTS

When T.V., a city maintenance worker, executed a water-shutoff work order at appellant Rick Carlson's home, Carlson became very angry. He grabbed the work order, drove to city hall, and found the city clerk, S.B., who had signed the work order. Carlson crumpled the work order and threw it at S.B., shouted various profanities at her, and told her that he was "going to kill" her.

When Carlson returned home, he found T.V. visiting with one of his neighbors. Carlson brandished a hunting knife and threatened T.V. that he was "going to kill" him and that he then was going to kill S.B. Carlson also slashed T.V.'s city maintenance truck, followed T.V. to Carlson's landlord's home, continued to threaten T.V., and further damaged T.V.'s maintenance truck. Carlson's landlord's wife called 911 to report Carlson. Responding to the 911 call, Deputies Weick and Marcinkowski found Carlson at home and arrested him. Deputy Marcinkowski's body-mic recorded Carlson's arrest.

Respondent State of Minnesota charged Carlson with two counts of making threats of violence under Minn. Stat. § 609.713, subd. 1 (2016), one each for S.B. and T.V.; and one count of first-degree criminal damage to property under Minn. Stat. § 609.595, subd. 1(3) (2016). At a pretrial hearing, Carlson moved the district court to redact statements from Deputy Marcinkowski's body-mic recoding but did not object to the statements that

he now challenges on appeal. The district court excluded portions of the recording but not the statements that Carlson now challenges.

A jury found Carlson guilty on all three counts. The court adjudicated Carlson guilty on the two counts of making threats of violence, imposed stayed sentences for those counts, and stayed adjudication on the criminal-damage-to-property count.

This appeal follows.

D E C I S I O N

Carlson argues that the district court committed plain error that affected his substantial rights when it admitted Deputy Marcinkowski's body-mic recording of the following statements:

DEPUTY WEICK: We didn't do cuffs the last time we went to Wilmar. I don't care. Do you remember?
THE DEFENDANT: I had cuffs.
DEPUTY WEICK: What's that?
THE DEFENDANT: I had handcuffs on when they took me to Wilmar.
....
DEPUTY MARCINKOWSKI: Well, what . . . make[s] you feel better when you're upset?
THE DEFENDANT: You can't do that.
DEPUTY MARCINKOWSKI: Hum?
THE DEFENDANT: You don't have any pot.
DEPUTY MARCINKOWSKI: Pot?
THE DEFENDANT: You can't get me any weed.
....
THE DEFENDANT: Pot
DEPUTY MARCINKOWSKI: Don't have it.
THE DEFENDANT: I know. Could do it more often.

The state argues that Carlson forfeited his claim because he failed to object at trial to the admission of the challenged statements. We agree.

“When a defendant fails to object at trial, the forfeiture doctrine generally precludes appellate relief.” *State v. Lilienthal*, 889 N.W.2d 780, 784 (Minn. 2017); *see also State v. Beaulieu*, 859 N.W.2d 275, 278 (Minn. 2015) (“A constitutional right, or a right of any other sort, may be forfeited in criminal . . . cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.” (quotation omitted)), *cert. denied*, 136 S. Ct. 92 (2015). The supreme court has “held that an objection to the admissibility of evidence must be made at the first opportunity, and that the failure to do so forfeits the right to raise the question on appeal.” *Lilienthal*, 889 N.W.2d at 785.

While this court may review unobjected-to statements for plain error, our decision to do so is discretionary. *See* Minn. R. Crim. P. 31.02 (“Plain error affecting a substantial right *can* be considered by the court . . . on appeal even if it was not brought to the [district] court’s attention.” (emphasis added)); *see also Lilienthal*, 889 N.W.2d at 785 (stating that Minn. R. Crim. P. 31.02 “*allows* appellate courts to correct forfeited errors” (emphasis added)); *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010) (“We have *discretion* to review unobjected to error under the plain error rule.” (emphasis added)). Because Carlson failed to object to the now-challenged statements, he has forfeited the issue, and we decline to review his challenge. *See Taylor v. State*, ___ N.W.2d ___, ___, 2018 WL 1633339, at *3 (Minn. Apr. 4, 2018) (declining to consider forfeited claim and stating that it “is well settled that a party may not raise issues for the first time on appeal” (quotation omitted)).

Affirmed.