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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0701**

State of Minnesota,  
Respondent,

vs.

James Obonyo Onuko,  
Appellant.

**Filed March 9, 2020  
Affirmed  
Kalitowski, Judge\***

Hennepin County District Court  
File No. 27-CR-18-26784

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

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

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

## **UNPUBLISHED OPINION**

**KALITOWSKI**, Judge

In this appeal, appellant argues that his conviction for second-degree assault with a dangerous weapon must be reversed because: (1) the district court committed plain error when it included a clearly erroneous jury instruction; and (2) appellant received ineffective assistance of counsel. We affirm.

### **FACTS**

In the evening of October 27, 2018, Bloomington police, responding to an assault complaint, found the victim drenched in blood and crying that her boyfriend, appellant James Obonyo Onuko, beat her with a baseball bat. The victim suffered a fractured jaw, two broken bones in her hand, a broken nose, four broken teeth, and several lacerations on her face and around her mouth.

The victim and Onuko do not agree on the series of events that led to the beating. The victim claims that she was sitting on a couch in the apartment that the pair shared when Onuko approached her from behind, grabbed her cell phone, and struck her with a baseball bat.

Onuko claims that while sitting on his bed, the victim approached him while holding a baseball bat. Onuko grabbed for the bat, successfully wrestled the bat away from the victim, and tried to escape the apartment. He admits that he accidentally struck the victim in the face with the bat twice during the struggle.

The state charged Onuko with one count of second-degree assault with a dangerous weapon in violation of Minn. Stat. § 609.222, subd. 2 (2018), to which Onuko claimed self-

defense. During the jury trial, the district court read a jury instruction regarding self-defense. The district court informed the jury that “[s]elf-defense means that [Onuko] used reasonable force against [the victim] to resist an assault against him.” The district court defined “reasonable force” as, “[t]he kind and degree of force one may lawfully use in self-defense” that is “limited by what a reasonable person in the same situation would believe to be necessary.” “Any use of force beyond that,” the district court added, “is regarded by the law as excessive.”

Initially, a proposed jury instruction included language informing the jury that Onuko had a duty to retreat despite being in his own home. The district court informed Onuko’s attorney that a defendant does not have a duty to retreat in his or her own home—though force used in self-defense must still be reasonable. The final instruction provided to the jury read: “The legal excuse of self-defense is available only to those who act honestly and in good faith. *This includes the duty to avoid the danger if reasonably possible.*” (Emphasis added).

The jury found Onuko guilty of one count of second-degree assault with a dangerous weapon.

## DECISION

### **I. The district court’s self-defense jury instruction was plain error, but was not prejudicial.**

Onuko challenges the district court’s self-defense jury instruction arguing that the instruction allows for the jury to erroneously infer that he had a duty to retreat in his home before defending himself.

“Generally, a party waives the right to appeal a jury instruction by failing to object to it at trial.” *State v. Glowacki*, 630 N.W.2d 392, 398 (Minn. 2001). When an appellant fails to raise a timely objection, our review on appeal is limited to whether the jury instruction constituted plain error. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). Under the plain-error analysis, the appellant must show: (1) an error; (2) that was plain; and (3) that affected appellant’s substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

**A. *The district court’s jury instruction was plainly erroneous.***

Under the first prong of the plain-error analysis, a jury instruction is an error if it materially misstates the law. *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001). Under the second prong of the plain-error analysis, an error is plain if it is “clearly contrary to the law at the time of appeal.” *State v. Johnson*, 699 N.W.2d 335, 340 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005).

It is settled law in Minnesota that an individual does not have a duty to retreat from his or her home before defending himself or herself. *See Glowacki*, 630 N.W.2d at 402 (holding that a defendant does not have a duty to retreat from his own home, or a duty to avoid danger, before using reasonable force in self-defense). Because the district court’s instruction stated that the legal excuse of self-defense was only available to those who “act[ed] honestly and in good faith,” including “the duty to avoid the danger if reasonably possible,” the instruction was contrary to settled law and its inclusion constituted plain error.

***B. The district court's jury instruction did not affect Onuko's substantial rights.***

Under the third prong of the plain-error analysis, an error that is plain affects a defendant's substantial rights "if the error was prejudicial and affected the outcome of the case." *Griller*, 583 N.W.2d at 741. An error is prejudicial if there is a "reasonable likelihood that the giving of the instruction in question would have had a significant effect on the verdict of the jury." *Id.* An appellant claiming that an erroneous instruction affected his substantial rights bears a "heavy burden of proving that there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury verdict." *State v. Kelley*, 855 N.W.2d 269, 283 (Minn. 2014) (quotation omitted). "An erroneous jury instruction will not ordinarily have a significant effect on the jury's verdict if there is considerable evidence of the defendant's guilt." *Id.* at 283-84.

Onuko claims that the inclusion of the "duty to avoid" instruction was a prejudicial error that affected his substantial rights because: (1) it lessened the state's burden of proving beyond a reasonable doubt that Onuko did not act in self-defense; and (2) it made it impossible to determine whether the jury rejected Onuko's narrative of the events of that evening, or whether it accepted his version but concluded that he was guilty because he failed to avoid danger.

We reject Onuko's first argument because *Glowacki* makes it clear that the simple act of including a plainly erroneous self-defense jury instruction is not prejudicial per se. 630 N.W.2d at 403 (holding a self-defense instruction constituted plain error, but was not prejudicial). Under these circumstances, the inclusion of an erroneous jury instruction is

not sufficient to demonstrate that the state's burden of proof is somehow reduced. Therefore, the inclusion of the "duty to avoid" jury instruction does not, in and of itself, show prejudice.

For his second argument, Onuko relies on *Baird* to support the proposition that it is impossible to determine if the jury rejected his self-defense claim because they did not believe his version of the events that evening, or because he failed in his "duty to avoid." But *Baird* is distinguishable.

In *Baird*, the Minnesota Supreme Court determined that a plainly erroneous jury instruction on self-defense affected the defendant's substantial rights because "it [was] simply impossible to determine whether the jury rejected [the appellant]'s version of the facts or whether it accepted his version but concluded that he was guilty nevertheless because he failed to retreat." 654 N.W.2d at 114. The supreme court determined that Baird was prejudiced by the inclusion of the instruction because a reasonable jury could have found that Baird's actions were reasonable under the circumstances. *Id.*; see also *Glowacki*, 630 N.W.2d at 402 (noting that a defendant's use of force, though in self-defense, must still be reasonable).

Here, the record indicates that Onuko severely beat the victim with a wooden baseball bat. He fractured her jaw, snapped two bones in her hand, smashed her nose, shattered four of her teeth, and split-open her skin, leaving deep wounds on her face and around her mouth. A subsequent investigation of the apartment revealed a blood-like substance splattered on the floor in the living room, on the front door, and on a baseball bat in the grass in the backyard. Onuko suffered no injuries from the encounter. Unlike in

*Baird*, where a jury could determine that Baird’s conduct was reasonable, in light of the extensive and significant injuries inflicted on the victim by Onuko, we conclude that no reasonable jury could find Onuko’s force was reasonable. *See Baird*, 654 N.W.2d at 114; *see also Glowacki*, 630 N.W.2d at 403 (holding that when the injuries suffered by a victim significantly exceed the injuries expected based on a defendant’s version of events, the force used is unreasonable).

In addition, unlike in *Baird*, Onuko testified that he tried to take the baseball bat away from the victim and leave the apartment. Thus, a reasonable jury may have found this admission sufficient to conclude that Onuko satisfied the instructed requirement of avoiding or retreating from the danger before he defended himself.

Because no reasonable jury could find that the force used by Onuko was reasonable under the circumstances, we conclude that the erroneous instruction did not affect the jury’s verdict and thus, Onuko was not prejudiced by its inclusion. Accordingly, the giving of the instruction does not satisfy the plain-error test and Onuko is not entitled to a new trial.

## **II. Appellant’s ineffective-assistance-of-counsel claim fails.**

Onuko argues that his attorney’s failure to object to the inclusion of the “duty to avoid” instruction constituted ineffective assistance of counsel. Ineffective-assistance-of-counsel claims are reviewed de novo. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (citing *Strickland v. Washington*, 466 U.S. 668, 698, 104 S. Ct. 2052, 2070 (1984)).

The Sixth Amendment guarantees a defendant the effective assistance of counsel. *State v. Wright*, 719 N.W.2d 910, 919 (Minn. 2006). An appellant must show: “(1) that his counsel’s representation ‘fell below an objective standard of reasonableness’; and (2) ‘there

is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.”” *Nissalke v. State*, 861 N.W.2d 88, 94 (Minn. 2015) (quoting *Strickland*, 466 U.S. at 688, 694, 104 S. Ct. at 2064, 2068). “If a claim fails to satisfy one of the *Strickland* requirements, we need not consider the other requirement.” *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

To satisfy the second prong of *Strickland*, an appellant must show that an error was prejudicial and affected the outcome of the case. *State v. Bobo*, 770 N.W.2d 129, 138 (Minn. 2009). An error is prejudicial if there is a “reasonable likelihood that the giving of the instruction in question would have had a significant effect on the verdict of the jury.” *Griller*, 583 N.W.2d at 741.

Here, we have concluded that the giving of the clearly erroneous jury instruction did not prejudice Onuko. We also conclude that his attorney’s failure to object to the inclusion of the erroneous jury instruction did not prejudice Onuko. Because the record is replete with evidence that supports the jury’s determination of guilt, Onuko has failed to meet his burden in demonstrating that there is a reasonable probability that the verdict would have been different but for the attorney’s conduct. And because we find no prejudice, we need not assess the other *Strickland* prong. *See Mosley*, 895 N.W.2d at 591 (“If a claim fails to satisfy one of the *Strickland* requirements, we need not consider the other requirement.”).

Finally, we find no merit in the claims made by Onuko in his pro se supplemental brief, because appellant fails to cite any relevant authority to support his assertions of error. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (noting that inadequately

briefed issues are not properly before an appellate court), *review denied* (Minn. Aug. 5, 1997).

**Affirmed.**