STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0284

State of Minnesota,
Respondent,

vs.

Randall Jermaine Watkins,
Appellant.

Filed November 14, 2022
Affirmed
Gaïtas, Judge

Hennepin County District Court
File No. 27-CR-19-29686

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

Michael O. Freeman, Hennepin County Attorney, Peter R. Marker, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Worke, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Randall Watkins appeals his convictions, following a jury trial, for second-degree intentional murder and unlawful gun possession. Watkins argues that his trial counsel violated his constitutional right to the effective assistance of counsel by failing

to ask him on direct examination whether he intended to kill the victim. He also contends for the first time on appeal that the district court erred when it gave the jury a justifiable-taking-of-life instruction for an intentional killing because his defense was that he unintentionally killed the victim in self-defense. Watkins also raises multiple issues in a pro se supplemental brief. We conclude that (1) Watkins's ineffective-assistance-of-counsel claim fails because he cannot show that trial counsel's mistake was prejudicial, (2) the district court's justifiable-taking-of-life instruction was plain error but did not affect Watkins's substantial rights, and (3) the issues raised in Watkins's pro se supplemental brief do not warrant a new trial. We therefore affirm Watkins's convictions.

FACTS

On Thanksgiving Day in 2019, Watkins shot and killed R.G., his ex-girlfriend and the mother of his child. He was charged with second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1) (2018), second-degree unintentional murder, Minn. Stat. § 609.19, subd. 2(1) (2018), and being a prohibited person in possession of a firearm, Minn. Stat. § 624.713, subd. 1(2) (2018). During his jury trial, Watkins argued that he acted in self-defense and did not intend to kill R.G. when he shot her. The jury found him guilty of all counts, and the district court sentenced him to 480 months in prison.

Watkins filed a direct appeal but then stayed the appeal to raise a claim of ineffective assistance of counsel in a postconviction proceeding in the district court. He now challenges the district court's rejection of his ineffective-assistance-of-counsel-claim and the district court's self-defense jury instructions, and he raises additional issues in a pro se supplemental brief.

State's Trial Evidence

Watkins and R.G. were in a romantic relationship for approximately three years, which ended about a month before Watkins killed R.G. They had a daughter, who was two years old and present during the shooting.

At trial, respondent State of Minnesota presented evidence through the testimony of R.G.'s mother, father, and friend that Watkins had physically abused R.G. multiple times during their relationship. Watkins was never convicted of any crimes related to the alleged physical abuse of R.G.

While they did not live together at any point in their relationship, R.G. kept some of her belongings at Watkins's Minneapolis home. During the afternoon on Thanksgiving, R.G. went there to retrieve her clothing. She was unsuccessful, and there was a confrontation during which R.G. allegedly struck Watkins's car with her own car and then followed him. Watkins called 911 during this incident.

Responding to the 911 call, Officer Partyka arrived at Watkins's house around 5:00 p.m. The officer testified that R.G. was "frustrated" but "calm." Officer Partyka offered to accompany R.G. into Watkins's house so she could retrieve her clothes, but Watkins rejected this idea. The officer then suggested that the parties pick a specific date and time for R.G. to pick up her clothes. Watkins again refused. Eventually, R.G. returned to her parents' house.

Around 9:00 p.m., R.G. told her parents she would be "right back," and she returned to Watkins's house with their toddler to get her belongings. Before she left her parents' home, she told her friend that she was going to "box it out" with Watkins.

At 9:37 p.m., Watkins and R.G. both called 911 from Watkins's house. R.G. told the 911 operator that Watkins would not let her take her clothes and would not let her leave. When asked if there were weapons in the house, R.G. said she believed Watkins had a gun and a knife. During R.G.'s phone call, Watkins was audibly yelling in the background while making his own 911 call. Officers responded to these 911 calls, but no one answered Watkins's door, and officers did not see any lights on inside or hear any noise.

At 10:08 p.m., R.G. called her father. She told him that Watkins would not let her leave. Simultaneously, Watkins made another 911 call. During this call he repeatedly told the operator that R.G. had punched him in the face. He also stated that R.G. had kicked him twice. On the audio recording of the 911 call that was played for the jury, Watkins yelled at R.G. that she was "not taking nothing out here," and R.G. responded, "if you would just let me leave, I don't want to stay here."

Watkins then reported to the 911 operator that R.G. had a knife and had "stabbed him." While the 911 call continued, Watkins told R.G. to "move outta my way," and there was a single gunshot. Watkins told the 911 operator that R.G. had been shot, and the operator transferred Watkins to an emergency medical services dispatcher for instructions on how to begin CPR.

Officer Partyka responded to the shooting. While Officer Partyka waited for other officers to arrive, Watkins exited the house with his hands up and asked for help. Watkins was arrested. A gun, which was later determined to be a .357 revolver loaded with hollow-

point bullets,[1] was found in his back pocket. Watkins did not appear to be injured. Photos of Watkins taken after his arrest show that, apart from a small cut on the inside of his upper lip, he was unharmed. Watkins had no visible bruising or swelling on his face, and there were no stab wounds anywhere on his body.

Officer Partyka entered the house and found the toddler crying in the front room. R.G. was lying on the floor, unresponsive, between the kitchen and dining room. After repositioning her so he could administer aid, Officer Partyka saw blood, detected a faint pulse, and began CPR. Another officer pointed out a knife on the floor, which Officer Partyka later collected as evidence. R.G. was taken to North Memorial Medical Center where she was pronounced dead.

R.G.'s cause of death was a gunshot wound, and her death was deemed a homicide. According to the medical examiner, the bullet struck R.G. "on the left side of the back." It traveled from "back to front, left to right, and slightly downward," but the medical examiner was unable to determine exactly how R.G. was standing when she was shot. The medical examiner also noted that there were no injuries to R.G.'s hands.

Forensic testing of R.G.'s jacket revealed that the distance between R.G. and the muzzle of the revolver when it was fired was between 5 and 30 inches, a fact that Watkins acknowledged during his trial testimony. The major male DNA profile found on a swab from the revolver used to shoot R.G. matched Watkins and not R.G. Three other minor

[1] A hollow-point bullet is a type of bullet designed to expand when it hits a target.

DNA profiles were found on the swab from the gun, but none of those could be developed. R.G. could not be excluded as a source of a minor profile.

The knife found next to R.G.'s body was also submitted for forensic testing. Watkins's DNA was on a swab from the knife. Two other minor DNA profiles were found on the swab from the knife. The analyst could not develop the minor profiles and therefore could not exclude R.G. as a source.

Defense Trial Evidence

At trial, Watkins waived his privilege against self-incrimination and testified on his own behalf. He contested the state's characterization of his relationship with R.G., denying that he physically abused her. Instead, he claimed that R.G. was assaultive. He testified that R.G. stabbed him with a comb, admitted to a conviction for pulling a knife on security officers, and acknowledged stabbing all her previous boyfriends.[2]

Watkins also introduced a cell-phone video of an incident that occurred in 2019, which allegedly showed R.G. punching him. On cross-examination, Watkins admitted that the incident started when he pushed the ignition button of R.G.'s car while she was driving on the highway, forcing her to pull off the road.

According to Watkins, in the week leading up to the shooting, R.G. stayed overnight with him a few times but did not take her clothes when she left. R.G.'s ex-boyfriend testified on rebuttal that R.G. stayed with him those nights.

[2] A rebuttal witness for the state, one of R.G.'s previous boyfriends, denied that R.G. ever stabbed him.

To explain the conflict that Watkins and R.G. had earlier in the day before the shooting, Watkins introduced a video that he made while driving his car. In the video, he states that R.G. is following him. He admitted during his testimony that he refused to allow R.G. to retrieve her clothes, even after Officer Partyka responded and offered to escort R.G. into the house. Watkins explained that he wanted to return to his family for Thanksgiving and he was tired of R.G.'s attitude and harassment. He offered to allow R.G. to retrieve her clothes the next day.

When R.G. returned later that night to get her belongings, Watkins said she kicked him in the face as he bent down to greet his daughter and stated, "I'm in this bitch now, and I ain't going nowhere." After R.G. reportedly told Watkins that she "got motherfuckers waiting on you outside," he testified that he looked out the window and saw two figures in hoodies walking by, and assumed they were with R.G.

Watkins introduced the 911 call that he made at 9:37 p.m., shortly before the shooting. During that call, he told the 911 operator that R.G. had kicked him in the face and punched him multiple times. He also told the operator he was worried that R.G. had people waiting outside, and he wanted R.G. to leave. When asked by the 911 operator, Watkins denied having a gun. He admitted at trial that this was a lie.

After ending the 911 call, Watkins began recording videos on his cell phone. In the videos, which were introduced at trial, Watkins and R.G. continued to fight about R.G.'s belongings.

Watkins played the audio from his second 911 call at 10:08 p.m. He explained that, during that call, R.G. refused to leave, was punching him, and had hurt their daughter. The operator asked Watkins to give R.G. her belongings and Watkins refused.

During his testimony, Watkins provided his account of the shooting. He testified that, while he was still on the phone with 911, R.G. followed him into the kitchen. As he attempted to leave the kitchen, he heard a knife being removed from the dish rack and felt "wind from the knife go past the back of [his] neck" as R.G. swung the knife at him. He told the 911 operator, "[n]ow she got a knife," and "[s]he stabbed me." But in his testimony, Watkins testified that he meant to say that R.G. was "stabbing at me," not that he had been stabbed.

Watkins stated that as R.G. raised the knife in her right hand, she used her left hand to reach and knock down his "protective arm." He explained that, when he pulled out the revolver with his right hand, he shot R.G. in the back, left shoulder area. Watkins told the jury that he shot R.G. because he "was in fear for [his] life" and he did not want to "die in [his own] house." After shooting R.G., Watkins asked the 911 operator to send an ambulance and attempted to resuscitate R.G.

Motion to Recall Watkins

After the state called two rebuttal witnesses and before closing arguments, Watkins's trial counsel moved to recall Watkins as a witness. Trial counsel advised the court and the prosecutor that he had "inadvertently failed to ask [Watkins] questions about his intent, which is obviously a crucial area." The district court denied the motion and advised trial counsel that he would "have to argue the inference."

Jury Verdict and Sentencing

Although Watkins's trial counsel argued that Watkins shot R.G. in self-defense, and the district court instructed the jury on the law of self-defense, the jury rejected Watkins's self-defense claim and found him guilty of both intentional and unintentional second-degree murder, in addition to unlawful gun possession. The jury also found that the state proved the existence of an aggravating factor—that Watkins committed the offenses in the presence of the two-year-old daughter he shared with R.G. The district court departed from the sentencing guidelines based on the aggravating factor, sentencing Watkins to 480 months in prison—17 months more than the presumptive sentence prescribed by the sentencing guidelines.[3]

Postconviction Proceedings

In a petition for postconviction relief filed during the stay of Watkins's direct appeal, Watkins asserted that he received ineffective assistance of trial counsel because his counsel forgot, during the direct examination, to ask about Watkins's intent at the time of the shooting and about the basis for his self-defense claim. In support of the ineffective-assistance claim, Watkins submitted two affidavits. The first, from trial counsel, stated that he would have asked Watkins "about his intent when he showed the gun and when he fired the gun," and "if he intended to shoot to kill [R.G.], or only to stop her from assaulting or stabbing him." He also averred that he "would have asked if [Watkins] felt he had any

[3] The district court also imposed a concurrent 60-month sentence for the gun conviction.

choice at the time but to shoot her." Trial counsel admitted that the failure to ask these questions was "not a strategic decision," stating, "I simply forgot to ask them."

The second affidavit, from Watkins, contained the answers he would have provided to the questions that trial counsel forgot to ask. According to his affidavit, Watkins would have testified to the following:

> When I shot [R.G.], my intent was to stop her from stabbing me. I heard [R.G.] pick up a knife, I could not get away from her because I had been shot one month earlier, and that limited my ability to run away. Although I had the gun on my person, I never intended to remove it. But after she swung the butcher knife at me multiple times, in one motion, I pulled the gun out and shot it because she had pinned me in the dark kitchen. I did not have time to aim the gun at her and I could not see exactly where she was because it was dark and because I am partially blind. The whole event happened so quickly, and I was fearful for my life. I did not intent to kill her.
>
> If [trial counsel] had asked me if I intended to kill [R.G.], or only stop her from assaulting or stabbing me, I would have explained that my only intent was to stop her from stabbing me. I did not intend to kill her.
>
> If [trial counsel] had asked me if I thought I had any other choice than to shoot [R.G.], I would have testified that I did not have any other choice. I could not get away from her. She had barely missed me in her multiple attempts to stab me. I did not feel like I had any other choice. At the point I shot her, it was because she had a knife in her hands, had already attempted to stab me, and I had to choose between her stabbing me and me protecting myself. In this moment, I shot at her to stop her from stabbing me. I did not intend to kill her. I was only trying to stop a serious assault from happening.

In an order denying postconviction relief, the district court denied Watkins's request for an evidentiary hearing, finding that there were no material facts in dispute. The district court also determined that Watkins's trial counsel "presented a well-defended case" and

that his "performance did not amount to constitutionally deficient representation." It concluded that "[t]he questions were unnecessary" given the testimony already in evidence. The district court observed that trial counsel "did ask [Watkins] why he shot R.G. [Watkins] answered he was in fear of his life, didn't feel he deserved to die in his house, and R.G. wouldn't stop stabbing at him." Moreover, the district court determined that trial counsel's mistake did not prejudice Watkins because trial counsel "elicited many of the facts [Watkins] claims he would have testified to" using other questions. The district court reasoned that the evidence of intent presented at trial was strong and that the jury would have rejected Watkins's denial of his intent to kill because they had already rejected his other testimony regarding self-defense.

DECISION

I. Although trial counsel's representation was deficient, there was no violation of Watkins's constitutional right to the effective assistance of counsel because trial counsel's mistake did not affect the outcome of Watkins's trial.

Watkins argues that he was deprived of his constitutional right to the effective assistance of counsel because his trial counsel forgot to ask him about his intent and the basis for his self-defense claim during his trial testimony. In a case where intent was an element of the most serious murder charge and an element of an affirmative defense, trial counsel's failure to ask Watkins about his intent on direct examination was objectively unreasonable performance. But, because there is not a reasonable probability that the outcome of Watkins's trial would have been different if trial counsel had directly inquired about Watkins's intent, we conclude that Watkins's ineffective-assistance-of-counsel claim ultimately fails.

The right to effective assistance of counsel is guaranteed to all criminal defendants by the United States and Minnesota Constitutions. U.S. Const. amend. VI; Minn. Const. art. I, § 6. To establish a claim that counsel provided ineffective assistance of counsel in violation of this constitutional right, a defendant must satisfy both prongs of the test laid out in *Strickland v. Washington*. 466 U.S. 668, 687 (1984). First, the defendant must prove that counsel's performance "fell below an objective standard of reasonableness." *Id.* at 687-88. Second, the defendant must prove prejudice resulting from counsel's inadequate performance. *Id.* at 694. To prove prejudice, the defendant must show that, but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. *Id.*; *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). A defendant bears the burden of establishing both elements of an ineffective-assistance-of-counsel claim. *State v. Nowels*, 941 N.W.2d 430, 443 (Minn. App. 2020), *rev. denied* (Minn. June 16, 2020) (quoting *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987)).

Appellate courts "review a district court's application of the *Strickland* test de novo because it involves a mixed question of law and fact. 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) (citation omitted).

A. Trial counsel's performance fell below an objective standard of reasonableness because the questions counsel forgot to ask went directly to an element of the charge and the heart of Watkins's defense.

Because the state needed to prove intent beyond a reasonable doubt to convict Watkins of second-degree intentional murder,[4] Watkins argues it was objectively unreasonable for his trial counsel to forget to ask about his intent to kill R.G. during his trial testimony. In applying the first prong of *Strickland*, "there is a strong presumption that counsel's performance was reasonable." *Andersen*, 830 N.W.2d at 10. An attorney must exercise "the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." *State v. Gassler*, 505 N.W.2d 62, 70 (Minn. 1993) (quoting *White v. State*, 248 N.W.2d 281, 285 (Minn. 1976)). Counsel's performance need not be perfect, but "simply reasonable[] under prevailing professional norms." *Strickland*, 466 U.S. at 688; *accord State v. Bailey*, 132 N.W.2d 720, 724-25 (Minn. 1965) (quoting *U.S. ex rel. Weber v. Ragen*, 176 F.2d 579, 586 (7th Cir. 1949)).

While this court "generally will not review attacks on counsel's trial strategy," *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004), counsel's failure to inquire about Watkins's intent to kill R.G. was not a strategic decision but was instead a mistake. Mistakes alone do not rise to the level of ineffective assistance if counsel's performance, taken as a whole, was objectively reasonable. *See Bailey*, 132 N.W.2d at 724 ("Mere improvident strategy, bad tactics, mistake, carelessness, or inexperience do not necessarily

[4] A person commits second-degree intentional murder by "caus[ing] the death of a human being with intent to effect the death of that person or another, but without premeditation." Minn. Stat. § 609.19, subd. 1(1).

amount to ineffective assistance of counsel unless taken as a whole the trial was a mockery of justice."); *Yaraborough v. Gentry*, 540 U.S. 1, 6 (2003) ("[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.").

Yet, counsel's mistake in this case resulted in a failure to elicit testimony going to the heart of both the state's case and Watkins's defense. Minnesota courts will always examine an attorney's performance if it implicates a defendant's fundamental rights. *Williams v. State*, 764 N.W.2d 21, 31 (Minn. 2009). A criminal defendant has a constitutional due-process right to present a complete defense. *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009). This gives a defendant "the right to make all legitimate arguments on the evidence, to explain the evidence, and to 'present all proper inferences to be drawn therefrom.'" *Id.* (quoting *State v. Wahlberg*, 296 N.W.2d 408, 419 (Minn. 1980)).

Here, the state needed to prove Watkins's intent to kill R.G. beyond a reasonable doubt. Although Watkins's trial testimony strongly suggested that he did not intend to kill R.G., he was never explicitly asked about his intent, and he did not directly testify that he had no intent to kill. Trial counsel understood the importance of this testimony because he prepared Watkins for the question about his intent before trial and later moved to recall Watkins to testify about his intent. Given the circumstances here, we conclude that trial counsel's failure to ask Watkins the question that would have elicited an answer negating an essential element of the crime fell below the objective standard of reasonableness

expected of an attorney. As this statement regarding his intent was the cornerstone of Watkins's defense, trial counsel's mistake amounted to deficient performance.

B. Because Watkins's proffered testimony would not have changed the outcome of his trial, Watkins cannot establish that his trial counsel's deficient performance was prejudicial.

Although trial counsel's performance fell below an objective standard of reasonableness, Watkins's ineffective-assistance-of-counsel claim ultimately fails because he cannot meet his burden of showing prejudice under *Strickland*'s second prong. In determining whether an attorney's deficient performance was prejudicial—which requires a court to consider whether there is a reasonable probability that the outcome of the trial would have been different but for the deficient performance—we evaluate "the totality of the evidence before the judge or jury." *Andersen*, 830 N.W.2d at 10. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Watkins fails to meet this burden for three reasons.

First, the trial evidence of Watkins's intent to kill was strong. Watkins pointed a gun loaded with hollow-point bullets at R.G.'s left shoulder and pulled the trigger. Firing a single shot can be evidence of intent to kill depending on the surrounding circumstances. *State v. Chuon*, 596 N.W.2d 267, 271 (Minn. App. 1999), *rev. denied* (Minn. Aug. 25, 1999). In *Chuon*, for example, we determined there was sufficient evidence of the defendant's intent to kill where he fired a single shot from six to eight feet away that struck the victim in the shoulder blade, an area of the body that contained vital organs. *Id.* Likewise, in *State v. Fardan*, where the defendant fired a single shot into the victim's abdomen from three to five feet away and left the victim bleeding on the ground, the

Minnesota Supreme Court concluded there was sufficient evidence of the defendant's intent to kill. 773 N.W.2d 303, 321-22 (Minn. 2009); *see also State v. Whisonant*, 331 N.W.2d 766, 768 (Minn. 1983) (holding that firing a single shot from a pen gun at a victim who was 12 feet away was evidence of intent to kill). Unlike the defendant in *Fardan*, Watkins attempted to resuscitate R.G. However, he shot R.G. at very close range—at most, from thirty inches away. Additionally, his bullet struck her "on the left side of the back," a part of her body that contained vital organs. Watkins's assertion that he did not intend to kill R.G. would not have outweighed this strong circumstantial evidence of his intent to kill.

Second, it is unlikely that the jury would have believed Watkins's testimony about his intent. By finding Watkins guilty of both intentional and unintentional murder, the jury necessarily rejected his other testimony regarding self-defense. And other evidence significantly undermined Watkins's account of the incident. Although Watkins told the 911 operator that R.G. had stabbed him, he had no stab wounds. Indeed, he had no physical injuries except for a small cut on the inside of his lip. Watkins's DNA was on the knife that he claimed R.G. had wielded in the moments before he shot her. According to the medical examiner, R.G. was shot in the back. Given the jury's apparent rejection of Watkins's testimony and the other damaging evidence against him, it is unlikely that the jury would have accepted his proffered testimony about his intent.

Third, Watkins's proffered testimony would have added little to his trial testimony. The substance of the proffered testimony was presented at trial and considered by the jury. Watkins explained, for example, that he was not able to run away, that R.G. swung the

knife at him multiple times, and that he was in fear for his life when he pulled the gun out to shoot her. He testified that he chose to shoot R.G. to protect himself because he did not want to die in his own home. While Watkins did not succinctly tell the jury that he did not intend to kill R.G., this fact was a logical inference from his trial testimony. And as previously discussed, given the jury's rejection of Watkins's other trial testimony, it is highly unlikely that Watkins's proffered testimony would have swayed the jury.

Had trial counsel questioned Watkins about his intent and his basis for self-defense, the jury would not have gained much new information apart from Watkins's assertion that he did not intend to kill R.G. Because the jury clearly rejected Watkins's account of the incident and there was sufficient evidence to establish his intent to kill, we cannot say there is a reasonable probability that the outcome of the trial would have been different but for counsel's deficient performance. Watkins cannot satisfy prong two of *Strickland*, and therefore, his ineffective-assistance-of-counsel claim fails.

II. The district court plainly erred by instructing the jury on the type of self-defense that justifies an intentional killing because Watkins claimed that R.G.'s death was unintentional, but the error did not affect Watkins's substantial rights.

In instructing Watkins's jury on self-defense, the district court provided substantively different instructions for each of the two murder charges. As to count one, the second-degree intentional murder charge, it gave a modified pattern instruction for justifiable-taking-of-life. This instruction informed the jury that Watkins would have been justified in intentionally killing R.G. if he reasonably believed he was defending himself against great bodily harm or death. The introduction to the pattern instruction for

justifiable-taking-of-life typically states, "[t]he defendant asserts the defense of the justifiable taking of life." 10 *Minnesota Practice*, CRIMJIG 7.15 (2021). But the district court changed the introduction to state, "[t]he defendant asserts the defense of self to Count I." As to count two, the charge of second-degree unintentional murder, the district court gave the general self-defense jury instruction. That instruction informed the jury that Watkins would have been justified in using force against R.G. if he reasonably believed he was defending himself against bodily harm. Neither party objected to these instructions.

Now, for the first time on appeal, Watkins argues that the district court erred when it provided the jury with a self-defense instruction concerning the justifiable taking of life because Watkins's trial theory was that he *unintentionally* killed R.G. while defending himself. We agree that it is plain error to give such an instruction when a defendant's trial theory is that the defendant did not intend to kill the victim. But, because the jury found Watkins guilty of second-degree intentional murder, it necessarily rejected his trial theory that he unintentionally killed R.G. in self-defense. We therefore conclude that the error did not affect Watkins's substantial rights and reversal of his conviction is not warranted.

Generally, jury instructions are reviewed for abuse of discretion. *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019). "[A] district court abuses its discretion if the jury instructions 'confuse, mislead, or materially misstate the law.'" *State v. Taylor*, 869 N.W.2d 1, 14-15 (Minn. 2015) (quoting *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014)). When instructing on self-defense, a district court should use "analytic precision." *State v. Edwards*, 343 N.W.2d 269, 277 (Minn. 1984).

Watkins argues that an abuse-of-discretion standard of review should be applied here. *See Stay*, 935 N.W.2d at 429-30 (applying an abuse-of-discretion standard in considering whether the district court erred in providing a jury instruction over the defendant's objection). Based on our reading of the record, however, Watkins did not object in the district court to the jury instruction that he challenges on appeal.[5] We review an unobjected-to error under the "plain error test." *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). "In order to meet the plain error standard, a criminal defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant's substantial rights." *Id*. (citing *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998)). "An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). If Watkins satisfies the first three prongs of the plain-error test, this court "may correct the error only if it 'seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.'" *State v. Huber*, 877 N.W.2d 519, 522-23 (Minn. 2016) (quoting *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001)) (other quotation omitted).

[5] At trial, counsel said the following when discussing the justifiable-taking-of-life instruction: "You know, my preference of course would be to have an instruction that said that he only feared an offense against the person, because that's more in line with the law regarding defense of dwelling. But absent the court doing that, you know, this instruction, I think, is appropriate." *See State v. Kelley*, 832 N.W.2d 447, 451 (Minn. App. 2013), ("[A] party must state his point so definitely that the court may intelligently rule upon it."), *aff'd on other grounds*, 855 N.W.2d 269 (Minn. 2014).

A. It was plain error for the district court to give the justifiable-taking-of-life instruction given Watkins's trial theory.

Two forms of self-defense exist under Minnesota law. Under Minnesota's general self-defense law, a person can use reasonable force when "resisting or aiding another to resist an offense against the person." Minn. Stat. § 609.06, subd. 1(3) (2018). A person claiming this form of self-defense must only show that they reasonably feared "bodily harm." *See* 10 *Minnesota Practice*, CRIMJIG 7.13 (2021) (setting forth the elements of general self-defense). "The intentional taking of the life of another is not authorized by section 609.06, except when necessary in resisting or preventing an offense which the actor reasonably believes exposes the actor or another *to great bodily harm or death*." Minn. Stat. § 609.065 (2018) (emphasis added). This second form of self-defense is referred to as justifiable-taking-of-life. *See* CRIMJIG 7.15 (setting forth the elements of justifiable-taking-of-life self-defense).

Here, the district court gave both instructions, providing the justifiable-taking-of-life instruction as the affirmative defense to count one, second-degree intentional murder, despite recognizing that Watkins's trial theory of the case was that he did not intend to kill R.G. This was error. We observed in *State v. Pollard* that "[t]he Minnesota Supreme Court has repeatedly stated that it is error to provide the justifiable-taking-of-life instruction, instead of the general self-defense instruction, when the defendant asserts self-defense but claims that the death was not the intended result." 900 N.W.2d 175, 179 (Minn. App. 2017). The pattern jury instructions also explain this concept. *See* CRIMJIG 7.15, n.1 ("[The justifiable-taking-of-life instruction] should be given only when the death was

intentional. When the death was unintentional . . . [the general self-defense instruction] should be given.").

The state argues that there was no error because the district court appropriately "matched" the self-defense instructions to the intent elements of the charged offenses. According to the state, if the jury found that Watkins intended to kill R.G., the jury could consider the justifiable-taking-of-life instruction to determine whether the killing was justified. On the other hand, if the jury found that the killing was unintentional, the jury could refer to the general self-defense instruction.

But the Minnesota Supreme Court has stated that a justifiable-taking-of-life instruction is inappropriate when a defendant is charged with intentional murder but claims at trial that the killing was unintentional because the instruction "improperly implies that the defendant must believe it necessary to kill in order for the killing to be justified." *State v. Carridine*, 812 N.W.2d 130, 144 (Minn. 2012) (quoting *State v Marquardt*, 496 N.W.2d 806, 806 n.1 (Minn. 1993)). Here, giving the jury a justifiable-taking-of-life instruction for the second-degree-intentional-murder charge was error because that instruction imposed a greater fear-of-harm requirement on Watkins's self-defense claim to that offense. *See Pollard*, 900 N.W.2d at 180-81. In considering Watkins's self-defense claim to second-degree intentional murder, the jury was required to conclude that Watkins feared "great bodily harm or death," rather than "bodily harm," the lower fear-of-harm requirement for self-defense when a defendant claims, as Watkins's did here, that the

killing was unintentional.[6] Because the justifiable-taking-of-life instruction misstated the law governing Watkins's self-defense claim—that he unintentionally killed R.G. while defending himself—it was error. *See id.*

The state contends that the district court's modification to the justifiable-taking-of-life instruction cured any suggestion that a greater fear-of-harm requirement applied to count one. Yet, the modification simply changed the name of the self-defense instruction from "defense of justifiable taking of life" to "defense of self." The instruction itself still required the jury to find that Watkins believed it necessary to kill R.G. in self-defense, which is contrary to Minnesota law given Watkins's trial theory that the killing was unintentional.

Finally, the state contends that our *Pollard* decision—which we apply here—leads to absurd results because it allows a defendant's theory of the case to govern the required fear-of-harm element of self-defense. But it is well established that a defendant is entitled to an instruction on the defendant's theory of the case—including the defendant's specific self-defense theory—if there is evidence to support that theory. *State v. Pendleton*, 567 N.W.2d 265, 270 (Minn. 1997). And, if the district court concludes that the defendant has satisfied that burden, the district court's jury instruction must correctly state the law. *Id.* at 270-71. Thus, we are not persuaded that requiring a district court to provide a self-defense

[6] The justifiable-taking-of-life instruction given to the jury stated: "Under Minnesota law, no crime is committed when a person intentionally takes the life of another if the person's action was taken resisting or preventing an offense of a physical nature the person reasonably believed exposed him to death or great bodily harm. In order for the taking of a life to be justified for this reason, three conditions must be met . . . ."

instruction that reflects the defendant's defense theory is absurd. Because Watkins's theory was that he did not intend to kill R.G., the district court erred in giving the jury a justifiable-taking-of-life instruction for count one.

B. The plain error did not affect Watkins's substantial rights.

We next consider whether the erroneous jury instruction affected Watkins's substantial rights. "An erroneous jury instruction affects a defendant's substantial rights if the error was prejudicial and affected the outcome of the case." *Huber*, 877 N.W.2d at 525 (citing *Griller*, 583 N.W.2d at 741). Such an error "is prejudicial if there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury's verdict." *Id.* (quoting *State v. Watkins*, 840 N.W.2d 21, 28 (Minn. 2013)) (other quotation omitted).

Had the jury been provided the general self-defense instruction in connection with count one, it would have been required to decide whether Watkins reasonably believed R.G. would inflict "bodily harm," rather than "death or great bodily harm" as required for a justifiable intentional killing. *See* Minn. Stat. §§ 609.06, subd. 1(3), .065, subd. 1. Watkins argues that the more demanding standard of the justifiable-taking-of-life instruction erroneously provided by the district court surely impacted how the jury weighed the trial evidence, and in turn, affected the verdicts. We disagree.

Unlike *Pollard*, where we reversed the defendant's conviction for second-degree felony murder based on the district court's improper instruction for justifiable-taking-of-life self-defense, 900 N.W.2d at 182, the circumstances here do not suggest that the erroneous instruction influenced the jury's verdict. In *Pollard*, the defendant was acquitted

of second-degree intentional murder, which created doubt as to whether a properly instructed jury would have also acquitted the defendant of felony murder, an offense that did not require the intent to kill. *Id.* at 178, 182. Here, on the other hand, the jury found Watkins guilty of second-degree intentional murder, necessarily concluding that Watkins intended to kill R.G.

The Minnesota Supreme Court has instructed that prejudice cannot be inferred when a jury, erroneously given a justifiable-taking-of-life instruction, returns a guilty verdict for an intentional murder. In *Carradine*, a jury found the defendant guilty of first-degree premeditated murder after the district court improperly provided a justifiable-taking-of-life instruction. 812 N.W.2d at 134, 144. The supreme court concluded that the erroneous instruction did not affect the defendant's substantial rights because "the jury necessarily rejected [the defendant's] testimony that it "wasn't [his] intent to hit anyone"—a factual predicate to his argument regarding the [justifiable-taking-of-life] instruction." *Id.* at 144. Likewise, here, by returning a guilty verdict on second-degree intentional murder, we conclude that the jury in Watkins's case necessarily rejected the "factual predicate" to his general self-defense argument—that he did not intend to kill R.G. Furthermore, the jury applied the less demanding bodily-harm standard in considering whether Watkins was guilty of count two, unintentional second-degree murder. In finding Watkins guilty of that offense, the jury also rejected his general self-defense claim.

Watkins attempts to distinguish his case from *Carridine* because he was not given a chance to testify about his lack of intent due to his trial counsel's deficient performance. But as discussed, it was substantially implied from the testimony he did provide that this

was not his intent, and there was sufficient evidence to support the jury's finding that Watkins intended to kill R.G. Even with the correct instruction for count one, it is unlikely that Watkins's testimony about his intent would have changed the jury's verdict.

We conclude that, although the district court's justifiable-taking-of-life instruction was provided in error, the error did not affect Watkins's substantial rights. Thus, the error does not require a new trial.

III. The issues raised in Watkins's pro se supplemental brief do not warrant a reversal of his convictions.

As best we can determine, Watkins raises the following additional arguments in a pro se supplemental brief: (1) the district court erred in denying his requests for a bail reduction; (2) the state improperly withheld evidence for six months before trial before providing it to the defense; (3) the state improperly handled Watkins's personal property, which was taken from him at the time of arrest; (4) the district court violated Watkins's constitutional right to a speedy trial; (5) the state improperly redacted transcripts of the 911 calls presented at trial; (6) the state improperly relied on hearsay evidence regarding past domestic abuse; (7) the state improperly called rebuttal witnesses with outstanding warrants and who had already talked to the press; (8) the district court erred by not allowing Watkins's friend to testify on his behalf; (9) Watkins received ineffective assistance of counsel because his trial counsel failed to introduce a call showing that Watkins tried to resuscitate R.G., to call witnesses suggested by Watkins, and to cross-examine certain rebuttal witnesses; (10) the district court erred when it denied Watkins's request to give a self-defense instruction at the beginning of trial; (11) Watkins's constitutional right to an

impartial jury was violated; (12) the district court improperly supervised the jury during trial; (13) there was insufficient evidence to support a conviction for second-degree intentional murder; (14) the district court improperly relied on an incorrect presentencing report and was biased during sentencing; and (15) the district court's sentencing order was erroneous.

While Watkins does occasionally cite to the record in his pro se brief, he provides no citations to legal authority. "[P]ro se claims on appeal that are unsupported by either arguments or citations to legal authority" will not be considered. *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008). We have carefully reviewed Watkins's pro se supplemental brief and the record, and we conclude that Watkins is not entitled to relief on any of his claims because they either did not affect the outcome of the trial, were not preserved for appeal, were not supported by the record, were not supported by proper citation to the record on appeal, or were not supported by legal arguments or citations to legal authority.

In sum, we conclude that Watkins is not entitled to a new trial because he failed to establish that his trial counsel's deficient performance was prejudicial, the district court's erroneous justifiable-taking-of-life instruction did not affect his substantial rights, and his pro se arguments lack merit. We therefore affirm Watkins's convictions.

Affirmed.