

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0750**

State of Minnesota,
Respondent,

vs.

Abdirizak M. Mohamud,
Appellant.

**Filed May 1, 2023
Affirmed
Reyes, Judge**

Olmsted County District Court
File No. 55-CR-21-7178

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

Michael J. Spindler-Krage, Rochester City Attorney, Samuel T. Shabel, Assistant City Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Segal, Chief Judge; and Worke, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues on appeal from his conviction of violating a domestic-abuse no-contact order (DANCO) that the district court abused its discretion by not instructing the

jury (1) on the defense of necessity and (2) that it had to agree unanimously on which of two acts violated the DANCO. We affirm.

FACTS

In 2021, R.O. had an active DANCO against appellant Abdirizak M. Mohamud. At that time, appellant's nephew resided in R.O.'s trailer. On the evening of December 13, 2021, appellant received a call from his friend M.O. who informed him that R.O. wanted to kick his nephew out because his nephew did not want to go to school or help around the trailer. Following the call, appellant went to R.O.'s place to pick up his nephew. After arriving, appellant contacted his nephew who eventually came outside. A discussion turned into an argument. Appellant told his nephew that they had to go, but his nephew refused, grabbed a knife, and stabbed appellant in the abdomen. Appellant went inside R.O.'s trailer and collapsed.

At approximately 11:48 p.m. that night, police officers responded to a dispatch call relating to that stabbing incident. When Officer P. arrived at the scene, Officer P. briefly interacted with nephew until another officer instructed Officer P. to go inside the trailer to see if there was anyone injured. Officer P. walked up to the front door and saw a male sitting inside, later identified as appellant. Officer P. knocked a couple of times, and R.O. eventually answered the door. Officer P. asked whether they could come in, and R.O. consented. Upon entering, Officer P. observed "a blood trail next to the couch in the living room leading back towards the bedroom." Officer P. followed the trail and found appellant in the laundry room. They observed that appellant had lacerations on his stomach. At that point, officers called for an ambulance.

When the paramedics arrived, they advised appellant that he needed to go to the hospital, but appellant refused to get in the ambulance and stated that he would rather have R.O. take him to the hospital. During the investigation, officers learned of the existence of the DANCO. They also learned that the trailer they were in was a protected location included in the DANCO, which prohibited appellant from being there. Additionally, officers learned that R.O. had a felony warrant from Texas for theft. Upon learning that information, officers consulted each other, including a sergeant on the scene, and decided that appellant needed to go to the hospital. They allowed appellant to have R.O. drive him to the hospital because that was the only way appellant would go.

On December 14, 2021, at approximately 5:00 a.m., Officers P. and H. went back to the trailer to see if R.O. and appellant were there. When the officers arrived, they knocked on the front door several times. When they received no response, the officers walked to the back door and knocked one or two times. R.O. answered the door. Officer P. told R.O. that they wanted to follow up with appellant. She consented and led them to the bedroom where appellant was sleeping. Officer H. asked about appellant's stomach lacerations, and R.O. responded that the lacerations were not deep, so they gave him medication. R.O. relayed to Officer H. that the doctor had recommended a CAT scan, but appellant refused further treatment, so they released him.

Officer H. then arrested appellant for violating the DANCO, and Officer P. arrested R.O. for the felony warrant. Subsequently, Officer H. transported appellant to an Adult Detention Center where appellant claimed a medical situation. An ambulance was called, and appellant was transported to a hospital and had surgery.

Respondent State of Minnesota charged appellant, in an amended complaint, with violating a DANCO under Minn. Stat. § 629.75, subd. 2(b) (2020). The case proceeded to a jury trial. Before trial, appellant submitted a notice of the defense of necessity, which the district court later denied before closing arguments. At the beginning of trial, the district court instructed the state to discuss the stabbing incident on December 13 to provide more context as to what led to appellant going to the hospital. The district court explained:

I do think the jury is going to want to have the complete story and not half a story [Y]ou end up with half a story if you try to . . . pretend that the [December 13] business didn't happen because . . . the jury is going to wonder . . . did police really show up at five in the morning [on December 14] and get people out of bed

The jury found appellant guilty, and the district court sentenced appellant to four days in jail with credit for four days and stayed imposition of the remainder of the sentence. This appeal follows.

DECISION

I. The district court did not abuse its discretion by denying appellant's request for a jury instruction on the defense of necessity.

Appellant argues that the district court abused its discretion by refusing to instruct the jury on the defense of necessity. We are not persuaded.

“The district court has broad discretion in determining jury instructions and [appellate courts] will not reverse in the absence of [an] abuse of discretion.” *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). “District courts are allowed considerable latitude in selecting language used in the jury charge and determining the propriety of a

specific instruction.” *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002).

The necessity defense “applies only in emergency situations where the peril is instant, overwhelming, and leaves no alternative but the conduct in question.” *State v. Johnson*, 183 N.W.2d 541, 543 (Minn. 1971). “A necessity defense defeats a criminal charge if the harm that would have resulted from compliance with the law would have significantly exceeded the harm actually resulting from the defendant’s breach of the law.” *State v. Rein*, 477 N.W.2d 716, 717 (Minn. App. 1991), *rev. denied* (Minn. Jan. 30, 1992) (quotation omitted).

“A party is entitled to an instruction if the evidence produced at trial supports the instruction.” *State v. Hall*, 722 N.W.2d 472, 477 (Minn. 2006) (citation omitted). To be entitled to a jury instruction on the necessity defense, a defendant must make a prima facie showing of necessity and prove by a preponderance of the evidence that the necessity defense applies. *State v. Hage*, 595 N.W.2d 200, 205 (Minn. 1999). The necessity “defense exists only if (1) there is no legal alternative to breaking the law, (2) the harm to be prevented was imminent, and (3) there is a direct, causal connection between breaking the law and preventing the harm.” *Rein*, 477 N.W.2d at 717. Appellate courts “view the evidence in the light most favorable to the defendant.” *State v. Radke*, 821 N.W.2d 316, 328 (Minn. 2012).

Appellant’s necessity-defense arguments rest on two assertions. First, he argues that the district court should have analyzed the defense of necessity in relation to the

stabbing incident on December 13. Second, he asserts that he presented a prima facie case that he was in immediate peril after his hospital discharge.

His first assertion is misguided. The citation charge shows the offense date as December 14. The state further confirmed before trial that it only charged appellant for violating the DANCO when he returned to R.O.'s place on December 14 after his hospital visit and that it was not charging him for violating the DANCO on December 13 when the stabbing occurred. The district court therefore limited its scope of review to the December 14 incident.

As for appellant's second assertion, the district court carefully considered the necessity defense throughout the trial and waited until both parties rested before determining that appellant had not made a prima facie showing of necessity regarding the December 14 incident. The district court explained that there was "no evidence that [appellant] had to leave the [emergency room]." Rather, the evidence showed that the "physicians were . . . recommending [] him [for] further diagnostics." As a result, the district court determined that appellant had not shown that there was no legal alternative other than going to R.O.'s place.

The record supports the district court's determination. First, appellant could have stayed overnight at the hospital after the doctor recommended that he receive further treatment. Nothing in the record indicates that the hospital forced him to leave. To the contrary, the testimony established that the hospital wanted him to stay. Second, he could have stayed at his current residence in Stewartville. He had been residing there and could have taken a rideshare service to his residence. Third, he could have stayed at a hotel. On

cross-examination, he admitted to being employed, so he had the financial means to stay at a hotel for one night. In sum, the record shows that appellant had other legal alternatives than going back to R.O.'s trailer.

We conclude that the district court did not abuse its discretion by determining that the defense of necessity did not apply in this case.

II. The district court did not abuse its discretion by not instructing the jury on specific unanimity when the state elected one specific act to prosecute.

Appellant argues that the district court should have provided a unanimity instruction to the jury because the jury could have found a DANCO violation for either the December 13 or December 14 incident. We disagree.

Appellant did not request a unanimity jury instruction to the district court. We therefore review an unobjected-to jury-instruction claim for plain error. *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001). Plain error exists if: (1) there is error; (2) that is plain; and (3) the error affects the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If the appellate court finds that any prong is not satisfied, it need not address the others. *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017). However, when the three prongs are met, "we may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Crowsbreast*, 629 N.W.2d at 437 (quotation omitted).

"Verdicts in criminal cases must be unanimous." *State v. Begbie*, 415 N.W.2d 103, 105 (Minn. App. 1987), *rev. denied* (Jan. 20, 1988). "Whe[n] jury instructions allow for possible significant disagreement among jurors as to what acts the defendant committed,

the instructions violate the defendant's right to a unanimous verdict." *State v. Stempf*, 627 N.W.2d 352, 354 (Minn. App. 2001).

Here, the record does not demonstrate any plain error because appellant, the state, and the district court all focused only on the incident that occurred on December 14. Appellant's opening and closing statements mention only the December 14 date. The state only mentioned the December 14 incident when discussing the elements of the DANCO in its closing statement, noting that "[f]irst, on December 14, 2021 an existing court-ordered no contact order was in place." Furthermore, when the state described how appellant violated the DANCO, it only mentioned finding appellant in a bed next to R.O. in R.O.'s trailer, an area prohibited by the DANCO, on December 14. Finally, the district court's jury instructions focused on the December 14 incident, stating that "the defendant's act took place on or about December 14, 2021[,] in Olmstead County." Because all the parties focused on the DANCO incident that occurred on December 14, the jury instructions did not violate appellant's right to a unanimous verdict. As a result, there was no error that is plain.

Appellant relies heavily on *Stempf* to support his argument. *See Stempf*, 627 N.W.2d. In *Stempf*, the state charged defendant with a single count of drug possession but presented evidence of two separate acts of possession. *Id.* at 353. *Stempf* is distinguishable from this case because the state in *Stempf* contended in closing arguments that either one of the acts of possession could justify a conviction. *Id.* at 358. Here, the state charged appellant only for the act that occurred on December 14 when appellant returned to R.O.'s trailer after being discharged from the hospital. Moreover, the state mentioned the

December 13 incident only because the district court instructed the state to discuss that incident so the jury could understand why appellant needed to go to the hospital. *Stempf* is therefore distinguishable.

We conclude that the district court did not abuse its discretion by not providing a specific-unanimity jury instruction when the state only prosecuted appellant for one act.

Affirmed.