

*This opinion is nonprecedential except as provided by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
A22-1149**

State of Minnesota,
Respondent,

vs.

William Joseph Young,
Appellant.

**Filed July 3, 2023
Affirmed
Reyes, Judge**

Otter Tail County District Court
File No. 56-CR-21-513

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Eldien, Ottertail County Attorney, Fergus Falls, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this direct appeal from a conviction of second-degree assault, appellant argues that (1) the district court abused its discretion by denying his request to instruct the jury on self-defense and defense-of-dwelling; (2) the district court plainly erred by admitting a

witness's hearsay statement as a present-sense impression; (3) the prosecution engaged in prosecutorial misconduct by misleading the jury about the law in closing argument; and (4) the cumulative effect of these errors deprived appellant of a fair trial. We affirm.

FACTS

Appellant William Joseph Young and victim Z.S. were close friends. They had known each other since approximately 2010 and played music in a band together. Z.S. officiated at appellant's wedding, and they regularly showed up at each other's house uninvited. On the afternoon and evening of February 25, 2021, the two men played music and drank alcohol at Z.S.'s house. At some point, appellant became upset with Z.S. and accused Z.S. of "not doing enough" for him as a friend. When appellant became verbally aggressive, Z.S. asked him to leave, and appellant shoved Z.S. before he left.

After leaving Z.S.'s house, appellant called and texted Z.S. about a laptop that he had left at Z.S.'s house. Z.S. did not respond, so appellant asked A.J., appellant's half-sister, to get the laptop for him. A.J. went to Z.S.'s house and told him that he and appellant "should talk about it instead of fighting." At A.J.'s request, Z.S. brought the laptop and went with her to appellant's house in Fergus Falls.

When they arrived at appellant's house, A.J. walked in first, and Z.S. followed her. Neither A.J. nor Z.S. could recall whether they knocked on the door. Appellant was sitting in the living room, which was right next to the front door. Z.S. said "hey" or "what's up" to appellant. Appellant immediately attacked Z.S. near the entryway. Z.S. did not hit back or attack appellant. Instead, Z.S. stepped back outside as A.J. tried to break them up. Z.S. did not sustain any injury from this altercation. After Z.S. went outside, A.J. followed

appellant as he ran upstairs. Appellant kicked A.J. in her chest, which caused her to fall down the stairs. At this point, Z.S. went back inside the house. Appellant hit Z.S.'s side, hand, and head with a baseball bat. Z.S. left the house again and collapsed on the snow in the yard. He tried to crawl to a neighbor's house for help but could not reach the door.

Fergus Falls Police Officers A.R. and R.F. responded to a hang-up 911 call from near appellant's home at 3:57 a.m. on February 26, 2021. Officer A.R. arrived first and asked appellant about the 911 call. Appellant responded that he did not make the call. Appellant claimed that Z.S. "had forced his way into his house and assaulted him." Officer A.R. observed a big depression in the snow, which looked like someone had fallen there. Shortly after, Officer R.F. arrived and found Z.S. lying in the front yard of a home across the street from appellant's house while bleeding from a large hematoma on the left side of his forehead. Officer A.R. went over and observed Z.S.'s condition. Both officers thought that Z.S. was dead and started rubbing his sternum. Officer R.F. called an ambulance and followed Z.S. to Lake Region Hospital, where Z.S. received treatment and was able to describe what had happened. Z.S. told Officer R.F. that appellant struck him with a baseball bat in his side. Appellant tried to strike him a second time, but Z.S. managed to get a hold of the bat and threw it on the ground.

While Officer R.F. accompanied Z.S. to the hospital, Officer A.R. took a recorded statement from appellant. Appellant maintained that Z.S. attacked him. Officer A.R. saw two baseball bats while talking to appellant: an aluminum t-ball bat on the floor in the entryway and a wooden bat in the living room. Appellant stated that he had only "punched" Z.S. but did not "remember hitting [Z.S.] with a bat." Officer A.R. also noticed that

appellant wore two large rings on his right hand, had “something red” on his ring that might have been blood, and had bruising on his right pinky finger.

Respondent State of Minnesota charged appellant with second-degree assault with a dangerous weapon against Z.S., Minn. Stat. § 609.222, subd. 1 (2020); second-degree assault with a dangerous weapon against A.J., *Id.*; and two misdemeanor counts of domestic assault against A.J., Minn. Stat. § 609.2242, subd. 1(1)-(2) (2020). Prior to trial, appellant provided notice that he intended to assert the defenses of self-defense and defense of dwelling, and proposed jury instructions regarding them to the district court. The district court declined to instruct the jury on either defense.

The case proceeded to a jury trial. The state introduced into evidence four cellphone recordings Z.S. made while standing outside appellant’s house without objection. In one of the recordings, although the screen was dark, appellant can be heard yelling “Come in my f—king door again. Come in. Come in the f—king door motherf—ker.” Z.S. responded “Jesus Christ I’m your friend.” Appellant responded “I’m going to f—king kill you. I’m going to f—king kill you.” Z.S. asked appellant to “stop it,” after which two loud metallic clangs can be heard. Officer R.F. viewed all the cellphone recordings and opined that appellant’s version of the events appeared inconsistent with the recordings.

The state also introduced into evidence pictures of Z.S.’s bruises taken at the hospital. One picture shows a “long and oval” bruise on Z.S.’s head. Based on Officer R.F.’s training and experience, he opined that the bruise on Z.S.’s head likely resulted from being struck with a baseball bat rather than being punched by hand. Another picture showed that Z.S. had a small bruise forming at the base of his hand, consistent with Z.S.’s

description of him trying to catch the baseball bat when appellant swung the bat at him again. Z.S. was diagnosed with a closed-head injury, a concussion,¹ a forehead hematoma, a left-hand soft-tissue contusion, and a left lateral pelvis soft-tissue contusion. The jury found appellant guilty of second-degree assault with a dangerous weapon against Z.S. but not guilty of the three charges in relation to A.J. The district court sentenced appellant to 51 months in prison. This appeal follows.

DECISION

I. The district court did not abuse its discretion by denying appellant's request to instruct the jury on self-defense and defense-of-dwelling.

Appellant argues that the district court abused its discretion by denying his request to instruct the jury on self-defense and defense-of-dwelling. We are not persuaded.

We review a district court's determination of whether a jury instruction should be given for an abuse of discretion. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). A district court abuses its discretion by refusing to give an instruction on a defendant's theory of a case when the evidence provides a rational basis to support the defendant's theory. *Id.* at 625. If, however, the defense was not prejudiced by the district court's refusal to give a specific instruction, "there is no reversible error." *Id.* at 629. We view the evidence in a light most favorable to the party requesting the instruction. *State v. Jama*, 908 N.W.2d 372, 378 (Minn. 2018), *aff'd*, 923 N.W.2d 632 (Minn. 2019).

¹ Z.S.'s diagnosis noted that, although the CT scan did not show any evidence of brain bleed or fracture to the skull, it was still "quite probable" that Z.S. had experienced a concussion.

A. Self-defense

To obtain a self-defense instruction, a defendant must provide evidence to show: “(1) an absence of aggression or provocation; (2) an actual and honest belief that imminent death or great bodily harm would result; (3) a reasonable basis existed for this belief; and (4) an absence of reasonable means to retreat or otherwise avoid the physical conflict.” *State v. Soukup*, 656 N.W.2d 424, 428 (Minn. App. 2003), *rev. denied* (Minn. Apr. 29, 2003). When a defendant acts in self-defense within their home, there is no duty to retreat. *State v. Carothers*, 594 N.W.2d 897, 903 (Minn. 1999). “Once the defendant has met that burden [of production], the state has the burden of disproving one or more of these elements beyond a reasonable doubt.” *Johnson*, 719 N.W.2d at 629 (quotation omitted). A defendant may establish a self-defense claim by circumstantial evidence without testifying at trial. *Id.* at 630.

In the present case, the state introduced into evidence appellant’s statement to Officer A.R. that “[Z.S.] forced his way into [appellant’s] home and assaulted him” as a statement by a party-opponent. Minn. R. Evid. 801 (d)(2). Appellant did not testify at trial but argues that this statement alone supported a self-defense instruction. Appellant claims that he reasonably feared for his safety when Z.S. showed up at his house intoxicated and that Z.S.’s bruises on one hand evidenced that Z.S. was the first aggressor. Moreover, appellant maintains that he had no duty to retreat in his own house.

Viewing the evidence in a light most favorable to appellant, he still fails to establish a rational basis for the first and third prongs of the self-defense claim. To satisfy the first prong, it is not enough that appellant show that he was not the first aggressor, rather, he

must not have acted in aggression or provocation throughout the incident. *See Soukup*, 656 N.W.2d at 428. Here, the cellphone recording captured appellant’s words of provocation when he yelled “come in the f—ing door mother—ker.” Even after Z.S. tried to calm appellant down by assuring him that he was appellant’s friend, appellant continued to claim that he was going to “f—king kill” Z.S. Appellant therefore cannot satisfy the first prong.

As for the third prong, appellant did not have a reasonable fear of imminent death or great bodily harm. The uncontroverted evidence in the record establishes that Z.S. and appellant were long-term friends and frequently went to each other’s house uninvited, that Z.S. came to appellant’s house on the night of the incident with appellant’s sister; that Z.S. stepped outside the house after their initial altercation, and that Z.S. had his hands in his pockets and did not hit appellant when he re-entered the house after hearing A.J. falling down the stairs. Even were we to accept as true that appellant subjectively feared for his safety, that fear was not reasonable and so appellant cannot satisfy the third prong of the self-defense claim. We therefore conclude that the district court did not abuse its discretion by declining to instruct the jury on self-defense.

B. Defense of dwelling²

To obtain an instruction on defense of dwelling, a defendant must provide evidence to show that (1) they reasonably believed that they were resisting an interference with their

² At trial, appellant requested an instruction on defense of property, which the district court rejected. Appellant rephrased the claim on appeal as defense of dwelling, which is a defense based on property rights. *See State v. Glowacki*, 630 N.W.2d 392, 401 (Minn. 2001). Despite the difference in phrasing, we consider them to be the same issue.

lawfully held property and (2) they used reasonable force to defend their property. *State v. Pendleton*, 567 N.W.2d 265, 268 (Minn. 1997); *see also* Minn. Stat. § 609.06 (2020).

It was undisputed that appellant owned the house. However, appellant failed to come forward with evidence to show that he defended his house with reasonable force under the circumstances. To the contrary, the record shows that appellant used an unreasonable amount of force against Z.S. Appellant could have requested that Z.S. leave his house; instead, he incited Z.S. to enter. *See State v. Zimmer*, 478 N.W.2d 764, 765 (Minn. App. 1991) (holding that conviction for misdemeanor trespass requires proof that trespasser refuses to depart after demand by lawful possessor at time of trespass), *aff'd*, 487 N.W.2d 886 (Minn. 1992). Because appellant failed to show that he used reasonable force to defend his property, the district court did not abuse its discretion by declining to instruct the jury on defense of dwelling.

II. The district court did not plainly err by failing to exclude sua sponte a statement from Officer A.R.’s testimony.

Appellant claims that the district court plainly erred by failing to exclude a statement from Officer A.R.’s testimony. We disagree.

At trial, A.J. testified that she did not recall getting hit with a bat herself or seeing appellant hitting Z.S. with a bat. Subsequently during Officer A.R.’s testimony, the state asked: “Did [A.J.] tell you whether or not she observed that incident?” Officer A.R. responded: “Yes, so I had asked her what [] happened, and the first thing out of her mouth —.” Appellant objected on hearsay grounds before Officer A.R. could finish the sentence. The district court overruled the objection and allowed Officer A.R. to finish his sentence.

Officer A.R. then continued: “The first thing that [A.J.] said to me was, and I quote, ‘I got my butt beat.’” Based on the content of Officer A.R.’s statement, the district court admitted it as a present-sense impression. Minn. R. Evid. 801 (d)(1)(D). In doing so, the district court expressly stated that this ruling “pertain[ed] to that particular statement” by Officer A.R.

The state then continued to ask Officer A.R. about his conversation with A.J. from the day of the incident, and the following exchange occurred:

- Q: Now, you had a -- we were talking about this conversation that you were having with [A.J.], correct?
- A. Yes.
- Q. Based on that conversation, what was your understanding about whether or not a bat was used in the incident?
- A. *That one was used.*

(Emphasis added.) Appellant did not object either before or after Officer A.R. answered. Appellant argues that the district court erred by admitting Officer A.R.’s statement “that one was used” as a present-sense impression. However, the record does not show that the district court made such a ruling, given that its prior ruling was specifically limited to Officer A.R.’s prior statement that A.J. told him that she got her “butt beat.” Because appellant did not object to this later statement at trial, we review it for plain error. *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). “In order to meet the plain error standard, [an appellant] must show that (1) there was an error, (2) the error was plain, and (3) the error affected [appellant]’s substantial rights.” *Id.* (citation omitted).

Here, appellant fails to show error. Officer A.R.’s statement “that one was used” does not fit the definition of hearsay because it is not an *out-of-court* statement. Minn. R.

Evid. 801 (c). (“Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”) Because appellant fails to establish error, we need not address the other two elements of the plain-error analysis. Accordingly, we conclude that the district court did not plainly err by failing to exclude sua sponte this statement from Officer A.R.’s testimony.

III. The state did not engage in prosecutorial misconduct by misstating the law during its rebuttal argument.

Appellant argues for the first time on appeal that the state engaged in prosecutorial misconduct during its rebuttal argument. We are not persuaded.

We review unobjected-to prosecutorial misconduct under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). An appellant bears the burden of establishing error that is plain, but upon doing so, the burden shifts to the state to prove that there is no reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury’s verdict. *Id.* “To evaluate the effect on substantial rights, [appellate courts] consider various factors, including the pervasiveness of improper suggestions and the strength of evidence against the defendant.” *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017) (quotation and citation omitted). “If the [s]tate fails to demonstrate that the alleged error did not affect the defendant’s substantial rights, [appellate courts] consider whether the error should be addressed to ensure fairness and the integrity of judicial proceedings.” *Id.*

In its closing argument, the state argued that it had proven beyond a reasonable doubt that appellant assaulted Z.S. with a baseball bat. Appellant maintained that he hit Z.S.'s head with his fist instead of a bat, emphasizing that, while Z.S. was bleeding from his head, there was no blood on the baseball bat. During rebuttal, the state responded with two arguments. It first pointed out that Z.S. was approximately three inches taller than appellant, making it unlikely that appellant could have hit Z.S.'s head with his rings and cause those injuries. The state alternatively argued that, even if the jury were to accept that appellant hit Z.S. with his fist, appellant's large rings could be dangerous weapons within the meaning of Minn. Stat. § 609.222, subd. 1 (2020).

A dangerous weapon is “[a] device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.” Minn. Stat. § 609.02, subd. 6 (2020). Great bodily harm in turn is defined as “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm. Minn. Stat. § 609.02, subd. 8 (2020). Whether an object or a body part qualifies as a dangerous weapon depends on the circumstances of the assault rather than the injuries of the victim. *See State v. Davis*, 540 N.W.2d 88, 89 (Minn. App. 1995). In *Davis*, we held that Davis's hands and feet constituted dangerous weapons because he used them “in a manner likely to produce death or great bodily harm,” even if the victim did not suffer great bodily harm. *Id.* at 91.

Here, the state argued that appellant's large rings were no different than “brass knuckles” and could constitute dangerous weapons. This was an issue of fact properly left

for the jury to decide. *See Davis*, 540 N.W.2d at 90 (stating that whether defendant used their hands or feet as dangerous weapons is question of fact). Had the jury found that appellant struck Z.S. with large rings on his hand in a manner that was likely to produce death or great bodily harm, then the jury could have found that the rings constituted dangerous weapons within the meaning of section 609.222, subdivision 1. The state therefore did not engage in prosecutorial misconduct.

IV. The cumulative effect of alleged errors did not deny appellant a fair trial.

Appellant argues that the cumulative effect of alleged errors denied him a fair trial. We disagree.

The supreme court has held that, “in rare cases, the cumulative effect of trial errors can deprive a defendant of his constitutional right to a fair trial when the errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the defendant’s prejudice by producing a biased jury.” *State v. Davis*, 820 N.W.2d 525, 538 (Minn. 2012) (quotation omitted). Having denied appellant’s claims of alleged errors, we further deny appellant’s argument based on their cumulative effect.

Affirmed.