STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1348

State of Minnesota,
Respondent,

vs.

John Thomas Quitter,
Appellant.

Filed December 15, 2025
Affirmed in part, reversed in part, and remanded
Ede, Judge

Pine County District Court
File No. 58-CR-22-740

Keith Ellison, Attorney General, Peter Magnuson, Thomas Ragatz, Jacob Campion, Assistant Attorneys General, St. Paul, Minnesota; and

Reese Frederickson, Pine County Attorney, Pine City, Minnesota (for respondent)

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

Considered and decided by Ede, Presiding Judge; Frisch, Chief Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

This direct appeal, which was stayed and remanded for postconviction proceedings, arises from final judgments of conviction for second-degree intentional murder, two counts of second-degree unintentional murder, possession of ammunition or a firearm after being convicted of a crime of violence, and fleeing a peace officer in a motor vehicle. In challenging his convictions and sentence, appellant argues: (1) that the district court abused its discretion by rejecting his postconviction claims (A) that he was entitled to a new trial based on newly discovered evidence and (B) that his trial counsel rendered ineffective assistance; (2) that the court abused its discretion in instructing the jury about the duty to retreat; (3) that plain-error prosecutorial misconduct arising from closing arguments about the self-defense standard warrants reversal; (4) that the court plainly and prejudicially erred by allowing the state to improperly introduce certain testimony about the use of force and to misuse that evidence in arguing against appellant's self-defense claim; (5) that appellant was deprived of a fair trial by the cumulative effect of trial errors; and (6) that, in calculating appellant's criminal-history score, the court abused its discretion. We affirm appellant's convictions. But we reverse his sentence and remand for respondent to further develop the sentencing record so that the district court can appropriately determine appellant's criminal-history score.

FACTS

Respondent State of Minnesota charged appellant John Thomas Quitter with: second-degree intentional murder, in violation of Minnesota Statutes section 609.19, subdivision 1(1) (2022); second-degree unintentional murder while committing second-degree assault, in violation of Minnesota Statutes section 609.19, subdivision 2(1) (2022); second-degree unintentional murder while committing intentional discharge of a firearm, in violation of Minnesota Statutes section 609.19, subdivision 2(1); possession of ammunition or a firearm after being convicted of a crime of violence, in violation of

Minnesota Statutes section 624.713, subdivision 1(2) (2022); and fleeing a police officer in a motor vehicle, in violation of Minnesota Statutes section 609.487, subdivision 3 (2022).

According to the complaint, Quitter fatally shot C.A. in the chest with a shotgun on September 6, 2022. When police later attempted to stop Quitter while he was driving, Quitter fled. Quitter pleaded guilty to possession of ammunition or a firearm after being convicted of a crime of violence and proceeded to a jury trial on the remaining offenses, after which he was found guilty of all charges. The following recitation of facts stems from the record of the trial and postconviction proceedings.

Trial Evidence

Quitter and J.R. dated between 2017 and 2020. While they were dating, Quitter and J.R. lived in a trailer on property in Hinckley that was owned by R.B., who was a friend of J.R. By September 2022, Quitter and J.R. were no longer dating but remained friends. At that time, J.R. was dating C.A. and no longer lived with Quitter in the trailer, but she often visited when she and C.A. argued, which was frequent because of their "tumultuous" relationship. While C.A. never hit J.R., he did shove her, held her down against her will, and threatened her life. J.R. recorded herself and C.A. fighting "multiple times," and she shared those recordings with Quitter.

On the night of September 5, 2022, J.R and C.A. used methamphetamine before driving from Brainerd to R.B.'s apartment in Hinckley. They argued along the way and arrived around 2 a.m. on September 6. J.R. and C.A. continued to argue at R.B.'s apartment. About an hour later, J.R. and C.A. drove to Quitter's trailer to retrieve some of J.R.'s belongings. Their quarrel persisted.

When they got to the trailer, J.R. left C.A. and went inside. Quitter was sitting on a couch and J.R. went into a bedroom, from which she watched C.A. drive away from the property. J.R. exited the trailer to collect some items that she had left in the yard. C.A. returned while J.R. was outside, and their argument resumed. Once more, C.A. left the property and J.R. went back to the trailer bedroom.

When C.A returned a third time, he spoke to J.R. through the bedroom window, asking if she had a methamphetamine pipe. After J.R. stated that she did not, C.A. walked toward the front door of the trailer and Quitter yelled, "Don't touch that f'ing door handle." C.A. did not touch the door handle, stated that he was "not even at the door" but rather was "at the window," and called Quitter by his first name, "John." Quitter responded by saying, "What the F do you want?" C.A. moved back to the bedroom window, looked at J.R., and punched the glass, shattering it "all over" J.R. and causing her to scream.

C.A. stepped away from the window and walked toward his vehicle. J.R. heard the trailer door open, followed by the sound of a gunshot and C.A. saying, "You shot me." She screamed and ran outside. As J.R. did so, she heard C.A. open the door, start his vehicle, and hit the accelerator. J.R. approached the vehicle and saw that C.A. did not "have any control over what he was doing," could not hear her, and could not speak. In this unresponsive state, C.A. leaned from the driver's seat toward the middle of the vehicle. After she yelled at Quitter to take C.A. to the hospital, J.R. saw Quitter approach from behind the trailer with a gun but did not see what Quitter did with the firearm.

Quitter drove C.A. to the hospital, arriving around 6 a.m. C.A. was not breathing, had no pulse, felt cool to the touch, and his pupils were fixed and dilated. Hospital staff tried to revive C.A. without success, and C.A. was declared dead at 6:15 a.m. A medical examiner later confirmed that the cause of C.A.'s death was the shotgun wound to his chest. Despite being told that he needed to stay because sheriffs were on their way, Quitter did not remain at the hospital; instead, he left a note with his name, a partial address for R.B.'s property, and J.R.'s telephone number.

Deputies responded to a call from the hospital about a gunshot wound victim at about 6:21 a.m. At the scene of the shooting, an investigator found broken glass from the window, a shotgun shell in front of C.A.'s vehicle, and a shotgun near a tree line north of the trailer. Deputy J.M. attempted to locate Quitter, including by checking various addresses and searching for his vehicle. Law enforcement also tracked and went to the location of Quitter's cell phone. There, Deputy J.M. observed Quitter swerving in his vehicle on a gravel road, followed him, and activated his emergency lights. Quitter did not stop and continued to drive away at approximately 80 miles per hour. Another deputy used his vehicle to drive Quitter into a ditch, where law enforcement had to forcibly remove Quitter from his vehicle.

During Quitter's arrest, Deputy J.M. drew his firearm because he was unsure if Quitter had a weapon and because Quitter's flight from law enforcement suggested that he was uncooperative. In the context of explaining his actions, Deputy J.M. testified that law enforcement "commonly train[s] on what's commonly classified as a 21-foot rule," which is "a general understanding" that, at a distance of "21 feet and closer, [a] threat elevates exponentially." He elaborated that, "if a suspect is within 21 feet and wants to harm [an officer], they are more likely to be able to reach [the officer] before [the officer] can react." In addition, Deputy J.M. stated that this threat assessment "changes with a firearm, because a firearm can be fired at a greater distance." And Deputy J.M. said that, if a suspect is unarmed and at a distance of greater than 21 feet, "[i]t would still be a threat but it would be a lower threat; a lower-level threat if they're unarmed and [at a] greater distance."

Deputy J.M. provided this testimony on redirect examination, during a colloquy that began with the prosecutor asking whether the deputy had received information during his use-of-force training about "distances as to when someone's threat level increases." Quitter objected to that question as "outside the scope" of cross-examination, but the district court overruled the objection. During the remainder of Deputy J.M.'s redirect examination, Quitter did not object.[1]

Once in police custody, Quitter gave conflicting stories about the events during the morning of September 6, 2022. He told the investigator: that he did not know how C.A. was shot and denied shooting him; that he accidentally shot C.A. after seeing an animal outside the trailer; that he fired a round while C.A. and J.R. were in the truck to distract them because they were arguing; that shooting C.A. directly in the chest would not distract C.A. and J.R. but rather "would be trying to kill [C.A.]"; that he fired into the air to make

[1] Quitter cross-examined Deputy J.M. about his experience as a use-of-force instructor. Deputy J.M. testified that the difficulty, dangerousness, and seriousness of Quitter's arrest would have been magnified if it were dark out, if the deputy were alone, and if Quitter had threatened law enforcement.

a point that C.A.'s behavior was stupid; and that he did not think that the shot he fired would harm C.A because of the distance between them.

A forensic scientist testified that the shotgun was about 30 to 42 feet away from C.A. when it was fired.

Closing Arguments, Duty-to-Retreat Jury Instruction, and Sentencing

In summation, the prosecutor relied on Deputy J.M.'s use-of-force testimony to argue that Quitter's discharge of his firearm was not a reasonable use of force:

> [C.A.] wasn't in the bedroom. He was . . . at the truck. It is not a reasonable belief based on the evidence that [C.A.] would have gone from being a guy that yells and sometimes pushes to being a guy who is about to shoot someone just because he broke a window. [C.A.] made no threats. He didn't try to get in the house. He was leaving. A reasonable person would not have responded to these circumstances by killing [C.A.] And no reasonable person who wasn't trying to kill [C.A.] would have fired a shotgun anywhere near the direction where [C.A.] was standing, especially in the dark. Deputy [J.M.] testified that, if you see a gun, you would have to evaluate that; that would mean the person is a higher threat. You still don't shoot just because you see a gun. It is a factor to consider. And if a person is unarmed, that changes the evaluation completely. You look at all of the circumstances. And if the person does appear to be a threat, it's when they get to about 21 feet away from you that you have to decide if you have to act. That's not just any person who is 21 feet away from you. That's someone who you have other specific reasons to believe is a threat to you in that moment.
>
> [C.A.] was at least 33 feet away from the defendant when the defendant decided to kill him.

Later in the argument, the prosecutor continued asserting that Quitter's decision to shoot C.A. was not a reasonable use of force:

> Defendant's actions were unreasonable under the circumstances. He didn't wait to find out what, if anything, [C.A.] was going to do. He didn't try to say anything to him. Defendant claims what he did was fire a warning shot. That doesn't really suggest he was in fear of immediate harm if he thought he was just distracting [C.A.] Firing a shotgun in someone's direction is imminently dangerous, whether it's as a distraction, a warning, or because you want to hurt them. . . . You don't point guns at people unless you are planning to shoot them or willing to shoot them, at least. A warning shot, a distraction shot, that could have been fired in a direction away from [C.A.] Do you remember that large field to his left, open sky above him? He could have yelled at [C.A.] to leave and waited to see how he responded, said something, anything to him about what was going on. But taking a life should be reserved for situations where [a] defendant feels he or someone else is in immediate danger, not just of harm but of great bodily harm or death. There is no evidence to support that that was a reasonable belief in this case. A reasonable person in similar circumstances would not have taken these actions. Paying for a broken window with his life? Paying for being a bad boyfriend with his life? A reasonable person would not have fired that shotgun anywhere in the direction of [C.A.,] let alone directly at his chest. There was no imminent danger. . . . That's not self-defense.

During rebuttal, the prosecutor further contended that it was unreasonable for Quitter to have fired the gun at C.A.:

> Defendant said he reacted to what happened. That's what defense counsel just said defendant did. He reacted to what happened. He didn't act to prevent an ongoing imminent threat. He reacted to a prior act of violence with the breaking of the window. . . . I am not trying to downplay that there was not [sic] domestic violence in the relationship between [J.R.] and [C.A.] Pushing her, shoving her to the ground, that is absolutely domestic violence. What I'm saying is that there was no reason to suggest that his behavior that day was turning from pushing her down to I'm going to murder you. And that's the threat that needs to have been neutralized in order to take a life.

Quitter did not object to these arguments by the state. But he did address the state's assertions about Deputy J.M.'s use-of-force testimony by arguing:

> Deputy [J.M.] . . . said, if it was nighttime and he couldn't see, that would magnify the threat. He said, if he was alone and didn't have his partners there, it would magnify the threat. He said, if . . . Quitter had done anything threatening, that would have magnified the threat.

Over Quitter's objection, the district court instructed the jury that "[t]he defendant has a duty to retreat or avoid the danger if reasonably possible, except the defendant has no duty to retreat when acting in defense of self or others in his home." The district court also informed the jury that, if an attorney's argument contained any statement of law that differed from the law that the court provided the jury, the jury needed to disregard such a statement.

The jury found Quitter guilty of all charges. In June 2023, the district court sentenced Quitter to 391 months' imprisonment—which was the high end of the presumptive sentencing guidelines range—on the second-degree-intentional-murder charge. The district court did not pronounce sentence on the remaining counts. In deciding that Quitter's criminal-history score was one, the district court relied on two 2018 convictions for fifth-degree possession of marijuana. For each of these convictions, the district court determined that Quitter received 0.5 criminal-history points. According to a confidential presentence investigation report (PSI), one of the 2018 convictions arose from district court case number 13-CR-15-898, which had an offense date of November 1, 2015.[2] Quitter did not challenge his criminal-history score at sentencing.

Postconviction Proceedings

On June 11, 2023, almost two months after trial and two days before the sentencing hearing, J.R. purportedly provided to Quitter's mother an audio recording of C.A. making threats against Quitter before the charged incident. In the recording, C.A. allegedly stated that he "wanted to make a minced meatball out of [Quitter's] f---ing head like soft hamburger when [he was] done with it" and that C.A. "would stop before [Quitter was] . . . dead so he could be a vegetable."

Quitter filed a notice of appeal in September 2023. We later granted his motion to stay this appeal and, in April 2024, he petitioned for postconviction relief in the district court. Quitter sought an evidentiary hearing on the petition and a new trial on the charges against him based on claims that he had received ineffective assistance of trial counsel and that the audio recording merited a new trial. In particular, Quitter asserted that his trial counsel was ineffective for failing to discuss with him and to request a lesser-included offense of first-degree heat-of-passion manslaughter, despite the existence of facts supporting that instruction. Quitter also maintained that the recording of C.A.'s threats against him qualified as newly discovered evidence that warranted a new trial.

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[2] Materials filed as confidential in the district court remain nonpublic on appeal. Minn. R. Civ. App. P. 112.02, subd. 1. But we are not precluded "from mentioning the contents" of confidential or sealed documents when the information is "relevant to the particular issues or legal argument being addressed in the proceeding." Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 4. Because it is relevant to the sentencing issue Quitter argues in this appeal, we accordingly provide a limited recitation of the facts set forth in the PSI.

In May 2024, the district court filed findings of facts, conclusions of law, and an order summarily denying Quitter's postconviction petition. Quitter later filed a motion for reconsideration and again requested an evidentiary hearing. Although the district court denied Quitter's motion for an evidentiary hearing on the issue of newly discovered evidence, the court granted his motion for an evidentiary hearing as to his ineffective-assistance-of-trial-counsel claim. At the hearing, Quitter and his trial counsel testified.

Quitter testified that his trial counsel had never discussed with him that first-degree heat-of-passion manslaughter was a potential lesser-included offense in his case and that the first time that he had heard the term "heat-of-passion" was at sentencing. During his testimony, Quitter admitted that he did not remember whether he had made a certain statement at sentencing and did not recall every conversation he had with his trial counsel, including discussions about discovery, whether to testify, and closing arguments.

Trial counsel testified that, although he did not recall the specific conversation in which he discussed lesser-included offenses with Quitter, he was "confident it was discussed because at each stage of [the] process, . . . [he had] discussed at length strategy decisions with . . . Quitter" and lesser-included offenses "would be . . . a legal strategy." He testified that this discussion would have occurred "around the time" of "the end of trial." Trial counsel elaborated that he "kept . . . Quitter apprised of everything that was happening in terms of process" and that he "also kept him apprised of what [his] strategy was in this case." According to trial counsel, this included the decision whether to "request . . . a lesser-included" instruction, which trial counsel considered to be "under the umbrella of strategy" and was an option that he was "confident . . . [he had] conveyed" to

Quitter. And trial counsel did not remember Quitter specifically saying that he did not want trial counsel to ask for a heat-of-passion manslaughter instruction.

Trial counsel also acknowledged that, in a memorandum that he filed before the sentencing hearing, he referred to first-degree manslaughter in arguing for a durational departure. And he admitted that, during the sentencing hearing, he stated that he "should have raised the issue of having a lesser-included offense of heat-of-passion murder and [he] didn't." But trial counsel also testified that he "made a strategy decision . . . not to seek a lesser-included" instruction and only "[a]fter the fact, when . . . [Quitter] was found guilty of every count, [did he] decide[] that maybe [he] should have asked for a lesser-included [instruction], because then [he] would have [had] a stronger argument" for a durational departure. Trial counsel reiterated that he was "confident [that a conversation with Quitter about lesser-included offenses] happened because [he] kept him apprised of everything that was happening in terms of process and strategy." And trial counsel stated that, "as it relates to that strategy decision, [he] made a decision" and "didn't seek the lesser-included" offense. The district court noted that Quitter "nodded along in agreement throughout [trial counsel's] testimony . . . as [trial counsel] outlined the hard work he undertook to defend" Quitter.

In February 2025, the district court filed findings of fact, conclusions of law, and an order that again denied Quitter's postconviction petition based on reasons detailed below.

Following our March 2025 order dissolving the stay, this appeal proceeded.

DECISION

Although Quitter asserts seven arguments, we reorganize them as follows for ease of discussion. Quitter contends: (1) that the district court abused its discretion by rejecting his postconviction claims (A) that he was entitled to a new trial based on newly discovered evidence and (B) that his trial counsel rendered ineffective assistance; (2) that the court abused its discretion in instructing the jury about the duty to retreat; (3) that plain-error prosecutorial misconduct arising from closing arguments about the self-defense standard warrants reversal; (4) that the court plainly and prejudicially erred by allowing the state to improperly introduce certain testimony about the use of force and to misuse that evidence in arguing against appellant's self-defense claim; (5) that appellant was deprived of a fair trial by the cumulative effect of trial errors; and (6) that, in calculating appellant's criminal-history score, the court abused its discretion. We address each argument below.

I. The district court acted within its discretion in denying Quitter's petition for postconviction relief.

Appellate courts "review the denial of a petition for postconviction relief, including the petitioner's request for an evidentiary hearing, for an abuse of discretion." *Campbell v. State*, 916 N.W.2d 502, 506 (Minn. 2018). "A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Ries v. State*, 920 N.W.2d 620, 627 (Minn. 2018) (quotation omitted). Appellate courts review the district court's "legal conclusions de novo and its findings of fact for clear error." *Rhodes v. State*, 875 N.W.2d 779, 786 (Minn. 2016).

A. Newly Discovered Evidence

As to his claim that the recording of C.A.'s threats against him qualified as newly discovered evidence, Quitter argues that the district court abused its discretion because the recording "was relevant, admissible, and likely would result in a more favorable conclusion on retrial." This argument is unavailing.

A postconviction petitioner is entitled to an evidentiary hearing "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2022). The Minnesota Supreme Court "ha[s] interpreted section 590.04 to require the petitioner to allege facts that, if proven, would entitle him to relief." *Dobbins v. State*, 788 N.W.2d 719, 728 (Minn. 2010). "A postconviction court . . . need not hold an evidentiary hearing when the petitioner alleges facts that, if true, are legally insufficient to entitle him to the requested relief." *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012).

> When determining whether to grant a new trial based upon newly discovered evidence, a defendant must prove the following: (1) that the evidence was not known to the [petitioner] or his/her counsel at the time of the trial; (2) that the evidence could not have been discovered through due diligence before trial; (3) that the evidence is not cumulative, impeaching, or doubtful; and (4) that the evidence would probably produce an acquittal or a more favorable result.

Rainer v. State, 566 N.W.2d 692, 695 (Minn. 1997). Failure to meet a single prong of the *Rainer* test is dispositive. *Miles v. State*, 840 N.W.2d 195, 201 (Minn. 2013).

The district court ruled that Quitter was not entitled to an evidentiary hearing because he "ha[d] not established that he meets the four prongs of the *Rainer* test by a preponderance of the evidence." As to the fourth prong, the district court reasoned that, because J.R. told Quitter about the recording after trial, Quitter was "surely unaware of the statements when he shot and killed the victim." The district court determined that Quitter's "claim . . . fail[ed] the fourth prong of the *Rainer* test" because, "at the time [Quitter] shot and killed the victim, he was unaware that the statements had been made," such that the "evidence would not be likely to produce an acquittal or a more favorable result because it could not have influenced [Quitter's] actions" and he could not "use information he was unaware of at the time of the killing to claim that it impacted his state of mind at the time of the killing."

We conclude that the district court acted within its discretion in deciding that Quitter was not entitled to an evidentiary hearing because his postconviction petition alleged facts that were legally insufficient to entitle him to the requested relief. *See Bobo*, 820 N.W.2d at 516. The district court's reasoning on the fourth prong is consistent with the Minnesota Supreme Court's holding that "[e]vidence of a victim's reputation for violence is admissible in a self-defense case to show that the defendant was reasonably put in apprehension of serious bodily harm, *provided that the defendant knew of the victim's reputation*." *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006) (emphasis added).

We are mindful that, as Quitter asserts, "[r]eputation evidence is also admissible to show that the victim was the aggressor, and for this purpose the defendant need not have known of the reputation." *Id.* But the undisputed trial evidence established both that C.A. was the initial aggressor during the charged incident and that C.A. was outside the trailer, at least 30 feet away, when Quitter shot him. In other words, the recording of C.A. making threats against Quitter is cumulative and a more favorable result based on that evidence is not reasonably probable. The district court therefore acted within its discretion in summarily rejecting Quitter's postconviction claim of newly discovered evidence, given its determination that the petition did not establish all four prongs of the *Rainer* test.[3]

B. Ineffective Assistance of Trial Counsel

Quitter contends that the district court abused its discretion by denying his postconviction claim of ineffective assistance of trial counsel. He maintains that his trial counsel failed to discuss with him whether to request a jury instruction on the lesser-included offense of first-degree heat-of-passion manslaughter and did not obtain his consent to forgo such a request. The state counters that Quitter's claim does not satisfy the two-prong test announced in *Strickland v. Washington*, 466 U.S. 668 (1984), particularly given the district court's credibility determinations. We agree with the state.

"The Sixth Amendment to the United States Constitution and Article I, section 6, of the Minnesota Constitution guarantee a criminal defendant 'the right to the effective assistance of counsel.'" *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (quoting *Strickland*, 466 U.S. at 686). "Because claims of ineffective assistance of counsel are mixed questions of law and fact, [appellate courts] review the postconviction court's legal

[3] For the same reasons, we are not persuaded by Quitter's argument that the district court abused its discretion in determining that the recording did not satisfy all four prongs of the *Rainer* test based on his contentions that the "evidence was relevant to show the relationship between C.A. and Quitter," was "extremely probative because it showed that C.A. wanted to hurt or kill Quitter within a week of the altercation at Quitter's trailer," and "undercut the state's closing argument that C.A. was attempting to peacefully leave the trailer after violently breaking a window while attempting to punch J.R."

conclusions on such questions de novo." *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013) (footnote omitted). But appellate courts "review a postconviction court's factual determinations under a clearly erroneous standard, and do not reverse those determinations unless they are not factually supported by the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). In reviewing a claim of ineffective assistance of counsel, an appellate court's "scrutiny of counsel's performance must be highly deferential." *State v. Rhodes*, 657 N.W.2d 823, 844 (Minn. 2003) (quotation omitted). Matters of trial strategy "lie within the discretion of trial counsel and will not be second-guessed by appellate courts." *Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007).

To establish that counsel was ineffective under the two-prong *Strickland* test, a defendant must show (1) that counsel's performance "fell below an objective standard of reasonableness" and (2) that, but for counsel's unreasonable performance, there is a reasonable probability that the result of the proceeding would have been different. 466 U.S. at 687–88, 694. If an appellant cannot meet one of the *Strickland* prongs, the claim fails, and an appellate court need not address the other prong. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020).

On the first *Strickland* prong, the district court reasoned that, given the contrasting testimony by Quitter and his trial counsel, the "issue before the court . . . [was] one of witness credibility." The district court found that Quitter's "assertion that the lesser-included offense was never discussed, nor his approval obtained, is not supported by the evidence." In making that finding, the district court determined that trial counsel "testified credibly" and that Quitter's "testimony was . . . not credible." The district court supported these determinations with specific references to the record, including trial counsel's testimony about discussing the lesser-included offense with Quitter and Quitter's lack of recollection about conversations with trial counsel during various stages of the trial versus his claimed clear memory that no discussions about lesser-included offenses occurred. And the district court observed that, when trial counsel testified about "the hard work he undertook to defend" Quitter, Quitter "nodded along in agreement," which the court noted was "behavior that [stood] in stark contrast to [Quitter's] testimony."[4]

"The district court is in the best position to evaluate witness credibility, and [appellate courts] defer to those determinations absent a clear error." *Griffin v. State*, 941 N.W.2d 404, 408–09 (Minn. 2020). Based on our careful review of the record, we conclude that the district court's credibility determinations and underlying factual findings are not clearly erroneous because they are supported by the evidence. *See id.* Given the deference we must accord the district court's credibility determinations and trial counsel's strategy decisions, we conclude that the court correctly determined that Quitter did not meet the first *Strickland* prong, which turned on Quitter's claims that trial counsel failed to discuss requesting the lesser-included offense with Quitter and did not obtain Quitter's consent to forgo such a request. *See id.*; *see also Leake*, 737 N.W.2d at 536; *Rhodes*, 657 N.W.2d at 844; *Morgan v. State*, 384 N.W.2d 458, 460 (Minn. 1986) (concluding that "[t]rial tactics . . . are not to be confused with competence" and rejecting a claim of ineffective assistance of trial counsel based in part on defense counsel's failure to "request a jury

[4] Quitter does not challenge this finding by the district court as clearly erroneous.

instruction on lesser included offenses to first-degree murder" when counsel had "apparently pursued an 'all or nothing' trial strategy, gambling that acquittal would result" and "[t]he strategy did not have the desired effect"). Thus, we need not review the district court's analysis of the second *Strickland* prong. *See Peltier*, 946 N.W.2d at 372.

II. The district court acted within its discretion in instructing the jury about the duty to retreat.

Quitter contends that he is entitled to a new trial because the district court abused its discretion in instructing the jury about the duty to retreat. He asserts that, because he and J.R. were inside the trailer at the time of the charged incident,[5] the district court's instruction was erroneous under the "castle doctrine," which "provides that a person has no duty to retreat from their home before acting in self-defense." *State v. Valdez*, 12 N.W.3d 191, 197 n.4 (Minn. 2024) (citing *State v. Johnson*, 719 N.W.2d 619, 622, 629 (Minn. 2006), as "rejecting a duty to retreat before acting in self-defense where the shooting occurred in the upstairs bedroom of the defendant's home," and quoting *State v. Carothers*, 594 N.W.2d 897, 900 (Minn. 1999), for the proposition that "early Minnesota caselaw rejected a duty to retreat in cases of self-defense occurring in one's home"). Quitter further argues that the district court's instruction was erroneous because, as to defense-of-others claims, the Minnesota Supreme Court has held that "a *defendant* does not have a

[5] On appeal, Quitter maintains that he was on the front steps of the trailer at the time he shot C.A. The state does not challenge that factual premise in asserting that the district court acted within its discretion in instructing the jury about the duty to retreat. Because it does not alter our ultimate decision to affirm on this issue, we assume without deciding that the trial evidence sufficiently supports Quitter's contention that he was on the front steps of the trailer and therefore within his home when the shooting occurred.

duty to retreat before acting in defense of another." *Id.* at 198. The state responds that the district court acted within its discretion because it provided the jury a correct statement of the law as it applies to this case. The state's argument is persuasive.[6]

"We review challenges to the district court's jury instructions for an abuse of discretion." *State v. Garza*, 3 N.W.3d 18, 20 (Minn. App. 2024) (citing *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019)). More specifically, appellate courts review jury instructions as a whole "to determine whether they fairly and adequately explained the law of the case." *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). "A jury instruction is erroneous if it materially misstates the applicable law." *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011). Appellate courts must grant a new trial if an appellant can establish that the jury instructions were erroneous and "if it cannot be said beyond a reasonable doubt that the error had no significant impact on the verdict." *State v. Kuhnau*, 622 N.W.2d 552, 558–59 (Minn. 2001).

Under Minnesota Statutes section 609.06, subdivision 1(3) (2022), "reasonable force may be used upon or toward the person of another without the other's consent . . . when used by any person in resisting or aiding another to resist an offense against the person."[7] The Minnesota Supreme Court has

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[6] The state alternatively contends that, even if the district court's jury instruction about the duty to retreat was incorrect, Quitter has not established prejudice warranting a new trial. Because we conclude that the district court acted within its discretion in instructing the jury, we decline to address the state's alternative argument.

[7] The district court's "Defense of Self or Others" instruction provides that "[n]o crime is committed when a person uses reasonable force to resist or to aid another person in resisting an offense against the person, if such an offense was being committed or the person

> read the self-defense provision in section 609.06 to include four elements that inform whether a defendant's use of force was reasonable: (1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he or she was in imminent danger of death or great bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger.

Valdez, 12 N.W.3d at 196–97 (quotation omitted). As to the fourth element, the supreme court has "held that a person is required to retreat if reasonably possible before acting in self-defense." *Id.* at 197 (footnote omitted). There are two exceptions: the castle doctrine and defense-of-others claims. *Id.* at 197 n.4, 198. Whether the duty to retreat applies is a question of law that appellate courts review de novo. *State v. Devens*, 852 N.W.2d 255, 257 (Minn. 2014).

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reasonably believed that it was." Although Quitter was charged with and convicted of, among other offenses, second-degree intentional and unintentional murder, the language of this instruction is consistent only with Minnesota Statutes section 609.06, subdivision 1(3), rather than Minnesota Statutes section 609.065 (2022), the latter of which provides that

> [t]he 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, or preventing the commission of a felony in the actor's place of abode.

The district court's decision to instruct the jury about self-defense based on subdivision 1(3) of section 609.06 is in harmony with Minnesota Supreme Court precedent holding that when, as here, "a defendant asserts self-defense and claims that the resulting death was unintentional, it is inappropriate [for a district court] to give [a] justifiable-taking-of-life instruction" consistent with Minnesota Statutes section 609.06. *State v. Carridine*, 812 N.W.2d 130, 143–44 (Minn. 2012). Our analysis of the district court's instruction on the duty to retreat therefore focuses on caselaw interpreting section 609.06, subdivision 1(3), rather than section 609.065.

Over Quitter's objection, the district court instructed the jury that "[t]he defendant has a duty to retreat or avoid the danger if reasonably possible, except the defendant has no duty to retreat when acting in defense of self or others in his home." Under the specific circumstances of this case, we conclude that the district court acted within its discretion by providing the duty-to-retreat instruction to the jury.

The instruction correctly informed the jury that, as an exception to Quitter's duty to retreat or avoid danger if reasonably possible, Quitter was not required to retreat if he was "acting in defense of self or others in his home." *See Valdez*, 12 N.W.3d at 197 n.4, 198. Minnesota jurisprudence has consistently held that, as an exception to the duty to retreat, the castle doctrine applies only when both the defendant and the victim are in the home. *See, e.g.*, *State v. Blevins*, 10 N.W.3d 29, 36 (Minn. 2024) ("To date,[[8]] we have recognized only one exception to the judicially created duty to retreat when reasonably possible before using the force authorized in section 609.06, subdivision 1(3): when a person is in their home."); *Johnson*, 719 N.W.2d at 622, 629; *State v. Glowacki*, 630 N.W.2d 392, 401–02 (Minn. 2001) (stating that "[t]here is no duty to retreat from one's own home when acting in self-defense in the home," observing that "it is not now and never has been the law that a man assailed in his own dwelling is bound to retreat" and that, "[i]f assailed there, he may stand his ground and resist the attack[,]" and characterizing *Carothers*, 594 N.W.2d at 903, as holding "that there is no duty to retreat from the home when acting in self-defense against an intruder" (quotation omitted)); *Carothers*, 594 N.W.2d at 900, 904 ("Defense of

[8] The Minnesota Supreme Court decided *Blevins* before *Valdez*.

dwelling and self-defense within the dwelling serve a defensive and not offensive purpose, and do not confer a license to kill or to inflict great bodily harm merely because the offense occurs within the home.”).

Our decision in *State v. Clayborne* is instructive. 404 N.W.2d 385 (Minn. App. 1987), *rev. denied* (Minn. May 28, 1987). In *Clayborne*, the defendant alleged that the victim had come to his house after threatening to “blow [the defendant’s] brains out.” *Id.* at 386. And the defendant claimed that, while the victim was standing on the sidewalk just inside the front gate of the defendant’s property, about five to twelve feet away, the victim “reached for something in his pocket.” *Id.* at 386–87. The defendant shot the victim in the chest from the threshold of the home. *Id.* at 387. For this act, the defendant was charged with and convicted of, among other offenses, first-degree assault. *Id.*

On appeal, we rejected the defendant’s contention “that the jury should not have been instructed that he had a duty to retreat because he was in his home during the altercation.” *Id.* We cited the Minnesota Supreme Court’s decision in *State v. Touri*, 112 N.W. 422, 423 (Minn. 1907), which upheld a jury instruction that “included language equivalent to a duty to retreat” when the defendant had “shot and killed an unarmed man from inside his screen door as the would-be assailant approached his house.” *Clayborne*, 404 N.W.2d at 387. We also noted the supreme court’s reasoning in *Touri* that the defendant “could have locked his door instead of leaving it open and shooting through the screen door.” *Id.* Because the district court in *Clayborne* “instructed on the duty to retreat or avoid danger if reasonably possible and on the use of reasonable force to resist trespass[,]" we applied *Touri* and concluded that "[t]he instruction was both correct and, under the facts of [the] case, appropriate." *Id.* (citation omitted).

Consistent with *Touri* and *Clayborne*, we conclude that the district court acted within its discretion in instructing the jury about the duty to retreat. The instruction correctly informed the jury that, if the jury determined that Quitter and C.A. were in the home at the time of the incident, then Quitter had no duty to retreat, but if the jury found otherwise, Quitter did have such a duty. As in *Clayborne*, "[t]he instruction was both correct and, under the facts of [the] case, appropriate." *Id.* Although Quitter cites several appellate decisions in arguing that "Quitter's front steps was an area of the home from which he had no duty to retreat," we conclude that each case is inapposite.

Quitter characterizes *State v. Gardner*, 104 N.W. 971 (Minn. 1905), as holding that "the duty to retreat is inapplicable when a person acts in self-defense on the lands surrounding his home." But in a subsequent case, the Minnesota Supreme Court explained that *Gardner*—which the court described as arising from "facts peculiar to frontier life"—held only "that the duty to retreat does not exist when two individuals, armed with guns, confront each other in an open space." *State v. Austin*, 332 N.W.2d 21, 24 (Minn. 1983) (quotation omitted). Indeed, the supreme court has observed that "[t]he underlying rationale of the case—where two men met in a woods—is that there is no place to run out of firing range" and that *Gardner* "is inapplicable when [a] defendant . . . ha[s] reasonable options to avoid danger prior to his confrontation." *Id.*; *see also Carothers*, 594 N.W.2d at 903 (stating that, in *Gardner*, the supreme court "first endorsed the duty to retreat in a case of self-defense involving deadly force occurring outside the home").

Quitter also cites *Penkaty*, 708 N.W.2d at 207, and *State v. McCuiston*, 514 N.W.2d 802, 804–06 (Minn. App. 1994), *rev. denied* (Minn. June 19, 1994), for the proposition that "[t]he duty to retreat is also inapplicable in other areas immediately surrounding the home, such as a front porch or open-air deck." In *Devens*, however, the Minnesota Supreme Court explained that "the castle doctrine extends to a house, an apartment or part of a structure where defendant lives and where others are ordinarily excluded." 852 N.W.2d at 259 (quotation and citation omitted). *Devens* distinguished *Gardner* and *Penkaty* "because, among other reasons, the defendants in those cases exercised a greater degree of exclusive possession and control over the areas in question than Devens did" as to "the hallway of his apartment building," to which Devens argued that the castle doctrine should extend. *Id.* at 258, 260. Because C.A. was outside the trailer and at least 30 feet away when Quitter fired at him, C.A. was not on or in "part of a structure where [Quitter] live[d] and where others [were] ordinarily excluded." *Id.* at 259. The facts before us are therefore distinguishable from *Penkaty*, 708 N.W.2d at 193–94—in which the defendant and victim were both on the defendant's deck—and *McCuiston*, 514 N.W.2d at 803—in which the defendant and victim were both on the defendant's porch.

Turning to the defense of others, that exception to the duty to retreat is not unlimited. In *Valdez*, the Minnesota Supreme Court held that "imposing a duty to retreat on the defendant is logically incompatible with a defense-*of-others* claim because, in such a claim, the person in peril is not the defendant, but rather a third person whom the defendant sought to defend." 12 N.W.3d at 199. Nevertheless, the supreme court also instructed that,

> to justifiably use force in defense of another under section 609.06, subdivision 1(3), a defendant must subjectively believe that the person in peril has no reasonable possibility of safe retreat, and that belief must be objectively reasonable based on the information available to the defendant at the time that they use force to defend the person in peril.

Id. Here, the duty-to-retreat instruction aligns with *Valdez* by correctly informing the jury that Quitter had the "duty to retreat or avoid the danger if reasonably possible," unless he acted "in defense of self or others in his home."[9]

Lastly, Quitter argues that the district court abused its discretion in instructing the jury about the duty to retreat because its decision to do so conflicted with previous statements that the court had made in granting Quitter's motion for a self-defense instruction. In explaining that ruling, the district court said that it "believe[d] that there was not a duty to retreat" because, "at the point that the window [was] broken," "[t]here was nowhere farther into the trailer that . . . Quitter could go" given that "[t]he bedroom window was already broken" and Quitter was "in the only other room with [an exit] door."

We are not convinced that these statements by the district court establish that the court abused its discretion in giving the challenged instruction. In response to the state's subsequent request that the district court include the duty-to-retreat instruction, the court clarified that its earlier "decision was made for the purpose of determining whether a self-

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[9] We are mindful that, unlike the castle doctrine, the defense-of-others exception to the duty to retreat is not limited to situations when a defendant and the individual the defendant is defending are in the defendant's home. *See id.* at 198. But given Quitter's position that he was on the front steps and therefore within his home when he shot C.A., and in light of the undisputed trial evidence establishing that J.R. was inside the trailer at that time, we conclude that the district court correctly instructed the jury that Quitter did not have a duty to retreat "when acting in defense of self or others in his home."

defense instruction should be given" and "whether the defense had met their burden of production." And the district court stated that "[t]he ultimate question" of whether Quitter and C.A. were outside the trailer at the time C.A. was shot—a factual determination[10] under which Quitter would have had the duty to retreat—was "one for the jury." We therefore discern no abuse of discretion on this basis. *Cf. Employers Nat. Ins. v. Breaux*, 516 N.W.2d 188, 191 (Minn. App. 1994) ("A trial court judge is not firmly bound by its own prior decision in the same way a trial court is bound by the decision of a higher court of review."), *rev. dismissed* (Minn. Sept. 16, 1994); *State v. Schmieg*, 344 N.W.2d 425, 427 (Minn. App. 1984) (concluding that, "[a]t trial, the [district] court is free to reconsider its suppression ruling relative to the statements attributed to the defendant if a proper motion or application is made" and that "[t]he ruling is not res judicata").

In short, the district court acted within its discretion in instructing the jury about the duty to retreat.

III. The state did not commit plain-error prosecutorial misconduct during closing arguments.

Quitter maintains that, "[a]lthough the jury was instructed on the correct form of self-defense, for the unintentional taking of life, the prosecutor incorrectly told the jury

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[10] When the district court instructed the jury, the applicability of a duty to retreat turned on the facts of where Quitter and C.A. were physically located at the time of the shooting and whether Quitter was acting in defense of J.R.—facts which were not conceded and which the jury had not found. A duty-to-retreat instruction was therefore appropriate because it was law that might have been relevant to the jury's deliberation depending on what underlying facts it found to exist. Put differently, with those two factual questions still outstanding, the absence of a duty-to-retreat instruction would have inadequately instructed the jury on the applicable law.

twice that the intentional taking of life self-defense standard was required." He asserts that "[t]his was misconduct and qualified as plain error." The state argues that the prosecutor's closing arguments were not plainly erroneous. We conclude that the state did not commit plain-error prosecutorial misconduct during closing arguments.[11]

"Prosecutors err when they misstate the law in closing argument." *State v. Segura*, 2 N.W.3d 142, 161 (Minn. 2024). When, as here, a defendant does not object to a prosecutor's summation, appellate courts review the closing arguments for plain error. *State v. Zielinski*, 10 N.W.3d 1, 18 (Minn. 2024) (citing *State v. Ramey*, 721 N.W.2d 294, 299 (Minn. 2006)). "An error is plain if it is clear or obvious; in other words, if the error contravenes case law, a rule, or a standard of conduct." *Id.* (quotation omitted). When alleged prosecutorial misconduct occurs during summation, appellate courts examine the closing arguments "as a whole, rather than to selected phrases and remarks." *Id.* (quotation omitted). Prosecutors are also afforded "considerable latitude" during summation and are not required to "make a colorless argument." *State v. Williams*, 586 N.W.2d 123, 127 (Minn. 1998).

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[11] Because we conclude that the state's summation was not plainly erroneous, we need not reach the parties' alternative arguments under the modified plain-error test about whether any assumed error affected Quitter's substantial rights and whether affirming Quitter's convictions would cause the public to question the fairness and integrity of the judicial proceedings. *See State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023) (explaining that "the burden . . . shifts to the State to demonstrate that the error did not affect the defendant's substantial rights" only "[i]f the defendant is successful" in demonstrating that alleged prosecutorial misconduct constitutes plain error and that appellate courts "assess[] whether the [plain] error should be addressed to ensure fairness and the integrity of the judicial proceedings" only "[i]f these [first] three prongs are satisfied" (quotations omitted)).

As noted above, the district court's "Defense of Self or Others" instruction follows Minnesota Statutes section 609.06, subdivision 1(3), rather than Minnesota Statutes section 609.065, which "addresses the intentional taking of a life when done in defense of another." *Valdez*, 12 N.W.3d at 196 n.3. Quitter contends that, "[a]lthough [he] only needed to fear bodily injury to himself or J.R. to act in self-defense, the prosecutor told the jury that Quitter had to fear his life or J.R.'s life was in danger[,]" which Quitter claims was a "misstate[ment] of the self-defense standard" and "was misconduct that undermined the fairness of Quitter's trial."

Examining the closing arguments as a whole as to this issue, we discern no clear or obvious error that contravenes case law, a rule, or a standard of conduct. *See Zielinski*, 10 N.W.3d at 18. The state argued that "taking a life should be reserved for situations where [a] defendant feels he or someone else is in immediate danger, not just of harm but of great bodily harm or death." And the state asserted that "that there was no reason to suggest that [C.A.'s] behavior . . . was turning from pushing [J.R.] down to [C.A. intending] to murder [J.R.]," which the state maintained was "the threat that [would have] need[ed] to have been neutralized in order to take a life." The premise of these arguments was the state's assertion that Quitter's "actions were unreasonable under the circumstances."

"[T]he concept of reasonableness is a critical part of self-defense." *Glowacki*, 630 N.W.2d at 399.

> To find that a defendant acted in self-defense, a jury must, as is illustrated by the self-defense statute, Minn. Stat. § 609.06 (2000), find that the defendant reasonably believed that force was necessary and that the defendant used only the level of force reasonably necessary to prevent the harm feared.

Id. And "[i]n cases where death resulted from self-defense, a defendant must have reasonably feared that he was threatened with great bodily harm or death and that the use of force to prevent that harm was reasonable." *Id.*; *see also State v. Boldman*, 813 N.W.2d 102, 108 (Minn. 2012) ("To establish a self-defense claim, appellant must establish that he reasonably feared great bodily harm or death and that the use of force to prevent such harm was reasonable.").

In light of this binding precedent and the entire context of the state's arguments about whether Quitter's conduct was reasonable, the state did not commit plain-error prosecutorial misconduct during closing arguments.

IV. The district court did not plainly err by admitting Deputy J.M.'s use-of-force testimony and the state has met its burden of showing that the court's plainly erroneous failure to intervene when the state misused that evidence in closing arguments did not prejudice Quitter's substantial rights.

Quitter contends that the district court plainly erred by allowing the state to improperly introduce Deputy J.M.'s use-of-force testimony and to misuse that evidence in its closing arguments against Quitter's self-defense claim. He asserts that the state's use of the testimony "to establish a heightened standard of reasonableness undercut Quitter's self-defense claim and violated established [Minnesota] Supreme Court precedent." The state responds that the district court did not plainly err, that Quitter has failed to show prejudice warranting a new trial, and that affirming Quitter's conviction would not cause the public to question the fairness and integrity of the judicial system. We conclude that the admission of Deputy J.M.'s use-of-force testimony was not plainly erroneous. And while the district court did plainly err by allowing the state to misuse that testimony in closing arguments challenging Quitter's self-defense claim, we also conclude that the state has shown that such error did not affect Quitter's substantial rights.

Appellate courts review claims of unobjected-to evidentiary error under the plain-error doctrine. *State v. Martens*, 18 N.W.3d 752, 757 (Minn. 2025). "Under the plain-error doctrine, the appellant must establish (1) an error, (2) that is plain, and (3) that affects the appellant's substantial rights." *Id.* (quotation omitted). "If these three requirements are met, [an appellate court] may correct the error only when it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* (quotation omitted).

Quitter relies on *State v. Post*, which concerned an appeal from attempted-murder and assault convictions despite the defendant's claim of self-defense. 512 N.W.2d 99, 103–104 (Minn. 1994). The defendant, who was employed as a security guard and had a permit to carry a gun, had fired a warning shot and wounded the victim during a roadside incident that was unrelated to the defendant's employment. *Id.* at 100–01. In challenging his convictions on appeal, the defendant argued that the district court had erred in admitting evidence of his employer's standards for the use of a firearm by a security guard. *Id.* at 102. The Minnesota Supreme Court concluded that the district court had "erred in admitting the [employer's] manual and allowing its use in cross-examining [the] defendant." *Id.* at 103. The supreme court reasoned that the standards in the manual "obviously were designed to guard against the employer's potential civil liability for the discharge of a firearm by one of the employer's guards" and were "not standards for determining if a criminal defendant acted reasonably in shooting someone during a nighttime confrontation out on a highway, and their introduction tended to divert the jury's attention from the issues before it." *Id.* And the supreme court held that

> without the evidence that it was a violation of 'standards' to fire a warning shot, the jury might well have been inclined to view the firing of a warning shot as evidence of a reasonable, gradually increasing use of force by defendant to meet a perceived threat to his own safety.

Id.

The district court did not commit a clear or obvious error that contravenes caselaw, a rule, or a standard of conduct by allowing Deputy J.M. to testify about his use-of-force training. *See Zielinski*, 10 N.W.3d at 18. The state correctly notes that the challenged testimony was admitted in connection with questioning about Deputy J.M.'s decision to draw his department-issued firearm for officer safety during Quitter's arrest. We discern no indication from the record that, at the time the district court allowed Deputy J.M.'s use-of-force testimony, the state was offering it to challenge Quitter's self-defense claim rather than to appropriately explain law enforcement's actions in arresting Quitter. Unlike *Post*, the state did not use Deputy J.M.'s testimony to cross-examine Quitter about the reasonableness of Quitter's conduct, nor was it clear or obvious at the time that Deputy J.M. testified that his statements were intended to challenge Quitter's claim of self-defense.

That said, the district court did contravene the supreme court's decision in *Post* by allowing the state to misuse Deputy J.M.'s use-of-force testimony in its closing arguments against Quitter's self-defense claim. As mentioned above, "[p]rosecutors err when they misstate the law in closing argument." *Segura*, 2 N.W.3d at 161. Here, the district court did not intervene when the prosecutor cited Deputy J.M.'s testimony in summation, not for purposes of explaining the conduct of law enforcement when Quitter was arrested, but to maintain that Quitter's use-of-force was unreasonable. Among other things, the prosecutor told the jury:

> A reasonable person would not have responded to these circumstances by killing [C.A.] And no reasonable person who wasn't trying to kill [C.A.] would have fired a shotgun anywhere near the direction where [C.A.] was standing, especially in the dark. . . . [I]f a person is unarmed, . . . [y]ou look at all of the circumstances. And if the person does appear to be a threat, it's when they get to about 21 feet away from you that you have to decide if you have to act. That's not just any person who is 21 feet away from you. That's someone who you have other specific reasons to believe is a threat to you in that moment.
>
> [C.A.] was at least 33 feet away from the defendant when the defendant decided to kill him.

Based on the supreme court's decision in *Post*, we conclude that the district court plainly erred by allowing these arguments because Deputy J.M.'s use-of-force testimony did not establish "standards for determining if a criminal defendant acted reasonably in shooting someone" under the specific circumstances of this case. 512 N.W.2d at 103.

Under the modified plain-error test outlined in *Ramey*, Quitter's successful demonstration of plain error in the state's unobjected-to closing arguments shifts the burden to the state to show that the error did not affect Quitter's substantial rights. *Portillo*, 998 N.W.2d at 248. "To meet its burden, the State must show that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *State v. Thompson*, 3 N.W.3d 257, 264 (Minn. 2024). "To determine whether there is a reasonable likelihood that the prosecutor's error had a significant effect on the verdict, we consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *Portillo*, 998 N.W.2d at 251 (quotation omitted). In addition, "[t]he impact of a prosecutor's improper remarks during closing argument may be lessened by the district court's jury instructions." *Segura*, 2 N.W.3d at 163. With these principles in mind, we conclude that the state has carried its burden of demonstrating that the district court's failure to intervene when the state misused Deputy J.M.'s use-of-force testimony in its closing arguments did not affect Quitter's substantial rights.[12]

The evidence against Quitter strongly disproved his self-defense claim. Among other things, the record establishes: that C.A. was unarmed, at least 30 feet away from Quitter, and had begun walking toward his vehicle before Quitter shot him in the chest; that Quitter apparently hid the shotgun after the incident; that Quitter fled the hospital and law enforcement; and that Quitter provided contradictory and incriminating statements to the investigator—including that he accidentally shot C.A. after seeing an animal outside the trailer, that he fired to distract C.A. and J.R. from their argument, and that shooting C.A. directly in the chest would not distract them but instead "would be trying to kill [C.A.]"

[12] Based on this conclusion, we need not assess whether the state's plainly erroneous closing arguments should be addressed to ensure fairness and the integrity of the judicial proceedings. *See Portillo*, 998 N.W.2d at 248.

The prosecutor's improper suggestions were also not pervasive. The challenged statements about Deputy J.M.'s use-of-force testimony comprised only 17 lines of one paragraph within 40 pages of the state's closing arguments. *See Thompson*, 3 N.W.3d at 264 (concluding that "the State . . . satisfied its burden to show that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury" when "the challenged misconduct . . . was limited to 20 statements scattered throughout 41 pages of trial transcript); *see also Segura*, 2 N.W.3d at 162–64 (holding "that the State proved that there is no reasonable possibility that any error on the part of the prosecutor in . . . [summation] affected the jury's verdict" when the challenged comments could not "reasonably be characterized as 'pervasive'" because they were "present in just one page of the 28-page transcript of the State's closing argument").

Moreover, Quitter had an opportunity and made efforts to rebut the prosecutor's improper suggestions. He cross-examined Deputy J.M. about his experience as a use-of-force instructor and cited the deputy's responsive testimony in his closing argument, asserting: that, "if it was nighttime and [the deputy] couldn't see, that would magnify the threat"; that, "if [the deputy] was alone and didn't have his partners there, it would magnify the threat"; and that, "if . . . Quitter had done anything threatening, that would have magnified the threat." Because each of those conditions applied to Quitter during the underlying incident—it occurred at night, Quitter was alone in ostensibly protecting himself and J.R., and C.A. had been acting in a threatening manner—the defense had an opportunity and made efforts to rebut the prosecutor's improper suggestions about Deputy J.M.'s use-of-force testimony. *See Portillo*, 998 N.W.2d at 251.

Finally, the impact of the prosecutor's improper remarks during closing arguments was lessened by the district court's jury instructions. As explained above, the district court correctly instructed the jury on the law that applies to Quitter's self-defense claim.[13] And the district court informed the jury that, if an attorney's argument contained any statement of law that differed from the law that the court provided the jury, the jury needed to disregard such a statement. And appellate courts "presume that juries follow instructions given by the district court." *Segura*, 2 N.W.3d at 167.

For these reasons, we conclude that the district court did not plainly err by admitting Deputy J.M.'s use-of-force testimony and that the state has met its burden of showing that the court's plainly erroneous failure to intervene when the state misused that evidence in closing arguments did not prejudice Quitter's substantial rights.

V. Quitter was not deprived of a fair trial by cumulative errors.

Quitter argues that he was deprived of a fair trial by the cumulative effect of the alleged trial errors. The state counters that there are no cumulative errors warranting a new trial. We conclude that Quitter was not deprived of a fair trial by cumulative errors.

"Cumulative error exists when the cumulative effect of 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." *Penkaty*, 708 N.W.2d at 200 (quotation omitted). As explained above, the only trial error we have identified in the record was the district

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[13] Despite Quitter's argument about the district court's duty-to-retreat instruction, Quitter acknowledges in his appellate brief that, as to the applicable self-defense standard, "the district court properly instructed the jury that Quitter only had to fear an offense against his person or an offense against J.R."

court's plain error in allowing the state to present closing arguments challenging Quitter's self-defense claim based on Deputy J.M.'s use-of-force testimony, which we have concluded does not warrant reversal because it did not affect Quitter's substantial rights. Quitter's argument therefore fails because he has not identified cumulative trial errors. *See id.*

VI. The district court abused its discretion in sentencing Quitter because the state did not carry its burden of proof in establishing Quitter's criminal-history score.

Quitter requests that we reverse his sentence and remand for resentencing, maintaining that the district court abused its discretion in calculating his criminal-history score because the state did not prove that one of his 2018 fifth-degree controlled substance convictions—district court case number 13-CR-15-898—constituted a felony under current Minnesota law. The state agrees, as do we.

"We review determinations of a defendant's criminal-history score for abuse of discretion." *State v. Edwards*, 900 N.W.2d 722, 727 (Minn. App. 2017), *aff'd*, 909 N.W.2d 594 (Minn. 2018). "The State bears the burden of proof at sentencing to show that a prior conviction qualifies for inclusion within the criminal-history score." *Williams v. State*, 910 N.W.2d 736, 740 (Minn. 2018).

In 2016, the Minnesota Legislature enacted the Drug Sentencing Reform Act (DSRA), which resulted in "some first-time fifth-degree possession offenses . . . being classified as gross misdemeanors." *State v. Strobel*, 932 N.W.2d 303, 305 (Minn. 2019) (quotation omitted); *see also* Act of May 22, 2016, ch. 160, § 7, 2016 Minn. Laws 576, 583–85 (codified at Minn. Stat. § 152.025 (2016)). "Section 7 of the DSRA became effective on August 1, 2016, and 'applies to crimes committed on or after that date.'" *Id.* (quoting Act of May 22, 2016, ch. 160, § 7, 2016 Minn. Laws 576, 585).

But "[f]or criminal history score purposes, prior offenses are classified as felonies, gross misdemeanors, misdemeanors, or petty misdemeanors using the law in effect at the time of sentencing on the current offense, not the law in effect when the prior offense was committed." *State v. Morgan*, 968 N.W.2d 25, 27–28 n.1 (Minn. 2021); *see also* Minn. Sent'g Guidelines 2.B.7.a (2022) ("The classification of a prior offense as a petty misdemeanor, misdemeanor, gross misdemeanor, or felony is determined by current Minnesota offense definitions . . . and sentencing policies."). And "[t]he severity level ranking in effect at the time the current offense was committed determines the weight assigned to the prior offense." *Id.*, 2.B.1 (2022).

Here, the prior conviction at issue is district court case number 13-CR-15-898, which concerned a fifth-degree possession-of-marijuana charge with an offense date of November 1, 2015. At sentencing, the state was required to prove that, in light of the DSRA, the conduct underlying this offense remained a felony for purposes of calculating Quitter's criminal-history score. *See Morgan*, 968 N.W.2d at 27–28 n.1; Minn. Sent'g Guidelines 2.B.1, 2.B.7.a. Based on the record before us, we conclude that the state did not carry that burden. *See Williams*, 910 N.W.2d at 740. Thus, the district court abused its discretion in calculating Quitter's criminal-history score. *See Edwards*, 900 N.W.2d at 727.

When a defendant did not object to the district court's calculation of their criminal-history score and the state did not carry its burden of proof, the proper remedy is to remand the matter to permit the state "to further develop the sentencing record so that the district court can appropriately make its determination." *State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008), *rev. denied* (Minn. July 15, 2008). We therefore reverse Quitter's sentence and remand to allow the state to further develop the sentencing record for the district court to properly determine Quitter's criminal-history score based on his conviction in district court case number 13-CR-15-898.

Affirmed in part, reversed in part, and remanded.