This opinion is nonprecedential except as provided by Minn.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
A24-0236

State of Minnesota,
Respondent,

vs.

Anthony Deshawn Coleman,
Appellant.

Filed June 16, 2025
Affirmed
Wheelock, Judge

Waseca County District Court
File No. 81-CR-22-733

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Rachel V. Cornelius, Waseca County Attorney, Waseca, Minnesota (for respondent)

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

Considered and decided by Wheelock, Presiding Judge; Frisch, Chief Judge; and Connolly, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges the district court's judgment of conviction entered after a jury found him guilty of attempted second-degree murder during his second trial on the charge,

arguing that the individual and cumulative effects of multiple errors made by the district court and prosecutor require that he receive a new trial. We affirm.

FACTS

Appellant Anthony Deshawn Coleman fired multiple shots at the victim, D.H., around 12:30 a.m. on November 10, 2022, from across an alley and an empty lot outside a bar in downtown Waseca. D.H. was unharmed. Respondent State of Minnesota brought three charges against Coleman: attempted first-degree premeditated murder in violation of Minn. Stat. §§ 609.185(a)(1), .17, subd. 1 (2022); attempted second-degree intentional murder in violation of Minn. Stat. §§ 609.19, subd. 1(1), .17, subd. 1 (2022); and second-degree assault with a dangerous weapon in violation of Minn. Stat. § 609.222, subd. 1 (2022). The matter proceeded to a jury trial in April 2023 that lasted four days and at which Coleman was represented by counsel. The jury acquitted Coleman of attempted first-degree murder, found Coleman guilty of second-degree assault, and did not reach a verdict on attempted second-degree murder. The district court ordered a second trial on the attempted second-degree murder charge.

Before the second jury trial, Coleman discharged his attorney and waived his right to counsel. During the few months that Coleman represented himself, he filed 21 motions, three of which were related to matters already decided by the district court and eight of which were denied because they related to various federal statutes, the Uniform Commercial Code (UCC), and admiralty law and were not relevant to the proceedings. The second trial was set to begin in September 2023, but Coleman failed to appear. Although he had come to the courthouse on that date to serve a motion, he left before the

trial was to start. That morning, after Coleman failed to appear, the district court issued an order appointing advisory counsel to assist in Coleman's defense and to ensure that the trial would move forward "in the event that Defendant becomes so disruptive during the proceedings that the defendant's conduct is determined to constitute a waiver of the right of self-representation." The district court expressed in its order that, given the volume and content of the motions Coleman filed[1] and that he came to the courthouse earlier that day to file another motion but left before trial, it was unsure whether Coleman understood the relevant law and was concerned that he was "purposefully delaying the trial." The district court also issued a warrant for Coleman's arrest. The second trial began on October 30, 2023.

The following facts were presented at the second trial. Less than two weeks before the alleged shooting, Coleman, M.B., and some friends were at a house party.[2] When they arrived, they observed that D.H.'s car was parked outside. Shortly after they entered the house, D.H. saw Coleman and M.B., displayed a gun, and started yelling and acting "crazy." Another person at the party ushered D.H. out of the house, and Coleman and his friends left some time later. When the group stepped outside, they noticed D.H.'s car again, this time across a parking lot, and D.H. appeared to be pulling out a gun. As the group

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[1] The district court observed, for example, that Coleman "continually files motions under the UCC, which is not applicable to this case."

[2] The parties and witnesses involved in this case have a lengthy history. Relevant to Coleman's defenses of self-defense and defense of others, around the time of the incident, Coleman had begun a romantic relationship with M.B., who shares children with D.H.'s brother.

watched, D.H. drove his car toward them, slowing down as he approached them, and it looked like D.H. was going to shoot them, so Coleman pushed M.B. behind him. Another friend who had been present at the house party, C.P., testified consistently with this version of events. During his testimony, D.H. agreed that he was at the party that evening but denied the other details provided by Coleman, M.B., and C.P. After leaving the party, Coleman went back to M.B.'s home and fell asleep with her, but was awakened by D.H.'s brother, the father of M.B.'s children, kicking in M.B.'s bedroom door, waving a gun in their faces, and threatening to kill them.

On the evening of November 9, 2022, Coleman had been drinking at his friend A.U.'s house with M.B., C.P., and another friend, K.F. Shortly before midnight, the group drove A.U.'s black SUV to downtown Waseca and went into a bar. The SUV was parked behind the bar and patio in the alley parking lot.

K.F. had been banned from entering the bar and was removed shortly after he entered, but he returned about 15 minutes later. M.B. testified that, when K.F. returned, he was "riled up" and wanted Coleman to go outside with him. Coleman and M.B. followed K.F. out of the bar to try and calm him down. K.F. testified that, when he was first removed from the bar, he saw D.H. pull up outside the bar in his car, and K.F. decided to approach D.H. to "keep the peace." When K.F. told D.H. that Coleman was inside the bar, D.H. pulled out a gun, cocked it, and said, "I bet, watch this." K.F. feared for his safety and went into the bar to tell Coleman what happened. Coleman testified that, until he was outside the bar with K.F., he did not know that D.H. was outside in his car. K.F. testified that, when they were outside, Coleman started shooting at D.H., paused to finish his drink,

and then kept shooting while D.H. drove off. In total, K.F. believed that Coleman fired 13 or 14 shots. During his testimony, K.F. acknowledged that his testimony was a condition of his plea bargain with the state for charges arising from his own conduct during this incident and acknowledged inconsistencies in his testimony between the first and second trials—K.F. previously testified that he thought D.H. might have fired at Coleman but he did not know whether Coleman had fired his gun first—and explained that the reason for his inconsistent testimony was because he was afraid of Coleman.

M.B.'s testimony differed from K.F.'s. She explained that, when she left the bar with Coleman and K.F., they all walked toward A.U.'s car. While standing near the car, M.B. saw D.H. parked along the street across the open gravel lot with a clear line of sight to them. M.B. testified that she heard shots coming from D.H.'s direction and ran back into the bar. She testified that she knew Coleman did not fire the first shot because she was standing right next to him and "would have heard it," "smelled it," and "felt it." She also agreed that she did not see D.H. shoot a gun.

Coleman's testimony also differed from the testimony provided by others. He testified that, once he set foot in the parking lot, he heard shots, K.F. mentioned D.H.'s name, and Coleman realized that D.H. was shooting at him. Coleman testified, "At no time during this incident [did] I have any intentions of firing to hurt or kill [D.H.], not once was that an intention of mine to come outside to be in a live active shooter situation."

D.H. testified that he had been celebrating a friend's birthday elsewhere in Waseca that night and the friend wanted to go to another bar in town. When he pulled up behind the bar, D.H. saw K.F. and they spoke briefly, during which K.F. said, "[M]other f-ckers

could do that to you right, right now if they wanted to," which confused D.H. because, based on a conversation they had a week before the shooting, he thought his conflict with K.F. had ended. D.H. decided that he did not want to go into the bar after this exchange and drove away across the gravel lot, but he stopped his car when he got to the street and he heard something "like gravel . . . hitting the car." D.H. testified, "I turned down the music, and then my back window busted, and that's when I stopped." He then looked around, thought he saw K.F. and Coleman, and drove home. Once he got home, D.H. called 911 and reported the shooting. D.H. testified that he did not have a firearm that night, that he did not have a problem with Coleman, and that he knew his brother had a conflict with Coleman. During cross-examination, D.H. agreed that, after the shooting, he stated to police that he did not think Coleman intended to kill him.

A person who lives a few blocks from the bar called 911 after hearing multiple gunshots; she testified that she heard a total of ten gunshots: first four, then three, then another three. Officers began their investigation at D.H.'s home; at trial, they testified about D.H.'s appearance when they arrived, stating that he was "frantic, scared. He was pacing, yelling at his phone. I believe he was so frantic that he couldn't figure out his phone." Upon seeing multiple bullet holes in D.H.'s car, officers determined that the report of a shooting was credible. D.H. identified K.F. and Coleman as the shooters and told officers that the shooting occurred behind the bar.

The first officer to arrive at the bar observed two men and three women who were standing next to a black SUV. The group included Coleman, M.B., A.U., C.P., and K.F., who all got into A.U.'s vehicle and drove away. The officer obtained the license-plate

information, and because the car belonged to A.U., officers went to A.U.'s home. While officers were investigating at the bar,[3] a witness approached the officers and said that he had heard 11 gunshots and, after a pause, heard three or four more; the witness provided the officers with his name and contact information. At some point after the shooting and before the officers returned to investigate, the witness found eight bullet casings in the alley and collected them for himself. A few months later, officers contacted the witness, who disclosed that he had taken the casings; the witness then turned the casings over to the police and showed the police where he found them behind the bar.

When officers arrived at A.U.'s home, they saw people exiting A.U.'s vehicle and arrested K.F. and Coleman. While searching Coleman, officers found an intact bullet and a casing from a discharged bullet, both of which were manufactured by Hornady as 9 mm ammunition. During their search of the scene at the bar, officers found bullet fragments, a bullet hole in a nearby building, and broken glass that they believed was from D.H.'s shattered car window. Officers also found two bullets in the front passenger door panel of D.H.'s car, both of which were 9 mm and manufactured by Hornady. D.H.'s car had two bullet holes in the front passenger door, one bullet hole in the back passenger door, and a shattered rear window on the driver's side. A forensic scientist testified that she could not confirm that any of the bullets or casings found were the same type of ammunition, or were fired from the same gun, as the bullet and the casing found in Coleman's pocket.

[3] Although law-enforcement officers from the sheriff's department and surrounding cities were called in to assist the Waseca police with the investigation, there were not enough officers to secure all three sites (A.U.'s house, D.H.'s car, and the bar), and each scene was left unattended for some portions of the investigation that evening.

Coleman's gun was never found. Officers did not search D.H. or his vehicle for signs that he had fired a gun that night or that he had a gun. Law enforcement never received reports of damage to other vehicles or property nearby, including property in the area behind where Coleman stood during the shooting.

At the second trial, which lasted four days, Coleman represented himself with the assistance of advisory counsel. The state called 15 witnesses, including D.H., K.F., three people who heard the gunshots, one bar employee who worked that evening, Coleman's concealed-carry instructor, and eight law-enforcement personnel. In his defense, Coleman called five witnesses—an employee of the bar, M.B., C.P., an officer who testified for the state and whom Coleman also called as a witness, and himself. Coleman asserted two affirmative defenses: self-defense and defense of others.

Near the beginning of his opening statement, Coleman said that D.H. had held him at gunpoint on numerous occasions prior to the incident for which Coleman was charged—an assertion that the district court had already told Coleman he could not make before the jury—and the state objected and moved for a mistrial. The district court did not grant the mistrial motion but instructed the jury to disregard Coleman's statement. Coleman repeated the comment almost immediately, with the same result. Later, during Coleman's narrative testimony toward the end of trial, he told the jury that there were events that he could not talk about and suggested that the state had concealed evidence from him and the jury that would prove his innocence. Due to the prejudicial nature of the statement, the state moved for a mistrial or, in the alternative, a curative instruction. The district court denied the motion and provided the jury with a curative instruction.

At various times throughout the trial, the district court had to remind Coleman of previous rulings it had made prohibiting specific information from being mentioned in front of the jury. During these proceedings, Coleman made his dislike of the prosecutors known to the district court and the prosecutors, and he repeatedly talked over the prosecutors.

At the end of the trial, the jury found Coleman guilty of attempted second-degree murder. The district court entered a judgment of conviction and sentenced Coleman to 153 months in prison.

Coleman appeals.

DECISION

Coleman asserts several arguments, including that (1) the district court abused its discretion by admitting K.F.'s testimony in which he speculated about whether D.H. would have shot at Coleman; (2) the district court plainly erred by permitting K.F.'s testimony that he feared Coleman; (3) the district court plainly erred by admitting a squad-car video and Coleman's statements; (4) the district court plainly erred by admitting the concealed-carry instructor's testimony about what to do after firing a gun; (5) the district court plainly erred by admitting the testimonies of the concealed-carry instructor and an officer about not drinking while carrying a firearm; (6) the prosecutor committed misconduct during closing argument; (7) the district court committed plain error by reading an inaccurate jury instruction; and (8) the cumulative effect of these errors deprived him of

his right to a fair trial.[4] We address each of Coleman's arguments according to the standard of review that applies: first, the one asserted error to which Coleman objected, followed by the six asserted errors to which he did not object, and finally, we conduct a cumulative-error analysis.

I. The district court did not abuse its discretion by admitting K.F.'s testimony speculating about whether D.H. would have shot at Coleman.

We first address Coleman's argument that the district court abused its discretion by admitting K.F.'s testimony that he did not think D.H. would shoot at Coleman. K.F., who testified as a witness for the state, stated, "[W]hy would [D.H. shoot at Coleman] if he know that his niece's and nephew mom [M.B.] is right there?" Coleman objected to this testimony at the time as speculative, which the district court overruled. The next day, M.B., who testified as a witness for Coleman, expressed that she also did not think D.H. would shoot at her. When testifying about D.H. driving slowly by her, Coleman, and the others after they were leaving the house party less than two weeks before the shooting, M.B. explained, "I remember [C.P.] ducking and [Coleman] told me to move out of the way because it looked like [D.H.] was going to try to shoot, but I wasn't going to go anywhere because, like, he's the uncle to my kids, . . . he's not going to go do anything to me."

On appeal, Coleman argues that the district court abused its discretion by admitting K.F.'s testimony because K.F. speculated as to D.H.'s intent. The state argues that, even

[4] Coleman asserts additional errors in a pro se supplemental brief, but he raises them without citations to legal authority, without argument, and without explaining the effect of the alleged errors beyond conclusory statements, rendering them forfeited. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002). Because these arguments are forfeited, we do not address them.

if the district court abused its discretion, Coleman cannot establish that he was prejudiced by that statement because M.B. independently testified as to the same speculation.

Appellate courts review a district court's evidentiary rulings for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). To succeed on appeal, the appellant must show that the district court abused its discretion and that the ruling prejudiced the appellant. *Id.* Prejudice is shown by demonstrating that the abuse of discretion substantially influenced the jury's verdict. *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997).

Here, we need not decide whether the district court abused its discretion by admitting this testimony and overruling Coleman's objection because Coleman cannot demonstrate that he was prejudiced by K.F.'s testimony.[5] M.B. provided nearly identical testimony to that of K.F., speculating that D.H. would not have shot at her because she had children with D.H.'s brother. Therefore, Coleman cannot show that excluding K.F.'s nearly identical statement would reasonably have changed the jury's verdict, and we conclude that Coleman cannot prove prejudice as to this asserted error.

II. None of Coleman's asserted errors, when reviewed for plain error, entitle Coleman to a new trial.

We now turn to the six errors that Coleman raises for the first time on appeal. Our analysis begins with the rule for plain-error analysis, then we proceed to analyze each

[5] We note that it is not clear whether this testimony was speculative as to D.H.'s intent because the testimony was about K.F.'s state of mind (and M.B.'s state of mind) and what he thought at the time, not what he believed D.H. thought or intended. Because we discern no abuse of discretion if this were an error, we need not determine whether this was a proper objection.

asserted error in turn. We conclude that Coleman's arguments are unavailing and that he is not entitled to a new trial.

Unobjected-to errors are reviewed for plain error, which requires the appellant to prove "(1) error; (2) that is plain; and (3) the error must affect substantial rights. If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (footnote omitted). "An error is plain if it is clear or obvious." *State v. Peltier*, 874 N.W.2d 792, 799 (Minn. 2016) (quotation omitted). "[F]or purposes of applying the plain-error doctrine the court examines the law in existence at the time of appellate review, not the law in existence at the time of the district court's error, to determine whether an error is plain." *State v. Kelley*, 855 N.W.2d 269, 277 (Minn. 2014).

The third prong of the plain-error test requires the appellate court to determine whether the plain error affected the defendant's substantial rights. *Griller*, 583 N.W.2d at 740. A defendant's substantial rights are affected "when there is a reasonable likelihood that the error substantially affected the verdict." *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011) (quotation omitted). To prove this prong, whether the asserted errors are evidentiary or in jury instructions, the appellant bears a heavy burden. *State v. Davis*, 820 N.W.2d 525, 535, 538 (Minn. 2012). Whether the defendant's substantial rights were affected is a fact-specific determination an appellate court makes after considering a number of factors, including "(1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who offered the evidence used it in closing argument, . . . [and] (4) whether the defense effectively

countered the evidence"; the reviewing court may also consider whether "strong evidence of guilt undermines the persuasive value of wrongly admitted evidence." *State v. Bigbear*, 10 N.W.3d 48, 54-55 (Minn. 2024) (quotations omitted) (listing factors for harmless-error analysis); *see Matthews*, 800 N.W.2d at 634 (explaining that the third prong of plain-error analysis is equivalent to harmless-error analysis and listing these factors). When considering the strength and persuasiveness of the evidence, the supreme court has stated that this analysis should not be conducted as if reviewing a sufficiency-of-the-evidence argument. *Bigbear*, 10 N.W.3d at 55. Not all factors will apply to all asserted errors. *Id.*

A jury instruction is erroneous "if it materially misstates the law." *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001). When the unobjected-to error involves a jury instruction, the appellant must establish that there is a reasonable likelihood that the erroneous instruction "had a significant effect on the jury's verdict." *State v. Watkins*, 840 N.W.2d 21, 28 (Minn. 2013). The reviewing court may consider a number of factors depending on the error, including whether (1) the appellant contested the element and submitted evidence to support a jury's finding that the element was not met, (2) the state submitted overwhelming evidence to prove the element, and (3) the jury's verdict included a finding of the element. *Id.* at 28-29. Determining whether the state's evidence was "overwhelming" requires considering whether the state presented a "quantum of evidence necessary" in light of the other factors. *State v. Huber*, 877 N.W.2d 519, 527 (Minn. 2016). The reviewing court may consider all aspects of the evidence presented, including the quality of the evidence, whether direct or circumstantial, to support the verdict; the quality of the evidence, whether direct or circumstantial, supporting the defendant's arguments or

opposing the verdict; the veracity of the evidence, meaning whether it "was highly contested and equivocal"; and the "quantum of evidence" necessary to support the verdict, which depends on the strength of the other evidence; ultimately, the state's evidence must be such that it can "overcome the prejudice caused by errors" in the trial. *See id.* at 526-27.

When the unobjected-to error is prosecutorial misconduct, appellate courts apply a modified plain-error test in which the burden shifts to the state on the third prong. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). To carry its burden on the third prong, the state must prove "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." *Id.* (quotation omitted). The supreme court has stated that, when reviewing prosecutorial misconduct, it is relevant to consider whether "there was scant evidence supporting the defense theory." *State v. Griese*, 565 N.W.2d 419, 428 (Minn. 1997). The burden shifts back for the defendant to establish that a new trial must be granted to ensure fairness and the integrity of judicial proceedings. *State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010).

If all three prongs of the plain-error, or modified plain-error, test are established, the reviewing court must then consider "whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *Griller*, 583 N.W.2d at 740; *accord Matthews*, 779 N.W.2d at 551. "A plain error that affects a defendant's substantial rights, without more, does not entitle a defendant to a new trial." *Huber*, 877 N.W.2d at 527. Granting a new trial may not always ensure the fairness, integrity, and public reputation of judicial proceedings. *Id.*

With this framework in mind, we consider Coleman's assertions of error in the following order: (A) evidentiary errors; (B) prosecutorial misconduct; (C) jury-instruction error; and (D) integrity and fairness.

A. None of the asserted evidentiary errors requires that Coleman receive a new trial.

Coleman asserts four evidentiary errors, arguing that it was plain error to admit (1) K.F.'s testimony that he feared Coleman and his associates, (2) the squad-car video of Coleman's statements during and after his arrest, (3) the concealed-carry instructor's testimony about what steps to take after discharging a weapon in self-defense, and (4) the concealed-carry instructor's and officer's testimonies about drinking alcohol while carrying a firearm. Coleman asserts that each of these errors individually affected his substantial rights and entitles him to a new trial. We address each alleged error in turn.

1. K.F.'s Testimony About His Fear of Coleman

Coleman argues that the district court plainly erred by permitting K.F.'s testimony that he feared Coleman. Coleman asserts that the testimony was not admissible under Minnesota Rules of Evidence 402 or 403 because it was not relevant and the state failed to provide a link between the facts of the case and K.F.'s fear of Coleman, making the testimony highly prejudicial such that it outweighed any probative value. The state argues that the testimony was relevant to explain why K.F.'s testimony was inconsistent and that it was not unfairly prejudicial because a witness's testimony about their fear of the defendant is permitted.

The challenged testimony occurred when K.F. responded to the state's questioning:

> Q: Do you have fear for your safety, [K.F.]?
> A: Yes, of course. That's the reason, you know, that's why I keep saying I don't know sometimes, but I'm defending my name at this point. My name's been brung up in, like, three different occasions and different statements that is not sitting right with me. You're not going to keep lying on me and saying I did something or made you do something I didn't know.
>
> Q: Okay. And by saying you had said "I don't know" before, is that when you mean, like, previously you had given some testimony under oath[6] and you had said "I don't know" a couple times?
> A: Yeah, because I fear for my safety and the ones around.
>
> Q: And who are you fearful of?
> A: The associates of Mr. Coleman and himself, like whatever the backlash that will come behind me.

Evidence is admissible so long as it is relevant, Minn. R. Evid. 402, though a district court may exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice," Minn. R. Evid. 403. Evidence that a witness feared testifying "is almost always relevant because it is probative of witness credibility." *State v. Maye*, 6 N.W.3d 103, 108 (Minn. 2024) (quotation omitted). Moreover, "evidence that a witness . . . is afraid of testifying is relevant both to general witness credibility and to explain . . . inconsistencies in a witness's story." *Id.*

Here, we determine that the district court did not plainly err in admitting K.F.'s testimony that he feared Coleman. The state used K.F.'s fear testimony to explain the

[6] During the second trial, the district court prohibited any mention of the first trial and directed parties and witnesses to refer to any testimony elicited at the first trial as "prior testimony" or something similar.

inconsistencies in K.F.'s testimony between the two trials. In the first trial, K.F. testified that D.H. may have fired at Coleman, but at the second trial, K.F. testified that he never saw D.H. fire a gun. The state first identified this discrepancy between K.F.'s testimonies at the two trials and then elicited K.F.'s statement that he feared Coleman; therefore, the testimony that K.F. feared Coleman was for the purpose of establishing K.F.'s credibility and explaining the inconsistencies in his testimony. Coleman cites a case from the Seventh Circuit, *Dudley v. Duckworth*, which describes admitting witness testimony about fear without providing a connection to the defendant as "an evidential harpoon." 854 F.2d 967, 970 (7th Cir. 1988) (quotation omitted). However, this caselaw is merely persuasive, *State v. McClenton*, 781 N.W.2d 181, 191 (Minn. App. 2010), *rev. denied* (Minn. June 29, 2010), and there is controlling authority in Minnesota that states evidence of fear is admissible to aid witness credibility and explain inconsistencies, *Maye*, 6 N.W.3d at 108, which is why the state elicited this testimony from K.F. Because the admission of K.F.'s testimony about fearing Coleman was not plain error, we do not reach the third prong of the plain-error analysis.

2. Squad-Car Video

Coleman argues that the squad-car video was erroneously admitted because (1) his statements in the video were made before he received a *Miranda* warning and (2) the state's questioning officers about the video during trial infringed on Coleman's constitutional right to remain silent. The state argues that there was no error because the officers did not elicit Coleman's statements through interrogation. We determine that the admission of the video, which included Coleman's statements in the video, was not plainly erroneous.

The video shows officers outside of A.U.'s home as they approached Coleman and K.F. with guns drawn, explained that they were under arrest, and demanded that they put their hands up and get on the ground. An officer placed Coleman in handcuffs, and Coleman asked what was going on. An officer responded that they were investigating a shooting at the bar. Coleman asked, "Who got shot?" and an officer responded, "A car got shot"; then Coleman asked, "What car?" and the officer responded, "A Chevy." Coleman identified himself to the officer and stated that he was at the bar earlier that night, then asked whether the officer had probable cause to arrest him, and the officer responded that the victim identified Coleman, to which Coleman replied, "F-ck that." Officers searched Coleman and discovered a bullet in his pocket; it is unclear from the video, but Coleman seems to explain that he had a permit to carry a firearm. An officer asked him, "Where's the gun, Anthony?" Coleman asked, "What the f-ck do you mean, where's the gun?" and the officer responded, "You have a round on you." This full exchange from the squad-car video was played for the jury.

The Public Safety Exception to Miranda

Coleman first argues that his statements were elicited before officers informed him of his rights under *Miranda v. Arizona*, which "prohibits the admission in evidence of statements made by a suspect during 'custodial interrogation' absent procedural safeguards to protect the suspect's rights under the Fifth Amendment." *State v. Tibiatowski*, 590 N.W.2d 305, 308 (Minn. 1999) (quoting *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)). The Supreme Court has carved out a limited exception to this rule, however, that applies when the officer's questions are in the interest of public safety. *New York v.*

Quarles, 467 U.S. 649, 657 (1984). "[T]he need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination." *Id.* Under this exception, when officers are "confronted with the immediate necessity of ascertaining the whereabouts of a gun" that they have reason to believe the suspect "removed from his [person] and discarded," the gun poses a "danger to the public safety" and officers may ask questions to find it. *Id.*

Returning to the exchange captured on the video, even if Coleman was in custody during the relevant portion of the video and any question from the officers was a custodial interrogation, the only question the officers asked was, "Where's the gun, Anthony?" We discern that this question clearly falls within the public-safety exception to the requirement that a suspect receive a *Miranda* warning prior to a custodial interrogation.

The facts of this case are similar to those of *State v. Caldwell*, in which we determined that an officer asking a suspect where he put the gun was not an interrogation and thus did not need to be preceded by a *Miranda* warning. 639 N.W.2d 64, 68 (Minn. App. 2002), *rev. denied* (Minn. Mar. 27, 2002). In that case, officers responded within minutes to a call that identified a suspect who was believed to have assaulted and threatened a victim with a gun earlier that day. *Id.* Officers found the suspect surrounded by people believed to be his companions, detained him, conducted a pat-down search of him but found no weapons, and asked him where he put the gun. *Id.* We determined that the officer's question was necessary for officer safety because the suspect could have discarded

the gun nearby where an accomplice or neighbor could discover it and put the officers' or the public's safety at risk. *Id.*

The facts here are similar. Officers followed a car leaving the scene of a shooting to an address to which the car was registered and observed Coleman, who had been identified by the victim, surrounded by companions. Officers then detained Coleman, conducted a pat-down search but did not find any weapons, and asked him, "Where's the gun, Anthony?" We conclude that, given these facts, the officers were not required to provide Coleman with a *Miranda* warning before asking him about the location of the gun under the public-safety exception. Because that exception to the *Miranda* requirement applied, we conclude that the district court did not plainly err by admitting Coleman's statement.

The Right to Remain Silent

Coleman next argues that the state violated his right to remain silent by referencing his decision not to tell the responding officers what happened or call 911 to report the shooting. However, our caselaw states that this was not plain error.

During trial, if the defendant chooses to testify on his own behalf, the state may mention a defendant's silence prior to arrest without violating the defendant's right to remain silent because his silence may be used to impeach his testimony. *State v. Borg*, 806 N.W.2d 535, 542 (Minn. 2011) (citing *Jenkins v. Anderson*, 447 U.S. 231, 238 (1980)). The protection of the right to remain silent is invoked when the government compels a defendant to speak or remain silent; thus, if a defendant's silence is not in response to this choice, "then testimony about the defendant's silence presents a routine evidentiary

question that turns on the probative significance of that evidence." *Id.* at 543 (quotation omitted). In *Jenkins*, the defendant testified on his own behalf at trial to support his assertion of self-defense and, during cross-examination, the state questioned the defendant about his failure to report the incident to the police. 447 U.S. at 232-34. The Supreme Court determined that a defendant's silence before their arrest may be used by the state to impeach the defendant's credibility without violating their Fifth Amendment rights. *Id.* at 238. And in *State v. Johnson*, this court determined that a suspect's silence, not in response to custodial interrogation and after the suspect was arrested but before the suspect received a *Miranda* warning, did not implicate the suspect's Fifth Amendment rights. 811 N.W.2d 136, 148 (Minn. App. 2012), *rev. denied* (Minn. Mar. 28, 2012).

Here, Coleman testified on his own behalf, and thus, the state was able to use the evidence of his silence to impeach his testimony. *See Borg*, 806 N.W.2d at 542. Moreover, even if Coleman was under arrest at the time, which we need not decide on these facts, Coleman's silence was not yet protected by the Fifth Amendment because it occurred before he was subject to a custodial interrogation or received a *Miranda* warning. *See Johnson*, 811 N.W.2d at 148. Given the applicable caselaw, we discern no plain error by the district court in admitting the squad-car video and do not reach the third prong of the plain-error test.

3. Concealed-Carry Instructor's Testimony

Coleman next argues that the district court plainly erred by admitting the concealed-carry instructor's testimony about what to do after firing a gun in self-defense.

The state called as a witness a firearm instructor who was certified by the U.S. Conceal/Carry Association (USCCA) and National Rifle Association and was Coleman's instructor for a concealed-carry course. The instructor taught courses that were required for individuals who wished to obtain a permit to carry a firearm in Minnesota, and the course was certified by the Minnesota Bureau of Criminal Apprehension. As to the course Coleman took, the instructor testified that the course is derived from a book and presentation provided by the USCCA. He also testified that Coleman completed the course and that he was Coleman's instructor. Coleman argues that the state elicited the following improper testimony from the instructor:

> Q: Do you provide information in your class about what . . . a gun carrier should do, in the event that they use their firearms? Not during the event, but following it.
> A: Following the event, yes. First off, making the phone call to 911 is critical, not only to get them involved but also to establish, if it were to go to court, to start working through that information.
>
> Q: Is there a series of steps that you teach in your class that a gun carrier should . . . follow in the event that they use their firearm?
> . . . .
> A: Yeah, so the phone call [to 911] is to, especially if somebody has been injured as well, get an ambulance coming, but to inform them that there's been an incident, inform them that you are a permit holder, where you're going to place the gun; that you're going to call your attorney and that you're going to basically get off the phone at that point.
>
> . . . .
>
> Q: When you teach your class, and you sort of teach them the process of what to do following a shooting incident, do you tell them that it's best to hide evidence?
> . . . .

> A: I do not, no.
>
> Q: Do you teach your students to deny involvement in the incident?
> A: No.
>
> . . . .
>
> Q: What is [a four-part statement]?
> A: . . . [Y]ou point out who the person is that was involved in the incident, . . . what evidence there is that [police] may miss; and also . . . witnesses in the area; as well as that you have contacted your lawyer, and that you will be making a statement but you're going to wait until you talk to them first.
>
> Q: And when you indicated that you should point out that there is some evidence, could that involve their firearm that they used?
> A: Absolutely, yes.
>
> . . . .
>
> Q: And calling your attorney is the last step of that four-part statement?
> A: Yes.
>
> Q: The first thing you indicated that a person should do after an incident is to call the police or make contact with emergency services?
> A: Yes.

Coleman argues that the concealed-carry instructor's testimony improperly created a "heightened standard" of self-defense for the jury that is prohibited by *State v. Post*, 512 N.W.2d 99, 103 (Minn. 1994). The state argues that the instructor's testimony merely reiterated the content of what he taught in his classes, including steps to take after discharging a firearm, that the testimony illustrated that Coleman elected not to follow the instructions that he learned in the course, and that this "suggests a guilty conscience." The

state also argues that *Post* is not relevant here because it involved instructions for conducting oneself during a shooting rather than conduct after a shooting that would demonstrate the defendant's state of mind.

Before reviewing the asserted error, we first address the parties' disagreement about whether Coleman properly objected to the testimony at trial such that we review the asserted error for an abuse of discretion. As already explained, when a party fails to object to an error in district court, we apply the plain-error test, but if a party objects to the asserted error in district court, then we review the error for an abuse of discretion, which is a lower standard. *State v. Word*, 755 N.W.2d 776, 781-82 (Minn. App. 2008). When a party objects but does not obtain a definitive ruling from the district court, the ruling is unclear, or the party is unsure whether a ruling was issued, the party should renew the objection or seek clarification. *Id.* at 783. In the absence of a "definitive ruling," an error is not preserved for appeal, and we apply the plain-error test. *Id.*

Prior to the state calling the concealed-carry instructor, Coleman, via his advisory counsel, requested that the instructor's testimony be limited to facts and not "how to react in a threat situation." The state responded that the instructor's testimony would be limited to "what he teaches in his class regarding when you have to use your gun in self-defense." Coleman proceeded to explain his concern that the instructor's testimony of "what to do in a threat situation might not be within the definition of self-defense," and the district court stated that it would provide to the jury the instruction on the legal definition of self-defense that the jury would be expected to follow. The state reaffirmed that the instructor would be called as a fact witness, not an expert witness. Upon reviewing the record, we cannot

identify a ruling from the district court on Coleman's objection, and he did not renew the objection; thus, we review Coleman's argument for plain error. *See id.*

Coleman argues that we should follow the logic employed in *Post*, 512 N.W.2d at 103, and determine that the district court erred by admitting the instructor's testimony. In *Post*, the defendant, an off-duty security guard, discharged his gun during a fight with another man and shot him in self-defense. 512 N.W.2d at 101. At trial, the defendant testified that he fired a warning shot, and the district court admitted the employer's manual that contained guidelines for handling a gun, which expressly stated that employees should never fire a warning shot. *Id.* at 101, 103. The supreme court reasoned that the manual provided standards that the defendant was supposed to follow to help the employer avoid civil liability and were not to be used "for determining if a criminal defendant acted reasonably in shooting someone during a nighttime confrontation." *Id.* at 103. The supreme court determined that the manual created an alternate standard that may have confused the jury so that it would not be "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.* Therefore, the supreme court concluded that the admission of the manual was an error. *Id.*

Here, the state would have us conclude that the instructor's testimony did not create a heightened standard, rather it provided insight to Coleman's state of mind—that of guilt—because Coleman did not follow the instructions provided by the instructor. But the instructor's testimony that the state elicited was more akin to that of an expert witness. Although the content of the instructor's testimony may have been limited to what he taught

in his course, the effect was to put the instructor into Coleman's position and identify for the jury what Coleman did wrong. We determine that, because the instructor's testimony likely created an alternate standard of self-defense that was inconsistent with the law and any jury instruction to the contrary, similar to the challenged testimony in *Post*, it was plain error for the district court to admit this testimony.

Having determined that the admission of the testimony was plainly erroneous, our analysis proceeds to the third prong, which requires that we consider a variety of factors. *See Bigbear*, 10 N.W.3d at 54. We conclude that Coleman has not met his heavy burden of proving that his substantial rights were affected by this error.

As part of his explanation for why he did not call 911 to report the shooting, Coleman, during his opening statement, stated that he had taken a concealed-carry class in which he was taught to call an attorney after discharging a firearm. In response, the state called the instructor as a witness to show that Coleman's statement about what the instructor had taught Coleman was inaccurate. We first note that the state's decision to call this instructor in response to Coleman's statement was not an error. *See State v. Glidden*, 459 N.W.2d 136, 141 (Minn. 1990) (explaining that a party's opening statement may open the door to an expert or witness). The instructor's testimony countered Coleman's explanation and was relevant to Coleman's credibility. Although the state's line of questioning put the instructor into Coleman's position, potentially creating a alternate standard for self-defense, Coleman had the opportunity to cross-examine the witness. Coleman, through his advisory counsel, chose to ask very few questions of his instructor, none of which counteracted this testimony. During closing argument, the state

briefly discussed the concealed-carry instructor's testimony, arguing that Coleman's failure to report the incident to police as he had been taught demonstrated his guilt. In Coleman's closing argument, provided by his advisory counsel, he addressed the instructor's testimony by stating that not everyone calls the police when they are the victim of a crime and referencing testimony from M.B. that she had been the victim of a crime on several occasions and never called the police. Before jury deliberations, the district court provided the jury with an accurate self-defense instruction that likely helped to remediate any alternate standard created by the plainly erroneous testimony.

Ultimately, the relevant factors do not weigh in favor of determining that Coleman has met his heavy burden of proving the third prong. Therefore, we conclude that the plain error of admitting the instructor's testimony about what he taught Coleman to do after discharging his gun did not affect Coleman's substantial rights and cannot provide a basis to order a new trial.

4. Testimony About Drinking Alcohol and Carrying a Firearm

Coleman also asserts that it was error for both the concealed-carry instructor and an officer to testify that he should not have been drinking alcohol while carrying his firearm.

The instructor made the following statements on this topic during his testimony:

> Q: Do you specifically teach your classes about carrying a gun while consuming alcohol?
> A: Yeah, . . . I bring it up numerous times, if you're going to drink don't carry, if you're going to carry don't drink. I keep that part pretty simple.
>
> Q: And why is that?
> A: The main reason is how it would be interpreted by the law, or by the jury actually . . . . Even trace amounts of alcohol can

> bring a jury member to have you fail the reasonable person test basically.

And the officer made the following statement on this topic during his testimony:

> Q: Are there any laws or prohibitions to carrying a firearm while consuming alcohol?
> A: There are . . . three different rules . . . one, it would be to be under the influence of alcohol. A second one is to . . . have a blood alcohol concentration of .10 or more; and the third is to have a blood alcohol concentration between .04 and a .10.[7]

The district court did not sua sponte provide a curative instruction for or strike these portions of testimony.

Coleman asserts that these pieces of testimony were inadmissible *Spreigl* evidence that undercut his self-defense argument. The state contends that the instructor's statement was only a recitation of what he taught in the course that Coleman took and that the officer's statement did not violate *Spreigl* because there was no evidence of Coleman's alcohol concentration that would connect Coleman to a crime related to drinking alcohol while carrying a firearm.

Subject to certain other exceptions, "evidence connecting a defendant with other crimes" is inadmissible "except for purposes of impeachment" if the defendant chooses to testify. *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965). Specifically, the evidence cannot be used to prove action in conformity with the person's character and may only "be introduced if its probative value is substantially outweighed by its tendency to unfairly

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[7] The officer also testified about his perception of Coleman's intoxication that evening, but Coleman and others testified that they had been drinking alcohol that evening and Coleman does not dispute the relevance of this testimony on appeal.

prejudice the factfinder." *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006) (citing Minn. R. Evid. 403, 404(b)). "When it is unclear whether *Spreigl* evidence is admissible, the benefit of the doubt should be given to the defendant and the evidence should be excluded." *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). However, a district court's decision not to sua sponte strike *Spreigl* evidence or provide a cautionary instruction is not plain error on its own. *State v. Vick*, 632 N.W.2d 676, 685 (Minn. 2001). Assuming, without deciding, that it was plain error to admit these portions of testimony, we proceed to the third prong of the plain-error analysis to consider whether admission of the challenged testimony affected Coleman's substantial rights.

We first note that whether Coleman committed the crime of consuming alcohol while carrying a firearm is not a disputed fact, as Coleman and his witnesses testified that they had been drinking alcohol and Coleman admitted that he shot his gun at D.H. that night. Indeed, after the officer and instructor testified, Coleman testified on his own behalf and admitted to drinking alcohol and to firing his gun. Given that Coleman did not dispute the testimony or evidence that he was drinking alcohol while carrying a firearm, that he never questioned either witness about these statements on cross-examination, that he testified to these facts himself, and that neither the state nor Coleman mentioned these pieces of testimony during closing arguments, none of the factors we consider weighs in favor of determining that Coleman has met his heavy burden of proving the third prong.

Therefore, we conclude that Coleman has not established that his substantial rights were affected by any plain error of the district court in admitting testimony from the instructor or officer about not drinking alcohol while carrying a firearm. Having concluded

that none of the alleged evidentiary errors provides a basis for the relief Coleman seeks, we turn next to his prosecutorial-misconduct argument.

B. Coleman is not entitled to a new trial for prosecutorial misconduct during closing argument because any alleged misconduct did not affect fairness and the integrity of the proceedings.

Coleman argues that the prosecutor committed misconduct during closing argument by injecting broader social issues into the case and appealing to the passions of the jury. The state asserts that the closing argument only characterized Coleman's conduct, that prosecutors are not required to provide "colorless" arguments, and that any error does not require a new trial.

Coleman highlights four instances of alleged prosecutorial misconduct. During closing arguments, the prosecutor discussed the location of the shooting in relation to public safety, saying:

> People cannot be shooting at other people, period, much less the nine times that we know that Mr. Coleman had shot, much less in downtown Waseca, the heart of Waseca. It's a residential area, it's a business area, there's patrons of the businesses that are out and about. I appreciate this happened about 12:30, a little after midnight, but still, . . . it's the most heavily populated area when you think about how condensed people are in that downtown area. There's lots of apartments, there's lots of homes in that area.

Later, the prosecutor characterized Coleman's actions as akin to vigilante justice, saying:

> Even if you believe that [D.H.] had a firearm and brandished it at [K.F.], *what sense does it make that you go out guns a blazing to take care of it yourself? It's not what you're allowed to do, it's not allowed.* Yet, he still continues to walk outside towards this supposed firearm. Even if you believe that [D.H.] was out there lying in wait, where is the evidence that [D.H.] actually shot?

(Emphasis added.) Then, the prosecutor explicitly referred to Coleman's actions as vigilante justice, saying, "[I]f you were concerned that some guy was outside lying in wait, why wouldn't you call law enforcement and let them handle it? We don't need vigilante justice, and that's what this was." Finally, during rebuttal, the prosecutor invoked public-safety concerns again, saying, "[T]his [was] a shooting, this was a serious incident. Waseca, thankfully, does not have many shootings, but we're also a small town where we don't have many officers on duty at one time."

Caselaw provides guidance on what prosecutors can and cannot say during closing arguments. To begin, a prosecutor need not make a "colorless argument," *State v. Smith*, 541 N.W.2d 584, 589 (Minn. 1996); however, a prosecutor's argument must comport with certain standards of conduct. In *State v. Salitros*, the supreme court cited the American Bar Association's standards "provid[ing] a general outline of what is appropriate and inappropriate" for the prosecutor to tell the jury during closing arguments. 499 N.W.2d 815, 817-18 (Minn. 1993). Those standards explain that arguments should not be "calculated to inflame the passions or prejudices of the jury" and should not "divert the jury from its duty to decide the case on the evidence, by injecting issues broader than the guilt or innocence of the accused under the controlling law." *Id.* at 817. Caselaw is clear that a prosecutor's closing argument cannot "play on the jurors' emotions and fears," *State v. Porter*, 526 N.W.2d 359, 365 (Minn. 1995), and may not imply "that the jury could serve public safety by delivering a verdict demonstrating public intolerance of a crime," *State v. Thompson*, 520 N.W.2d 468, 472 (Minn. App. 1994), *rev. denied* (Minn. Oct. 27, 1994).

Additionally, it is "objectionable" for a prosecutor to state that a defendant was acting as a "vigilante." *State v. Merrill*, 428 N.W.2d 361, 372 (Minn. 1988).

On the facts of this case, the prosecutor's statements during closing argument present a close question as to whether they constitute misconduct. The prosecutor's references to public-safety interests and vigilante justice walk the line between providing a colorful argument and misconduct. Assuming, without deciding, that Coleman established plain error, we proceed to the next prong of our analysis. Under the modified plain-error test that applies to unobjected-to prosecutorial misconduct, the burden shifts to the state to prove that the error did not affect Coleman's substantial rights. *See Ramey*, 721 N.W.2d at 302. Here, the state's brief asserts that any error was "minor and not egregious" and cannot warrant a reversal of Coleman's conviction. But this is a conclusory statement unsupported by argument, and we determine that the state has forfeited its argument on the third prong. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (deeming an issue forfeited because the appellant failed to make and develop an argument in their brief), *rev. denied* (Minn. Aug. 5, 1997). Therefore, our analysis proceeds to consider whether a new trial is necessary to ensure fairness and the integrity of judicial proceedings.

We conclude that a new trial is not necessary on the facts of this case "to ensure fairness and the integrity of the judicial proceedings." *Matthews*, 779 N.W.2d at 551. We reach this conclusion based on our understanding of caselaw discussing the final step of the modified plain-error test. In *State v. Ramey*, the supreme court remanded for our court to apply the newly announced, modified plain-error test, and we concluded that the

defendant was entitled to a new trial because, in a short trial that depended on the credibility of a single witness, the prosecutor usurped the jury's role by "vouching for [the witness's] credibility" during their argument to the jury. No. A04-1056, 2007 WL 1247145, at *4 (Minn. App. May 1, 2007).[8] In *State v. Portillo*, the supreme court, in a divided opinion, reversed and remanded for a new trial because, during the state's closing-argument rebuttal, the prosecutor said, "[The defendant] no longer has that presumption of innocence. He has been proven guilty beyond a reasonable doubt." 998 N.W.2d 242, 247 (Minn. 2023). The majority opinion reasoned that "error in misstating the presumption of innocence strikes at that bedrock axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law." *Id.* at 256 (quotations omitted).

We determine that the facts of this case do not present such a glaring problem as the facts in *Ramey* and do not cut to the constitutional core of criminal law as the conduct did in *Portillo*. Coleman's second trial proceeded with 18 witnesses, unlike the single witness provided in *Ramey*, and the jury was able to decide for itself the credibility of each witness and all of the evidence, demonstrating that the impact of the prosecutor's misconduct was significantly less than it was in *Ramey*. The prosecutor's statements during closing argument also did not misstate any constitutional principle of criminal law; although the prosecutor's statements injected character and policy valuations into the case, they did not cut to the constitutional core of criminal law as the statement did in *Portillo*. Assuming,

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[8] "Nonprecedential opinions . . . may be cited as persuasive authority." Minn. R. Civ. App. P. 136.01, subd. 1(c).

without deciding, that the prosecutor's statements amounted to misconduct, and notwithstanding the state's failure to meet its burden on the third prong, we conclude that Coleman has not demonstrated that a new trial is required to ensure fairness and the integrity of judicial proceedings.

C. Coleman is not entitled to a new trial for asserted inaccurate jury instructions because he has not established a violation of his substantial rights.

Coleman argues that the district court erred by providing a jury instruction on the defense of others that misstated his duty to retreat. The state argues that there was no error because the defense-of-others jury instruction includes a duty to retreat.

Coleman did not object to the jury instruction at trial. The district court provided the jury instruction on "defense of self, death not the result," which states:

> It is lawful for a person, who is resisting an offense against his person or aiding another in resisting an offense against the person and who has reasonable grounds to believe that bodily injury is about to be inflicted to defend from an attack. In doing so, the person may use all force and means that the person reasonably believes to be necessary and that would appear to a reasonable person, in similar circumstances, to be necessary to prevent an injury that appears to be imminent. The kind and degree of force a person may lawfully use in defense of self or others is limited by what a reasonable person in the same situation would believe to be necessary. Any use of force beyond that is not reasonable.
>
> The legal excuse of defense of self or others is available only to those who act honestly and in good faith. A person may use force in defense of self or others only if the person was not the aggressor and did not provoke the offense. *The 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 rule of self-defense does not authorize one to seek revenge or to take into his own hands the punishment of an offender.
>
> The defendant is not guilty of a crime if he acted in defense of self or others as authorized by law.
>
> To prove guilt, the state has the burden of proving beyond a reasonable doubt that at least one of the requirements of this defense has not been met.

(Emphasis added.) For the jury to find Coleman guilty of attempted second-degree murder, it had to reject Coleman's defense-of-others argument.

Although we acknowledge that the duty to retreat may be different as between self-defense and defense of others, the facts of this case do not clearly show that a modified instruction on the duty-to-retreat element was necessary. In *State v. Valdez*, the supreme court concluded that, for "a defendant's use of force in defense of another to be reasonable, *the person in peril* must not have had a reasonable possibility of safe retreat." 12 N.W.3d 191, 199 (Minn. 2024). And "to determine whether the person in peril had a reasonable possibility of safe retreat, the person in peril's ability to retreat must be assessed from the perspective of the defendant." *Id.* The supreme court concluded that the jury instruction in *Valdez*, which included the exact same language as is emphasized above in the instruction read at Coleman's second trial, was erroneous. *Id.* at 195, 199. In *Valdez*, the victim "was trying to smother" the other person's "face and neck" and, from some distance away, the defendant shot the victim to protect the other person. *Id.* at 194. In contrast, Coleman stood next to the people—M.B. and K.F.—whom he claimed to be defending from gunshots allegedly coming from across a gravel lot where D.H. was parked.

Coleman's ability and duty to retreat was the same as theirs. Thus, it does not seem likely that the district court plainly erred by instructing the jury on the duty to retreat as written for self-defense rather than providing a modified instruction for defense of others as was required in *Valdez*.

However, even if the district court plainly erred by providing a jury instruction on defense of others that misstated the duty to retreat, we determine that Coleman has not met his heavy burden of proving that the error affected his substantial rights. First, we observe that the evidence was strong that M.B. and K.F.'s ability to retreat was the same as Coleman's: the facts demonstrate that Coleman stood next to M.B. and K.F., and in fact, M.B. retreated into the bar as soon as she heard gunshots. We next observe that the only evidence to support Coleman's belief that he and the others could not retreat, requiring him to defend M.B. and K.F., was his own testimony that D.H. shot at him first and M.B.'s statement that she heard gunshots coming from D.H.'s direction. Furthermore, the district court's instruction that the jury consider whether Coleman had the ability to retreat was nearly identical to asking whether the two people standing next to Coleman had the ability to retreat. Because the state's evidence was stronger than Coleman's and the facts do not demonstrate that a different jury instruction was necessary, we determine that any error in the jury instruction would not reasonably have altered the jury's verdict, and therefore, Coleman has not met his heavy burden on this prong. We therefore conclude that Coleman is not entitled to a new trial on these grounds.

D. Coleman is not entitled to a new trial to ensure fairness and the integrity of judicial proceedings.

In the interest of a thorough analysis, and because we reached this step when considering the alleged prosecutorial misconduct, we consider whether, if Coleman had met his heavy burden to prove the third prong on any of the other asserted errors, a new trial is necessary to ensure fairness and the integrity of judicial proceedings. In *Griller*, the supreme court explained that, "under Minn. R. Crim. P. 31.02, review of unobjected-to errors is discretionary" and concluded that, on the facts of the case, "the fairness and integrity of judicial proceedings would be adversely affected if we granted Griller a new trial." 583 N.W.2d at 742. The supreme court reasoned that

> it would be a miscarriage of justice to grant Griller a new trial. Griller was afforded a complete adversarial trial that lasted eight days. During his trial, Griller thoroughly presented his self-defense theory of the case. The jury considered and rejected Griller's far-fetched version of events. Granting Griller a new trial under these circumstances would be an exercise in futility and a waste of judicial resources. Because the integrity of judicial proceedings would be thwarted by granting Griller a new trial, we refrain from granting him this relief on the basis of an erroneous jury instruction.

Id.

We are persuaded by the supreme court's reasoning in *Griller*. This is Coleman's second trial on this charge. The first trial lasted four days, and Coleman was represented by counsel; the second trial lasted four days, and Coleman appeared self-represented and aided by advisory counsel. At the second trial, the jury heard from 18 witnesses and Coleman himself and considered Coleman's assertion that D.H. fired at him first but rejected this claim given the evidence to the contrary. In *Portillo*, when considering

prosecutorial misconduct, the supreme court said that the "pivotal question" was whether addressing the "error will serve to enforce the constitutional protections afforded to all criminal defendants." 998 N.W.2d at 255. Given that Coleman thoroughly presented his case and yet the jury did not find his argument credible, we are not persuaded that a third trial is necessary to enforce the constitutional protections afforded to all criminal defendants.

In reaching this conclusion, we note that we considered Coleman's representation of himself at the second trial. Pro se parties "are generally held to the same standards as attorneys," *State v. Fellegy*, 819 N.W.2d 700, 704 (Minn. App. 2012), *rev. denied* (Minn. Oct. 16, 2012), and Coleman chose to appear self-represented, as was his right. On appeal, however, a defendant who represented himself cannot "complain [about] the quality of his own defense." *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975).

The district court found that, prior to trial, Coleman used tactics to delay the start of trial, including filing excessive and frivolous motions and refusing to appear for trial. This conduct led the district court to order the appointment of advisory counsel to ensure that the second trial would proceed. Coleman's conduct at the second trial prompted the state to thrice move for a mistrial due to the prejudicial statements he made during his opening statement and his narrative testimony. The district court issued a curative instruction each time. The Minnesota Supreme Court has also explained that "the court cannot allow a defendant to use the right of self-representation to delay proceedings or to force a mistrial." *State v. Christian*, 657 N.W.2d 186, 191 (Minn. 2003). Our review of the record demonstrates that Coleman employed a strategy of delay designed to frustrate the legal

process. We are persuaded by the supreme court's reasoning in *Griller* and *Christian* and determine that, under these circumstances, granting Coleman a new trial would be an exercise in futility and a waste of judicial resources that would thwart the integrity of judicial proceedings. *See Griller*, 583 N.W.2d at 742.

III. The cumulative effect of the asserted errors does not require that Coleman receive a new trial.

Coleman argues that the cumulative effect of the errors throughout his trial distracted the jury from its task and denied him the right to a fair trial. The state asserts that, to the extent there were errors, the errors were not so egregious, even cumulatively, as to require a new trial.

In rare cases, the supreme court has held "that 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." *Davis*, 820 N.W.2d at 538 (quotation omitted). To conduct this analysis, appellate courts "look to the egregiousness of the errors and the strength of the State's case." *State v. Fraga*, 898 N.W.2d 263, 278 (Minn. 2017). It is a "rare case[]" that will receive a new trial based on cumulative error, and the supreme court is "more inclined to order a new trial for cumulative errors in very close factual cases." *Id.* at 278-79. We determine that this is not such a rare case as to require a new trial on the basis of cumulative error.

We first consider the strength of the state's case. Coleman does not challenge the elements of attempted second-degree murder as provided to the jury, which are as follows:

(1) Coleman took a substantial step toward the killing of D.H. and (2) Coleman intended to kill D.H. Because Coleman admitted that he shot at D.H, we need consider only the intent element of the offense. Coleman testified that he did not intend "to hurt or kill [D.H.]" and that he acted only in defense of himself and others. Intent may be proved through circumstantial evidence. *See State v. Colgrove*, 996 N.W.2d 145, 150 (Minn. 2023) (applying the circumstantial-evidence standard of review to evidence proving intent to kill). When considering all the circumstances, a "jury may infer that a person intends the natural and probable consequences of his actions and a defendant's statements as to his intentions are not binding on the jury if his acts demonstrated a contrary intent." *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). Furthermore, the "intent to cause death may be inferred from the manner of shooting." *Id.* (quotation omitted).

The state provided strong evidence to prove Coleman's intent. The state offered evidence of at least nine gunshots through witness testimony, recovered casings, and photos of bullet holes in D.H.'s car and a nearby building, and witnesses testified that there may have been more shots fired. Although D.H. admitted that he did not think Coleman intended to kill him and Coleman testified that he never intended to kill D.H., the evidence of Coleman's actions contradicts these statements. Police found two bullet holes in the front passenger door of D.H.'s car—parallel with where D.H. sat in the car. Because the state provided evidence that established that Coleman fired his gun at least nine times at the car in which D.H. sat and that many bullets struck the car, and because a natural and probable consequence of firing a gun at least nine times at an occupied vehicle would be the death of the occupant, the state's evidence is stronger than the limited evidence that

Coleman presented to challenge the intent element—his own testimony and M.B.'s speculation that she heard gunshots coming from somewhere other than Coleman.

Next, we consider the state's evidence relevant to Coleman's assertion of the affirmative defenses of self-defense and defense of others—defenses that the state had to overcome for the jury to find Coleman guilty of attempted second-degree murder. With the exception of the fourth element, the elements for defense of others parallel the elements for self-defense. *See Valdez*, 12 N.W.3d at 197-98. The elements are "(1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that [they were] in imminent danger of death or great bodily harm; [and] (3) the existence of reasonable grounds for that belief." *Id.* at 197 (quoting *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997)). The fourth element for the defense of others is that the person in peril did not have "a reasonable possibility of safe retreat" as "assessed from the perspective of the defendant." *Id.* at 199. The fourth element for defense of self is "the absence of a reasonable possibility of retreat to avoid the danger." *Id.* at 197 (quoting *Basting*, 572 N.W.2d at 285). The degree of force used in self-defense or defense of others must be "reasonable under the circumstances." *Id.* (quotation omitted). The state need disprove only one element of the self-defense or defense-of-others claim for it to fail. *State v. Radke*, 821 N.W.2d 316, 324 (Minn. 2012). The district court's jury instruction was consistent with this rule, and Coleman does not assert error in the instruction other than as to the duty to retreat for defense of others, which we addressed above.

We determine that the strength of the state's evidence demonstrates that Coleman's self-defense or defense-of-others arguments were unsuccessful notwithstanding the

allegedly erroneous instruction on the duty to retreat. The only evidence to support Coleman's assertion that he was not the initial aggressor was Coleman's testimony that D.H. fired his gun first. K.F. testified at the first trial that he was not sure whether D.H. fired his gun first but agreed that he might have, and K.F.'s testimony at the second trial contradicted that previous testimony. M.B. testified that Coleman did not fire his gun first, but she also admitted that she did not see D.H. fire his gun. Therefore, the only evidence to support Coleman's claim that he was not the initial aggressor was his testimony and M.B.'s testimony.

The state, however, provided multiple pieces of circumstantial evidence to support the inference that D.H. never fired a gun toward Coleman and therefore rebutted Coleman's self-defense and defense-of-others arguments. The state offered testimony from several officers about the extent of their search of the area behind the bar for bullets, casings, and damage near and behind where Coleman, K.F., and M.B. stood during the shooting. Officers received no reports of damaged property around the area behind Coleman, found no damage to any property near where Coleman and the others stood, and found no bullets or casings that would support Coleman's assertion that D.H. fired his gun toward Coleman, M.B., and K.F. The absence of any evidence to support Coleman's version of events is relevant. Although Coleman correctly points out that the crime scenes were left unattended at various times during the investigation that night and that a possibility exists that evidence of D.H. firing a gun at Coleman could have been removed, the jury's finding of guilt demonstrates that it was not persuaded by this possibility. In contrast to M.B.'s and K.F.'s testimonies that they were unsure or could not confirm whether D.H. had a gun or fired at

Coleman, the state produced multiple officers who testified about the extent of their search for evidence around the bar and that their search yielded no evidence that D.H. had fired a gun at Coleman. We observe that this issue came down to a credibility determination by the jury as fact-finder and that the jury weighed the evidence to determine whether Coleman acted in self-defense or defense of others and did not find Coleman's evidence credible.

In sum, we are not persuaded that Coleman has presented a "rare case[]" in which "the errors, when taken cumulatively, have the effect of denying the appellant a fair trial." *Fraga*, 898 N.W.2d at 278 (quotation omitted). Although this case contained a number of asserted errors of varying degrees, we conclude that the state's evidence against Coleman was strong, this was not a factually close case, and therefore Coleman was not denied a fair trial. Given the facts, circumstances, and procedural history of this case, we determine that a new trial is not necessary and affirm the jury's verdict and the district court's entry of judgment of conviction.

Affirmed.