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February 2, 2021

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You are hereby notified that the Court has entered the following opinion and order:

2019AP1892-CR	State of Wisconsin v. Kenei Tyrone Harris (L.C. # 2017CF2555)
2019AP1893-CR	State of Wisconsin v. Kenei Tyrone Harris (L.C. # 2017CF5555)

Before Brash, P.J., Donald and White, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Kenei Tyrone Harris appeals the judgments convicting him of the following charges: first-degree reckless injury by use of a dangerous weapon, as a repeater; possessing a firearm as a felon; endangering safety by using a dangerous weapon, as a repeater; and felony intimidation

of a witness, as a repeater.¹ He also appeals the order denying his postconviction motion. Harris argues that the instruction provided to the jury on the intimidation charge did not fully and fairly inform it of the law that it was to apply. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).² We further conclude that Harris forfeited his objections to the jury instruction on intimidation. Therefore, we summarily affirm.

According to the complaint filed in Milwaukee County case No. 2017CF2555, the charges against Harris for first-degree reckless injury, possessing a firearm as a felon, and endangering safety by use of a dangerous weapon stemmed from incidents that resulted in Harris firing numerous shots at the victim, hitting him five times. According to a separate complaint filed in Milwaukee County case No. 2017CF5555, while he was in custody awaiting trial, Harris called his girlfriend multiple times and asked that she and others tell the victim not to show up for trial. In the calls, which were monitored and recorded, Harris said he would pay the victim money if he did not show up. The State charged Harris with felony intimidation of a witness as a repeater.

The circuit court subsequently granted the State's motion to join the two cases for trial. The jury found Harris guilty of all four charges, and the circuit court imposed sentences totaling twenty years.

¹ These cases were consolidated for purposes of briefing and disposition.

² All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Harris then filed a postconviction motion seeking to vacate his convictions. He argued that the circuit court’s use of the pattern jury instruction on the intimidation charge did not fully and fairly inform it of the law that applied to the charge. The circuit court denied Harris’s postconviction motion, and this appeal follows.

Harris reasserts his postconviction claim. If this court reverses his conviction on the intimidation charge, Harris additionally contends that because all of the charges against him that were joined for trial were “inexorably intertwined,” the remaining charges will also have to be reversed.

Whether a defendant forfeited his right to challenge a jury instruction is a question of law that this court reviews independently. *State v. Trammell*, 2019 WI 59, ¶16, 387 Wis. 2d 156, 928 N.W.2d 564. Any objections to alleged errors in the proposed jury instructions must be made at the jury instruction conference. *See* WIS. STAT. § 805.13(3) (“Failure to object at the conference constitutes a waiver of any error in the proposed instructions[.]”)³; *see also* WIS. STAT. § 972.11(1) (making § 805.13(3) applicable to criminal cases).

WISCONSIN STAT. § 805.13(3) makes clear that objections to the jury instructions “on the grounds of incompleteness or other error” must be made at the jury instruction conference or will be deemed waived. Our supreme court has reiterated that, in a criminal case, “[f]ailure to contemporaneously object to jury instructions results in forfeiting review of the jury

³ Although WIS. STAT. § 805.13(3), and some cases interpreting that statute use the term waiver, in the context of the failure to object to a jury instruction, the applicable term is forfeit—i.e., the failure to make the timely assertion of a right. *See State v. Ndina*, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612 (explaining the distinct legal concepts embodied by the terms “forfeiture” and “waiver”).

instructions.” See *State v. McKellips*, 2016 WI 51, ¶47, 369 Wis. 2d 437, 881 N.W.2d 258, see also *Trammell*, 387 Wis. 2d 156, ¶24.

The record reflects that Harris did not object to the intimidation instruction at the jury instructions conference or offer any supplemental instructions for the circuit court’s consideration. Harris acknowledges that the intimidation instruction was “correct as far as it went, so there was nothing about it that defense counsel could have objected to.” He argues instead that “[t]he problem with the instruction was that it was missing a very important part to it[,]” and seemingly concludes—without supporting legal citation—that objections are required for affirmative misstatements in the instructions but not for omitted language.

We are not persuaded by Harris’s efforts to cast this as something other than a forfeited objection to the intimidation instruction. If he believed the instruction was somehow incomplete, he was statutorily obligated to object during the instruction conference. See WIS. STAT. § 805.15(3); see also *State v. Cockrell*, 2007 WI App 217, ¶¶34-36, 306 Wis. 2d 52, 741 N.W.2d 267 (concluding that forfeiture applied where the defendant argued that the jury instruction omitted information but never objected or proposed any alternative language at the instruction conference). He did not do so; therefore, we conclude that Harris forfeited the claims of error he raises in this appeal. In light of this conclusion, we need not address Harris’s claim that his remaining convictions should be vacated because they were intertwined with the intimidation conviction.

IT IS ORDERED that the judgments and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals