

THE UTAH COURT OF APPEALS

STATE OF UTAH,
Appellee,

v.

MITCHELL GARRETT SOLSTAD,
Appellant.

Opinion

No. 20230732-CA

Filed September 3, 2026

Third District Court, Salt Lake Department
The Honorable Kara Pettit
No. 211902008

Robert Denny, Attorney for Appellant

Derek E. Brown and Aubrey Bisbee,
Attorneys for Appellee

JUDGE RYAN D. TENNEY authored this Opinion, in which
JUDGES DAVID N. MORTENSEN and JOHN D. LUTHY concurred.

TENNEY, Judge:

¶1 Mitchell Solstad rear-ended a car and then fled the scene. While being followed by the driver of that car, Solstad—who was speeding through a residential neighborhood—ran a stop sign and hit another car, killing its driver. The State charged Solstad with manslaughter and several other drug- and driving-related offenses. Solstad later requested and received a jury instruction on negligent homicide (a lesser included offense of manslaughter), as well as another instruction on the affirmative defense of compulsion. After a two-day jury trial, Solstad was found guilty of negligent homicide, along with four of the other six charges. Solstad now appeals, raising ineffective assistance of counsel and plain error claims related to his negligent homicide conviction. For the reasons set forth below, we affirm.

BACKGROUND¹

The First Accident

¶2 In December 2020, Solstad was homeless and living out of his car, which was a 1989 Jeep Cherokee. On December 4, Solstad was heading toward a neighborhood in Salt Lake City where he usually parked his car in a vacant lot for the night. On the way there, he was drinking a soda, but because there were no cup holders in his car, he had to hold the soda while driving. Solstad spilled some of the soda on his center console, and while attempting to clean it up, he rear-ended the car in front of him, which was stopped at a red light. Before the driver of the other car (Driver) could get out of his car, Solstad put his Jeep in reverse and backed up, made a U-turn, and “sped” off. One witness later said that he could hear the Jeep’s tires “spinning and squealing” as the Jeep pulled away. Driver had “initially pulled over and stopped,” but when he “saw that the Jeep was speeding away,” he also made “a full U-turn and tried to pursue the Jeep.”

¶3 The two cars drove through a residential neighborhood “incredibly fast.” When they eventually approached an intersection at 700 East (a road that has multiple lanes in each direction), Solstad “didn’t come to a complete stop” but instead simply “slowed down enough to . . . look both ways” while driving through it. Driver followed Solstad across that intersection, going just “as fast” and also not coming to a complete stop.

1. “On appeal, we review the record facts in a light most favorable to the jury’s verdict and recite the facts accordingly. We present conflicting evidence only as necessary to understand issues raised on appeal.” *State v. Holgate*, 2000 UT 74, ¶ 2, 10 P.3d 346 (quotation simplified).

State v. Solstad

The Second Accident

¶4 As the chase continued, Solstad was driving east on Bryan Avenue when he approached the intersection at 1100 East. Solstad ran the stop sign at that intersection and hit a dip in the road. This sent his Jeep slightly airborne, after which he broadsided a car that was traveling north. At the moment of impact, Solstad was driving “around 50 miles an hour” on a road that had a speed limit of 25 miles per hour. Solstad and the driver of the car he hit (Victim) were both taken to the hospital. Victim was later declared dead, with the cause of death being “blunt force injuries” that he suffered in the accident.

The Charges and the Evidence Presented at Trial

¶5 The State charged Solstad with manslaughter and several other drug- and driving-related offenses. The case went to a two-day jury trial.

¶6 Before trial, Solstad requested a jury instruction on negligent homicide as a lesser included offense of manslaughter, as well as an instruction on the affirmative defense of compulsion. The court agreed to give both instructions. In the compulsion instruction, the jury was instructed that “a person is not guilty of a crime if he acted because he was coerced to do so by . . . someone’s threat to use imminent unlawful force against him,” and the jury was further instructed that the “threatened use of force must be such that a person of reasonable firmness in [the] defendant’s situation would not have resisted.” *See also* Utah Code § 76-2-302 (setting forth the compulsion defense).

¶7 At trial, several witnesses provided testimony and evidence relevant to the issues on appeal.

¶8 **Witness to the First Accident.** One witness to the first accident was in his front yard when he heard “an engine revving really high” and the “wind and tire noise of a car moving at a high rate of speed.” This witness didn’t see the impact between the two cars, but he did hear the “crunch” as the Jeep hit Driver’s car. The

witness described how Driver's car was "pushed over to the side of the road," and he said that "after the initial impact, [Driver] pulled a little bit further over to the corner." The witness testified that Driver "looked like he was about to get out of his car," but that when the Jeep made a U-turn and sped away, Driver also "did a full U-turn and tried to pursue the Jeep." The witness testified that before the crash, the Jeep was "driving erratically" and heading down the street "at a high rate of speed." This witness also testified that, following the accident, the Jeep was "absolutely" still traveling at "a high rate of speed as [it] left" the scene and that it continued to drive "[e]rratically." The witness testified that the speed limit in that residential neighborhood was 20 or 25 miles per hour.

¶9 **Witnesses to the Chase.** The State called two other witnesses who saw the chase that occurred between the first and second accidents. The first witness testified that he was in his front yard when he heard something that "sounded like engines roaring" and "tires . . . squealing." This witness looked up and saw "two cars come around the corner" going "incredibly fast" at "approximately freeway speeds," despite the residential neighborhood having a speed limit of 25 miles per hour. This witness testified that as the Jeep approached 700 East, it looked as though the Jeep "hit the brakes" because the witness "could see smoke from the tires." The witness testified that the Jeep "didn't come to a complete stop, but . . . slowed down enough" for the driver to "look both ways" and proceeded to cross 700 East. The witness testified that the second car "followed" the Jeep across 700 East. During cross-examination, this witness clarified that the "vehicle pursuing the Jeep . . . was absolutely going as fast" as the Jeep and that it also didn't come to a complete stop at the stop sign before crossing 700 East. The witness testified that the second car was "[p]retty close" to the Jeep when it drove in front of his house, "[s]ix to 10 feet maybe," and that it "maintain[ed] that closeness as [the cars] sped past" him. On redirect, he clarified that as the Jeep crossed 700 East, the second car "kind of slowed down and had some distance between the Jeep" but that it then continued at a high rate of speed after crossing 700 East.

¶10 The other witness to the chase testified that he lives on Bryan Avenue and was driving to pick up dinner when he “heard [an] engine roar and saw” the Jeep come down a side street, turn right onto 1000 East, and take an immediate sharp left onto Bryan Avenue. This witness then saw “another car coming, doing the same thing,” taking the “[s]ame path, same pattern, same speed” down the side street. The witness testified that he “thought it was two guys effing around” and that he “knew they were going way too fast for [his] neighborhood,” “[w]ay too fast for any neighborhood.” The witness also testified that he saw the Jeep “kind of swerving a little bit.” He clarified that he couldn’t remember if he told the police that the second car was chasing the Jeep, but “certainly that’s the impression” he had “looking back on it, and that’s the impression [he] had at the time.” The witness testified that Driver was “[a] couple seconds” behind the Jeep—“maybe a couple of houses behind each other, a couple of driveway length[s]”—but that “each car was driving about the same speed” and the “back car was keeping up with the front car.” The witness testified that “the second car was definitely chasing the first car.”

¶11 **Witness to the Second Accident.** The State also called a witness who was biking on 1100 East and saw the second accident happen. This witness testified that she and a roommate were heading south on 1100 East when, “out of nowhere,” a Jeep came out of Bryan Avenue traveling “very fast.” The witness testified that she did not get the impression that the Jeep was “being chased.”

¶12 **Video Evidence.** The State introduced two videos at trial—one was from a doorbell camera from a house on 1100 East that showed the second crash, and the other was from a Nest doorbell camera from a house on Bryan Avenue that showed the street moments before that crash. The Nest video showed the Jeep speed past, and roughly six seconds later, Driver’s car entered the frame.

¶13 **Solstad’s Testimony.** Solstad chose to testify at trial. He explained that when the first accident happened, he felt “a tinge

of fear” because he had never been in such a situation before. He said that he “was afraid of possibly getting [his] car impounded” because he didn’t have insurance or active registration on the car. He testified that he didn’t see any damage to Driver’s car, he didn’t have concerns that anyone was hurt, and he “wasn’t expecting anyone to chase [him],” so he “felt it was safer to just drive away.”

¶14 Solstad testified that as he was driving away, he noticed that Driver “started driving really close” to his Jeep, “tailgating” him, so he “started to become very concerned.” When asked why he felt concerned, he replied, “I’ve had a very difficult life throughout my early adulthood. I have experienced numerous violent occurrences. I have been caught off guard and jumped by several people. I’ve been robbed at gunpoint. These are things no one wants to go through. And at that time in my life, I developed a very sensitive fight-or-flight response.” Solstad explained that when he noticed Driver closing in behind him, he “began to speed up,” and he then noticed that Driver “matched [his] speed and was following very closely.” When asked why he continued to speed up, Solstad responded,

[T]hroughout my life, I have heard incidents on the news of road rage. I understood that that was a very serious possibility. Growing up in middle school, I remember me and my friends would joke about the traffic in L.A. Because of the rate of road rage incidents, I was afraid of what [Driver] . . . I was concerned with possible outcomes of violence with [Driver].

¶15 On cross-examination, Solstad acknowledged that driving the speed he was driving in that area was “dangerous,” but he then stated, “Considering that I was being chased and previous trauma I had experienced in my life, what was at stake, I felt . . . the primary motivation was to just escape and preserve my home and myself. And I wasn’t thinking of the danger.” Solstad also admitted, however, that driving away from the first accident was

“irresponsible” and “not the proper thing to do.” And when asked if he had actually experienced a road rage incident previously in his life, Solstad said that he had not. Moreover, when Solstad was asked if Driver did anything to threaten him, Solstad responded, “I’d say the rate of speed he was driving his intense pursuit was very—it made me fearful, and it was very concerning.” But Solstad then agreed that “in hindsight, . . . it would have been safer to pull over.” Solstad also said that he “wasn’t sure if [Driver] had a gun or who was in the car with him” and that he didn’t know anything about Driver’s “temperament.” And Solstad further testified that he “knew nothing about [Driver] and what he was capable of—what he could have been capable of.”

Closing Arguments and Verdict

¶16 During the State’s closing argument, the prosecutor argued that Solstad’s actions that day were the product of a series of conscious choices. The prosecutor emphasized that Solstad “drove erratically before and after [the] initial crash,” and the prosecutor argued that “[n]o one forced [Solstad] to drive with [an] erratic, high rate of speed.” The prosecutor also argued that there “was no use of unlawful force against” Solstad and that there were no “threats made” against him, which, in the prosecutor’s view, meant that the compulsion defense did not apply. Here, the prosecutor highlighted the fact that Solstad had testified that “he didn’t know whether [Driver] had anything against him,” “whether [Driver] had a gun,” or whether Driver had “made any threats.” The prosecutor played the Nest video for the jury again, noting that the video “highlights a critical piece of” what happened, and the prosecutor asked the jury to “pay attention to” the Jeep and “where [Driver’s] car is that then follows [the Jeep] several seconds later.”

¶17 Following deliberations, the jury convicted Solstad of negligent homicide.² Solstad now appeals.

ISSUES AND STANDARD OF REVIEW

¶18 On appeal, Solstad argues that his trial counsel (Counsel) provided ineffective assistance by not moving to arrest judgment on the negligent homicide conviction. He alternatively argues that the district court committed plain error in failing to enter a directed verdict on that charge. “Claims for plain error and ineffective assistance of counsel present questions of law, which we determine in the first instance as a matter of law.” *State v. Draughon*, 2026 UT App 52, ¶ 26, 588 P.3d 1051 (quotation simplified), *cert. denied*, 591 P.3d 751 (Utah 2026).

ANALYSIS

¶19 Solstad raises two challenges to his negligent homicide conviction, both of which are premised on his assertion that the State failed to disprove his compulsion defense beyond a reasonable doubt.

A. Ineffective Assistance of Counsel

¶20 Solstad first argues that Counsel provided ineffective assistance by not moving to arrest judgment on Solstad’s negligent homicide conviction.

¶21 “To prevail on a claim of ineffective assistance of counsel, a criminal defendant must show that (1) counsel’s performance was deficient and (2) the deficient performance prejudiced the defense.” *State v. Miller*, 2023 UT App 85, ¶ 25, 535 P.3d 390 (quotation simplified). “To satisfy the deficient performance

2. Solstad was also convicted on four of the other six drug- and driving-related counts, but he does not challenge any of those convictions on appeal.

prong, the defendant must establish that defense counsel's actions fell below an objective standard of reasonableness." *Id.* ¶ 26 (quotation simplified). "To satisfy the prejudice prong, the defendant must present sufficient evidence to support a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* ¶ 27 (quotation simplified). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* (quotation simplified).

¶22 A "futile motion necessarily fails both the deficiency and prejudice prongs of the *Strickland* analysis because it is not unreasonable for counsel to choose not to make a motion that would not have been granted, and forgoing such a motion does not prejudice the outcome." *State v. Makaya*, 2020 UT App 152, ¶ 9, 476 P.3d 1025. "As a result, the failure of counsel to make motions or objections which would be futile if raised does not constitute ineffective assistance." *Id.* (quotation simplified).

¶23 Solstad argues that Counsel's failure to move to arrest judgment on the negligent homicide conviction constituted deficient performance because the State failed to meet its burden to disprove the defense of compulsion beyond a reasonable doubt. Solstad further argues that he was prejudiced by this deficient performance because filing such a motion would have resulted in an acquittal on that charge. We disagree.

¶24 When a defendant requests a jury instruction regarding an affirmative defense, "the court is obligated to give the instruction if evidence has been presented . . . that provides any reasonable basis upon which a jury could conclude that the affirmative defense applies to the defendant." *State v. Smith*, 2019 UT App 141, ¶ 31, 449 P.3d 971 (quotation simplified). Once the court concludes that there is a reasonable basis for giving the instruction, the State carries the burden to then "disprove the existence of [the] affirmative defense[]" beyond a reasonable doubt." *State v. Drej*, 2010 UT 35, ¶ 15, 233 P.3d 476 (quotation simplified); *see also State v. Maama*, 2015 UT App 234, ¶ 17, 359

P.3d 1266 (“It is fundamental that the State carries the burden of proving beyond a reasonable doubt each element of an offense, including the absence of an affirmative defense once the defense is put into issue.” (quotation simplified)).

¶25 Here, Solstad requested and received a jury instruction on the affirmative defense of compulsion. Thus, the burden shifted to the State to disprove that defense beyond a reasonable doubt. But the jury here convicted Solstad of the lesser included offense of negligent homicide, and in doing so, it necessarily found that “[t]he defense of compulsion [did] not apply.” At that point, Counsel could have potentially attempted to challenge this conviction by filing a motion to arrest judgment. *See* Utah R. Crim. P. 23 (“At any time prior to the imposition of sentence, the court upon its own initiative may, or upon motion of a defendant shall, arrest judgment if the facts proved or admitted do not constitute a public offense . . . or there is other good cause for the arrest of judgment.”). But Counsel’s failure to make such a motion here did not constitute deficient performance, nor did it prejudice Solstad, because that motion would have been futile.

¶26 “To determine whether filing a motion to arrest judgment would have been futile, we evaluate whether the evidence presented at trial was so questionable that such a motion would have caused the trial court to reverse the jury verdict.” *State v. Wells*, 2014 UT App 13, ¶ 7, 318 P.3d 1251. “The court may only reverse a jury verdict when the evidence is sufficiently inconclusive or inherently improbable such that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime for which he or she was convicted.” *Id.* (quotation simplified). “This standard of review is highly deferential to the jury’s determination.” *State v. Taylor*, 2023 UT App 133, ¶ 18, 539 P.3d 351 (quotation simplified). Thus, “the question presented is not whether a court can conceive of alternative (innocent) inferences to draw from individual pieces of evidence, or even whether it would have reached the verdict embraced by the jury”; rather, the court’s task is to ask “whether the jury’s verdict is reasonable in light of all of the evidence taken

cumulatively, under a standard of review that yields deference to all reasonable inferences supporting the jury's verdict." *Id.* (quotation simplified); *see also State v. Stricklan*, 2020 UT 65, ¶ 114, 477 P.3d 1251 (stating that the issue "is simply whether the inference[s] adopted by the jury [were] sustainable" (quotation simplified)).

¶27 Utah Code section 76-2-302 establishes the compulsion defense in Utah. Under its terms,

[a] person is not guilty of an offense when the person engaged in the proscribed conduct because the person was coerced to do so by the use or threatened imminent use of unlawful physical force upon the person or a third person, which force or threatened force a person of reasonable firmness in that situation would not have resisted.

Utah Code § 76-2-302(1).

¶28 We agree with the State that on these facts, a motion to arrest judgment would have been futile because the jury could reasonably find that the State proved that there was no "threatened imminent use of unlawful physical force." *Id.* This is so because presenting evidence of a mere *possibility* of a threat is not enough to support a compulsion defense.

¶29 Our caselaw has clarified that "for a threat to be imminent, it must appear that it had been communicated to the defendant that he [or she] would be subjected to physical force presently," and our caselaw further establishes that the "threat of force must be specific and leave the defendant with no reasonable alternative to the commission of the crime charged." *Smith*, 2019 UT App 141, ¶ 32 (quotation simplified). Thus, a mere "supposition that maybe" the defendant would be harmed unless the defendant committed the crime "does not evidence" a specific threat. *Id.* ¶ 34 (quotation simplified). In other words, generally "fearing for

one's safety is not the same as being coerced to engage in illegal activity." *State v. Rivera*, 2019 UT App 27, ¶ 31, 440 P.3d 694.

¶30 Here, a jury could have found that there was no specific or imminent threat of force at all. Indeed, Solstad's own testimony suggested this. Solstad testified that he "wasn't sure if [Driver] had a gun," nor did he know anything about "his temperament." He also testified that he "knew nothing about [Driver] and what he was capable of" or "what he could have been capable of." Solstad also testified that "in hindsight, . . . it would have been safer to pull over." These statements suggest that Solstad himself understood that Driver had not made any specific threat to him, which tends to undermine any suggestion that Solstad was driving away at high speeds because some imminent threat of physical force from Driver was coercing him to do so.

¶31 The surrounding circumstances amply corroborate this view of the facts. Solstad had just rear-ended Driver's car and then fled the scene at high speeds of his own volition. At that point, Driver had not threatened him in any way. Indeed, a witness to the first accident testified that Driver had pulled over to the side of the road and looked like he was about to get out of his car, which suggests that Driver simply wanted to exchange information following the accident. True, Driver subsequently followed Solstad after he sped away from the scene of the accident. But there was testimony and evidence at trial that while Driver was following Solstad, he was not threatening him. Witnesses at trial testified that while Driver was maintaining similar speeds as Solstad, there was "some distance between the Jeep" and Driver's car. One witness testified that Driver was "maybe" six to ten feet from Solstad's Jeep, while another witness testified that Driver's car was "maybe a couple of houses" or "a couple of driveway length[s]" behind the Jeep. The Nest video corroborated this, showing that in the moments before the second accident, Driver was approximately six seconds behind Solstad. Thus, there was no indication that Driver was aggressively speeding up to cut Solstad off or attempting to run him off the road. And of more importance, there wasn't any evidence that

Driver was making threatening physical gestures, showing a gun, or otherwise doing anything else during the pursuit that would have constituted an explicit threat of physical force.

¶32 Taken together, there was little compelling evidence presented at trial indicating Solstad was facing an “imminent” threat of unlawful physical force that compelled him to speed through a residential neighborhood at “approximately freeway speeds” and then run the stop sign on Bryan Avenue. And viewed through the necessary procedural framing, it simply wasn’t the case that the evidence presented was “sufficiently inconclusive or inherently improbable such that reasonable minds must have entertained a reasonable doubt that” the State had carried its burden of disproving the compulsion defense. *Wells*, 2014 UT App 13, ¶ 7 (quotation simplified). For these reasons, any motion to arrest judgment would have been futile, and Counsel therefore did not perform deficiently by failing to make such a motion.

B. Plain Error

¶33 Solstad also argues that the district court committed plain error by not sua sponte entering a directed verdict in his favor on the negligent homicide charge, again asserting that the State had presented insufficient evidence to disprove compulsion beyond a reasonable doubt. We again disagree.

¶34 To establish plain error with respect to an alleged insufficiency of the evidence, “a defendant must demonstrate first that the evidence was insufficient to support a conviction of the crime charged and second that the insufficiency was so obvious and fundamental that the trial court erred in submitting the case to the jury.” *State v. Holgate*, 2000 UT 74, ¶ 17, 10 P.3d 346. A court evaluates whether a directed verdict is warranted by determining whether “some evidence exists from which a reasonable jury could find that the elements of the crime had been proven beyond a reasonable doubt” when the evidence is “viewed in the light most favorable to the State.” *State v. Buranek*, 2025 UT App 92, ¶ 16, 573 P.3d 440 (quotation simplified). Thus, “an example of an

obvious and fundamental insufficiency is the case in which the State presents *no* evidence to support an essential element of a criminal charge.” *State v. Doyle*, 2018 UT App 239, ¶ 20, 437 P.3d 1266 (emphasis in original, quotation otherwise simplified).

¶35 We reject this claim for the same reasons set forth above, namely, that there was little compelling evidence presented at trial to support a finding that Solstad was facing an imminent threat of unlawful physical force. What’s more, we note that Solstad, in his opening brief, acknowledged that there *was* some evidence “that could potentially show [Solstad’s] compulsion defense did not apply.” Thus, any insufficiency in the evidence wasn’t so obvious and fundamental that the court plainly erred in submitting this charge to the jury.

CONCLUSION

¶36 We conclude that Counsel did not provide ineffective assistance by failing to make a motion to arrest judgment on the negligent homicide conviction. Nor did the court plainly err by failing to sua sponte enter a directed verdict on that charge. We therefore affirm Solstad’s conviction.
