

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARRY C. SHIFFER,

Defendant-Appellant.

UNPUBLISHED

October 12, 2026

10:20 AM

No. 374823

Ingham Circuit Court

LC No. 23-000286-FH

Before: YOUNG, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

Barry Shiffer appeals by right his conviction of, and sentence for, threatening or falsely reporting terrorism, MCL 750.543m(1). Following his jury trial, Shiffer was sentenced, as a fourth-offense habitual offender, MCL 769.12, to serve a term of imprisonment of 16 years and 8 months to 42 years. He raises three issues: (1) that the trial court erred by failing to instruct on jury nullification; (2) that the trial court erred by failing to give a self-defense or defense of others instruction; and (3) that OV 19 was incorrectly scored at 25 points. We disagree on all issues and affirm Shiffer’s conviction and sentence.

I. FACTS

Following earlier interactions with Lansing Police Department (LPD), LPD referred Shiffer to a social worker. The social worker assisted Shiffer in contacting constituent services for some elected officials and also listened to Shiffer’s critiques on the prison system’s ineffectiveness. On February 10, 2023, Shiffer sent the social worker a text message which included the following:

Evacuate the Ingham County Circuit Courthouse. Contact the bomb squad.
I have mailed an unlit pipe bomb to Judge Rosemarie Aquilina. . . .

The harmless pipe bomb is addressed to the judge that denied me a fair trial
and inflicted some of my psychological injuries. . . .

Shiffer is now a domestic terrorist. . . . I belong in a Gretchen Whitmer prison. . . .

The pipe bomb will not injure or kill Judge Rosemarie Aquilina. The pipe bomb will shine a spotlight on her unpunished felony obstruction of justice. . . .

I will overpower your clueless ass in the courtroom. . . . Bitch, call the bomb squad. . . .

This is a solicitation to kidnap each and every Michigan judge. This is a solicitation to kidnap both Gretchen Whitmer and MDOC Director Heidi Washington. It's time for me to play hardball with your dumb ass. . . .

The social worker reported the message to the LPD, who contacted the Ingham County Sheriff's Office, who in turn requested that the LPD assist with an sweep of the Ingham County courthouse. Law enforcement deployed two K-9 units, and "searched every part of the building except for the detention level." No explosives were found.

Then, a search for Shiffer began. During this time, Shiffer sent the social worker additional text messages. In these text messages, Shiffer named additional government officials as the targets of "unlit sticks of dynamite," in addition to other threats. A State Police detective notified every individual named in the threats. On February 15, 2023, Shiffer was found and arrested.

At a pretrial hearing, defense counsel stated that Shiffer "wishes during the trial to raise the defense of jury nullification," but also that counsel did not wish to file such a motion. Shiffer requested the following "Citizens' Veto"¹ instruction:

It is presumed by our system of criminal justice that juries are the best judges of the facts. Accordingly, you are the sole judges of whether considering all the evidence defendant's guilt has been proven beyond a reasonable doubt.

Because judges are presumed to be the best judges of the law, you must accept my instructions as being correct statements of the generally accepted legal principles that apply in the case of this type. These principles are intended to help you in reaching a fair result in this case.

You are also entitled to act upon your conscious feeling about what is a fair result in the case and acquit the defendant if you believe strongly that conscience and justice require a verdict of not guilty. No one can require you to return a verdict that . . . does violence to your conscience.

You should exercise your judgment and examine your conscience without passion or prejudice but with honesty and understanding. You should exercise with

¹ We use this, Shiffer's preferred term, to describe the concept more generally known as "jury nullification."

great caution your power to find a defendant not guilty whose guilt has been proven beyond a reasonable doubt.

Give respectful consideration to my instructions and the law as they help you at arriving at a conscientious determination of justice in this case. This is your highest duty as a juror as a representative of the public and as officers of this court.

The court denied Shiffer's request and Shiffer had a two-day jury trial in Ingham County Circuit Court. Against defense counsel's advice, Shiffer testified at trial, providing a narrative that included a "confession . . . to sending those disturbing text messages to [the] LPD social work supervisor" He repeatedly referred to the subsequent events as a "false bomb threat courthouse evacuation," which Shiffer testified he "instigated . . . on behalf of those 30,000 Michigan prisoners that are denied PTSD relief." The jury found him guilty of threatening or falsely reporting terrorism, and the trial court sentenced him to serve a minimum of 200 months in prison.

Shiffer appeals by right his conviction and sentence.

II. STANDARDS OF REVIEW

"Claims of instructional error are reviewed de novo on appeal." *People v Fennell*, 260 Mich App 261, 264; 677 NW2d 66 (2004). We review "jury instructions in their entirety to determine whether the trial court committed error requiring reversal." *People v Crawford*, 232 Mich App 608, 619-620; 591 NW2d 669 (1998). We review "issues of constitutional interpretation" de novo. See *People v Beck*, 504 Mich 605, 618; 939 NW2d 213 (2019).

Unpreserved appellate claims are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.* at 763. When plain error has occurred, "[t]he reviewing court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 774.

We review "de novo the trial court's interpretation and application of the statutory sentencing guidelines." *People v Dickinson*, 321 Mich App 1, 21; 909 NW2d 24 (2017). "A trial court's factual determinations must be supported by a preponderance of the evidence and are reviewed for clear error." *People v Calloway*, 500 Mich 180, 184; 895 NW2d 165 (2017). The trial court's factual determinations are clearly erroneous if the reviewing court is left with "a definite and firm conviction that the trial court made a mistake." *Id.* "When calculating scores under the sentencing guidelines, a trial court may consider all the evidence in the trial court record." *Id.*

III. CITIZENS' VETO

First, Shiffer argues that the trial court erred by refusing to instruct the jury, or allow argument, on the "Citizens' Veto," meaning the jury's inherent power to return a verdict of not guilty based not on the evidence but rather the jurors' own disapproval of the applicable law. We disagree.

"It is the function of the trial court to clearly present the case to the jurors and instruct them on the applicable law. Jury instructions must therefore include all the elements of the charged offenses and any material issues, defenses, and theories that are supported by the evidence." *Fennell*, 260 Mich App at 265 (citations omitted). "A court must instruct the jury so that it may correctly and intelligently decide the case." *Crawford*, 232 Mich App at 620.

Juries "have the power to acquit as a matter of leniency." *People v Lewis*, 415 Mich 443, 449; 330 NW2d 16 (1982). "Jury nullification is the power to dispense mercy by nullifying the law and returning a verdict less than that required by the evidence." *People v Demers*, 195 Mich App 205, 206; 489 NW2d 173 (1992). However,

simply because the jury has the power to dispense mercy and reach conclusions contrary to the weight of the evidence does not mean it has the right to do so. The jury "has the *power* to acquit on bad grounds, because the government is not allowed to appeal from an acquittal by a jury. But jury nullification . . . is just a power, not also a right." [*People v Bailey*, 451 Mich 657, 671 n 10; 549 NW2d 325 (1996), amended 453 Mich 1204 (1996), quoting *United States v Kerley*, 838 F2d 932, 938 (CA 7, 1988).]

"However, this is a de facto power with regard to which the jury is not instructed." *People v Torres (On Remand)*, 222 Mich App 411, 420; 564 NW2d 149 (1997). In *People v St Cyr*, 129 Mich App 471, 472; 341 NW2d 533 (1983), the defendant admitted to armed robbery. At trial, "he testified that his sole motivation in committing the robbery was to obtain money so that he could purchase food and Christmas presents for his daughter and fiancée." *Id.* He requested a Citizens' Veto instruction, which the trial court denied. *Id.* at 472-473. We observed that "[f]ederal courts have uniformly held that no such right exists," *id.* at 473, and that, "although the jury has the power to disregard the trial court's instructions, it does not have the right to do so," and ruled that the trial court properly denied the requested instruction. *Id.* at 474. Similarly, in *People v Patrick*, 178 Mich App 152, 161; 443 NW2d 499 (1989), we ruled that it was not error for a trial court to decline "to instruct the jurors that they had the power to acquit [the defendant] even though there was undisputed evidence of his guilt." The prevailing view, ultimately, is that "tacit toleration of jury verdicts of innocence, in apparent contradiction to clear proof of guilt, affords adequate protection to the 'conscience' function of the jury, and that explicit instructions sanctioning such action pose too great a threat to the rule of law." *United States v Anderson*, 716 F2d 446, 450 (CA 7, 1983).

Shiffer draws upon *People v Chamblis*, 395 Mich 408; 236 NW2d 473 (1975), for its discussion of the jury's purported right to nullify. The discussion in *Chamblis*, 395 Mich at 421, only acknowledges that a jury may resort to the Veto in practice while also indicating that a judge may properly endeavor to limit the Veto's use. In other words, *Chamblis* stands for a legal

proposition with which no one disagrees: Jurors have the power to nullify. *Chamblis* and the cases that followed indicate only that a jury may in practice exercise the Veto, not that it must, or even should, be formally reminded of that power.

Shiffer insists that *he* had the right to entice the jurors to exercise their power of nullification. However, the authority that Shiffer relies on does not clearly characterize the Veto as a right of the defendant, but rather the prerogative of the jurors. See *People v Goss*, 446 Mich 587, 597; 521 NW2d 312 (1994); *Lewis*, 415 Mich at 449; *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980); *Chamblis*, 395 Mich at 421; *Hamilton v People*, 29 Mich 173, 189-190 (1874). Defendants are obviously potential beneficiaries of the Veto, but the law does not recognize a defendant's entitlement to instructions on it.

Simply put, binding precedent opposes Shiffer's position, we therefore conclude that the trial court properly denied Shiffer's request for argument or instruction on the Citizens' Veto.

IV. SELF-DEFENSE AND DEFENSE OF OTHERS

Shiffer argues that the trial court erred by not sua sponte providing instructions on self-defense or defense of others. We disagree.

As indicated in the statement of facts, Shiffer admitted to sending text messages that included a bomb threat and requested evacuation of a courthouse. Shiffer averred he did this as a form of protest and in honor of the teachings of Nelson Mandela and incarcerated persons suffering from PTSD, among others. To begin, Shiffer does not testify or argue that he was threatening the Ingham County Circuit Court to defend himself. He expresses frustration with his past marijuana conviction and prison time, but there is no support for an instruction on self-defense. As to defense of others, Shiffer repeatedly insists he is acting on behalf of others, namely thousands of incarcerated and untreated individuals. However, M Crim JI 7.22(3) to (6) describes the four requirements for self-defense or defense of others and "use of force" is among them. Here, there was a *threat* of force, which does not justify such an instruction. In *People v Ogilvie*, 341 Mich App 28, 37; 989 NW2d 250 (2022), the defendant pointed a loaded gun at the victim. The trial court provided instructions on the use of deadly force in self-defense. *Id.* at 37-38. We ruled that the instructions were erroneous because the defendant "merely threatened to use deadly force, and a threat of deadly force is not the *use of* deadly force." *Id.* at 38.

The evidence did not support a defense of others instruction, neither Shiffer nor his attorney actually requested them, and there is no indication that these instructions would have made a difference if they had been provided.

V. OFFENSE VARIABLE 19

Shiffer argues that the trial court improperly scored 25 for Offense Variable 19 (OV 19) under the sentencing guidelines. We disagree.

MCL 777.49(a) prescribes 25 points for OV 19 if the defendant's "conduct threatened the security of a penal institution or court." Subsection (b) prescribes 15 points for using force or threat of force to interfere "with the administration of justice or the rendering of emergency

services,” and Subsection (c) prescribes 10 points for otherwise interfering with the administration of justice or violating a personal protection order.

At sentencing, defense counsel argued that OV 19 should be scored at 0 points arguing that Shiffer “made statements to a social worker for the Lansing Police Department,” but was “not accused of actually sending any threats to a penal institution, the jail or court.” He additionally argued that “no actions were ever taken” beyond communications with the social worker. The prosecuting attorney retorted that Shiffer “did take action by addressing a court employee—someone employed with the Lansing Police Department and then directed that employee to call the bomb squad.”

Shiffer’s argument rests upon a specific and narrow interpretation according to which it requires a threat actually “attempted or carried out,” or bombs being “actually mailed.” Although Shiffer did not actually mail a bomb, that was certainly not known to his readers when he sent the message. Put differently, Shiffer’s conduct—mailing a bomb threat—*did* threaten the security of the Court *until* officers could officially confirm there was no actual bomb. That the concern or threat dissipated does not mean there was not an institutional threat to begin with. Further, that Shiffer described his bomb as “unlit” and “harmless” in his writings is of no moment. At trial, an officer testified that, even in the hands of trained professionals, a pipe bomb is inherently unstable and might explode even without being lit. Shiffer’s description of his threatened bomb as “harmless” or “unlit” did not render the rest of what he wrote nonthreatening, or something security did not need to take seriously.

Because Shiffer threatened the security of the courthouse, and in doing so put the security of the building and its occupants at risk, the trial court properly assessed 25 points for OV 19.

Affirmed.

/s/ Adrienne N. Young
/s/ James Robert Redford
/s/ Kathleen A. Feeney