

**Filed 6/11/15 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2015 ND 145

State of North Dakota,

Plaintiff and Appellee

v.

Jan David Hornor,

Defendant and Appellant

No. 20140367

Appeal from the District Court of Cass County, East Central Judicial District,
the Honorable Steven E. McCullough, Judge.

AFFIRMED.

Per Curiam.

Gary E. Euren, Assistant State's Attorney, P.O. Box 2806, Fargo, ND
58108-2806, for plaintiff and appellee; submitted on brief.

Benjamin C. Pulkrabek, 402 First St. N.W., Mandan, ND 58554-3118, for
defendant and appellant; submitted on brief.

State v. Hornor

No. 20140367

Per Curiam.

[¶1] Jan David Hornor appeals from a criminal judgment entered after a jury found him guilty of manufacturing methamphetamine, possession of methamphetamine, possession of amphetamine, and possession of drug paraphernalia. Hornor argues it was obvious error for the district court not to provide an adverse-inference jury instruction regarding the State’s failure to produce evidence showing Hornor’s fingerprints were on the items of drug paraphernalia seized from his residence. To establish obvious error, the defendant must show there was: “(1) error; (2) that is plain; and (3) affects substantial rights.” State v. Gresz, 2006 ND 135, ¶ 7, 717 N.W.2d 583 (emphasis added) (concluding when the defendant did not show there is evidence to support a self-defense claim, “we cannot say the failure to instruct the jury on self-defense was error, let alone obvious error.”). We conclude Hornor did not show it was error for the district court to not provide an unrequested adverse-inference instruction under the circumstances of this case, let alone establish that it amounted to obvious error. We summarily affirm under N.D.R.App.P. 35.1(a)(7).

[¶2] Gerald W. VandeWalle, C.J.
Lisa Fair McEvers
Carol Ronning Kapsner
Dale V. Sandstrom
Daniel J. Crothers