IN THE COURT OF APPEALS OF IOWA

No. 1-566 / 10-0930
Filed August 10, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TRAVARIS JAMES CHANCELLOR,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

A defendant appeals following his convictions for two counts of second-degree murder. **AFFIRMED.**

Scott A. Hall of Carney & Appleby, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Jaki Livingston and James Ward, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

VOGEL, P.J.

Travaris Chancellor appeals following his conviction for two counts of second-degree murder in violation of Iowa Code sections 707.1 and 707.3 (2009). He asserts the district court erred in instructing the jury, specifically that the jury instruction given improperly defined reasonable doubt. Because we find the reasonable doubt instruction given was an accurate statement of the law, we affirm Chancellor's convictions.

With respect to reasonable doubt, the jury was instructed:

> Instruction No. 10
>
> The burden is on the State to prove Travaris Chancellor guilty beyond a reasonable doubt.
>
> A reasonable doubt is one that fairly and naturally arises from the evidence in the case, or from the lack or failure of evidence produced by the State.
>
> If, after a full and fair consideration of all the evidence, you are firmly convinced of the defendant's guilt, then you have no reasonable doubt and you should find the defendant guilty.
>
> But if, after a full and fair consideration of all the evidence in the case, or from the lack or failure of the evidence produced by the State, you are not firmly convinced of the defendant's guilt, then you have a reasonable doubt and you should find the defendant not guilty.

See Iowa Crim. Jury Inst. 100.10 (1973). Chancellor objected to this instruction.[1] He requested the court give the model jury instruction approved by the Iowa

[1] At trial, both parties objected to the district court's and the opposing party's proposed instruction. The following record was made as to Chancellor's objection:

> DEFENSE COUNSEL: . . . [W]e would ask the stock instruction on reasonable doubt be given and the new stock instruction the committee came up with. . . .
>
> THE COURT: Okay. Well, you are not happy with my reasonable doubt instruction either; is that correct? That is the way I take it.
>
> DEFENSE COUNSEL: We would prefer the stock instruction.
>
> THE COURT: Well, the stock instruction hasn't really been . . . adopted. So if you want the stock, I will give you the stock. We will give the one before—the one the State is requesting.
>
> DEFENSE COUNSEL: I would object to the old one.

State Bar Association jury instruction committee in March 2009, which contains the following additional paragraph between the second and third paragraphs quoted above:

> A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

See Iowa Crim. Jury Inst. 100.10 (2009). The district court declined to utilize the model instruction revised in March 2009.

We review challenges to jury instructions for correction of errors at law. *State v. Hanes*, 790 N.W.2d 545, 548 (Iowa 2010). "Our review is to determine whether the challenged instruction accurately states the law and is supported by substantial evidence. Error in giving a particular instruction does not warrant reversal unless the error was prejudicial to the party." *State v. Spates*, 779 N.W.2d 770, 775 (Iowa 2010).

> THE COURT: Are you objecting to the new one as well?
>
> DEFENSE COUNSEL: No, I'm not objecting to the new stock instruction.
>
> THE COURT: Since the old instruction has been approved, rather than take a chance as both sides are objecting, I am going to change the reasonable doubt instruction to the one that has been approved.

On appeal, Chancellor argues that because the jury instruction improperly defined reasonable doubt, his due process rights were violated. The State argues that Chancellor did not make a due process argument before the district court and has not preserved error on a due process argument for appeal. *See State v. Spates*, 779 N.W.2d 770, 776 (Iowa 2010) (finding that although the defendant objected to the jury instruction at trial, it was not on the same ground raised on appeal and the issue raised on appeal was not preserved); *State v. Sanborn*, 564 N.W.2d 813, 815 (Iowa 1997) ("A defendant may not rest an objection on one ground at trial, and rely on another for reversal on appeal."). We do not reach this issue because we find the instruction given was an accurate statement of the law. Thus, any due process argument based upon the instruction's deficiency fails as well.

The district court has broad discretion in instructing the jury and is not required to use any particular language in an instruction. *Stringer v. State*, 522 N.W.2d 797, 800 (Iowa 1994). "If an instruction correctly states the applicable law it will be deemed proper even though an alternative wording is possible." *State v. Morrison*, 368 N.W.2d 173, 175 (Iowa 1985). There is no error so long as the choice of words does not result in an incorrect statement of law or omit a matter essential for the jury's consideration. *Stringer*, 522 N.W.2d at 800.

On appeal, Chancellor argues that the instruction given was an inaccurate statement of the law. We, however, find no error in the instruction that was actually given. The supreme court expressly approved a similar jury instruction in *State v. McFarland*, 287 N.W.2d 162, 163 (Iowa 1980), holding that it was an adequate explanation of reasonable doubt. That decision is binding on us. Because the jury was instructed according to the law, Chancellor cannot establish prejudice. *Cf. State v. Holtz*, 548 N.W.2d 162, 164 (Iowa 1996) (concluding that "no prejudice resulted from any error in failing to give the uniform instruction"). Therefore, we affirm.

AFFIRMED.