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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0759

State of Minnesota,
Respondent,

vs.

Jeffrey Alan McRaven,
Appellant.

Filed March 30, 2020
Affirmed
Jesson, Judge

Hennepin County District Court
File No. 27-CR-18-2258

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Slieter, Judge.

U N P U B L I S H E D   O P I N I O N

JESSON, Judge

Appellant Jeffrey Alan McRaven participated in a brawl in which several people were shot and sustained serious injuries, which included one victim being paralyzed from

the waist down. A jury convicted McRaven of second-degree riot. McRaven appeals his conviction arguing that the jury instruction given by the district court misstated the law by not specifying that he had to be an intentional participant in the brawl. Because the jury instruction requires a showing of knowing participation in a public disturbance, we affirm.

FACTS

Officers were called to a Minneapolis home in November 2017 after reports of a loud fight and gunshots. The fight began after appellant Jeffrey Alan McRaven, his brother, and another individual started arguing outside the home following a dispute over vaping devices. Initially, McRaven watched while his brother and another individual threw punches at each other. Two more individuals arrived soon after and joined the brawl. McRaven eventually joined in the brawl as well. One of the individuals was shot in the spinal cord and paralyzed. Another individual jumped on top of this person to protect them from further gunfire and was also shot several times. McRaven ran. While McRaven was running away, another person started shooting at him. Witnesses testified at trial that they heard several gunshots throughout the brawl. Police found a gun in the street where the brawl occurred.

McRaven was charged with attempted second-degree murder, first-degree assault (great bodily harm), second-degree assault (dangerous weapon), illegal possession of a firearm, and second-degree riot.

The case proceeded to a jury trial. McRaven testified that he went to the Minneapolis home that night because he heard that his brother was drunk and going there to fight a person. McRaven said that, after he arrived at the home, a person came outside

and pointed a gun at McRaven's brother. Another individual then arrived by car and charged towards his brother. McRaven admitted that he and several others intervened in the brawl to prevent his brother from being attacked. Two witnesses testified that McRaven fired a gun eight times before he fled, but McRaven testified that he did not shoot a gun during the brawl. According to McRaven, he heard two different types of gunshots but he did not see the shooter. And McRaven acknowledged that there were three or more people assembled during the brawl, that the group assembled was disturbing the peace, and that somebody in the fight was armed with a weapon.

Before the case was submitted to the jury, defense counsel objected to the district court using the standard criminal jury instruction for the charge of second-degree riot arguing that it did not include the proper intent element. The district court rejected defense counsel's argument and instructed the jury in accordance with the standard jury instruction.

The jury found McRaven guilty of second-degree riot, but it was unable to reach a verdict on the remaining counts. The district court stayed execution of a 15-month prison sentence and placed McRaven on probation for three years. McRaven appeals.

D E C I S I O N

McRaven argues that the district court abused its discretion by instructing the jury consistent with the standard criminal jury instruction for second-degree riot. He contends that the instruction misstated the law because it did not specify that, to find him guilty, the jury needed to conclude that he knowingly and intentionally participated in the brawl or that he intended his presence in the brawl to further an intentional act that disturbed the peace.

A district court's instructions to the jury must explain the law to be applied in the case fairly and adequately without misstating the law in a material way. *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011). Reviewing courts give the district court great latitude in the language used to instruct the jury. *State v. Gatson*, 801 N.W.2d 134, 147 (Minn. 2011). When reviewing jury instructions, appellate courts must read the instructions as a whole to conclude whether the instruction correctly states the law in a way that the jury can understand. *State v. Peou*, 579 N.W.2d 471, 475 (Minn. 1998). Accordingly, we review jury instructions for an abuse of discretion. *State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016).

McRaven challenges the instruction language used in describing the second element of the riot offense:

> The elements of riot in the second degree are:
>
> First, the defendant was one of three or more persons assembled together.
>
> Second, *those assembled disturbed the public peace* by an intentional act or threat of unlawful force or violence to person or property.
>
> Third, the Defendant was *armed with a dangerous weapon or knew that any other participant was armed* with a dangerous weapon. A "dangerous weapon" is a firearm, whether loaded or unloaded, any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that in the manner used or intended to be used is calculated or likely to produce death or great bodily harm or any fire that is used to produce death or great bodily harm.
>
> Fourth, the Defendant's act took place on or about November 18, 2017 in Hennepin County.

(Emphasis added.); *See generally*, 10 *Minnesota Practice*, CRIMJIG 13.115 (2015). McRaven contends that this instruction suggests that a person does not need to participate in the assembly to be found guilty. He argues that the district court should have changed "those assembled" to "Mr. McRaven" to specify that the jury needed to conclude that he disturbed the peace by an intentional act or threat of unlawful force.

We disagree. The district court's jury instruction does not misstate the second-degree riot statute. The second-degree riot statute states:

> When three or more persons assembled disturb the public peace by an intentional act or threat of unlawful force or violence to person or property, each participant who is armed with a dangerous weapon or knows that any other participant is armed with a dangerous weapon is guilty of riot second degree.

Minn. Stat. § 609.71, subd. 2 (2016). The statute, as reflected in the jury instruction here, requires knowing participation by McRaven without substituting his name for "those assembled." It does so by requiring that McRaven be one of the "three or more persons" assembled and that this assembly "disturb[ed] the public peace." *Id.*

Further, the statute and the jury instruction require that McRaven either have a weapon or know another participant is armed. This element, as the district court astutely noted, requires knowing participation and alleviates the concern that mere presence is sufficient to sustain a conviction for second-degree riot.

And factually, the record reflects that McRaven's actions went beyond mere presence. McRaven's participation in the brawl is established by his own testimony. The record, including his own admission, portrays McRaven as an active participant in the

brawl. The incident clearly disturbed the public peace by occurring outside with physical fighting, several gunshots fired, and victims sustaining serious injuries. Further, at least one individual involved in the brawl had a gun, which McRaven knew. The supreme court has upheld a conviction for second-degree riot on much less information than is present here. *See State v. Winkels*, 283 N.W. 763, 766 (Minn. 1939).[1]

In sum, the district court's jury instruction on second-degree riot did not misstate the law.

Affirmed.

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[1] The language of the riot statute has changed in some respects since *Winkels*, but it is sufficiently similar for the reasoning in the case to be persuasive.