STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0849

State of Minnesota,
Respondent,

vs.

Marsean Juan Crockett,
Appellant.

Filed June 14, 2021
Affirmed
Johnson, Judge

Dakota County District Court
File No. 19HA-CR-19-579

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

Kathryn M. Keena, Acting Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Dakota County jury found Marsean Juan Crockett guilty of threatening to commit a crime of violence. We conclude that the district court did not plainly err when it instructed the jury on the elements of the offense. Therefore, we affirm.

FACTS

On March 5, 2019, Crockett entered a CVS store in Eagan with his sister. According to the store manager, Crockett's sister carried an empty, folded bag. The manager saw Crockett and his sister remove something from a shelf and walk toward the exit. The manager followed Crockett's sister and saw diapers and baby food in the bag. The manager confronted Crockett and his sister, which gave rise to a verbal altercation. The manager said something to the effect of, "you're caught this time, just give it up." The manager called the police, informed Crockett and his sister that he had done so, and said that he would report their license plate number to the police. Crockett removed the items from the bag and threw them on the floor. In response, the manager said to Crockett, "the cops know who you are." Crockett responded by making "a gesture to his waistband" and by saying, "I'll shoot the sh-t out of you." Crockett and his sister then left the store. The manager testified at trial that he did not see a gun but believed that Crockett's statement about shooting him was "credible," in part because Crockett's sister had a visible reaction to Crockett's statement. A police officer stopped Crockett's vehicle shortly after he drove away from the CVS store. The officer did not find a gun on Crockett's person or in the vehicle.

The state charged Crockett with threatening to commit a crime of violence, in violation of Minn. Stat. § 609.713, subd. 1 (2018). The case was tried to a jury over two days in March 2020. The state called three witnesses: two police officers and the store manager. The state introduced three exhibits, including an audio-recording and transcript

of the manager's 911 call and a surveillance video-recording. The jury found Crockett guilty. The district court sentenced him to 33 months of imprisonment. Crockett appeals.

DECISION

Crockett argues that the district court erred in its jury instructions on the elements of the offense.

A district court must instruct the jury in a way that "fairly and adequately explain[s] the law of the case" and does not "materially misstate[] the applicable law." *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011). A district court must define the crime charged and should explain the elements of the offense. *State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002). A district court need not provide "detailed definitions of the elements to the crime . . . if the instructions do not mislead the jury or allow it to speculate over the meaning of the elements." *State v. Davis*, 864 N.W.2d 171, 177 (Minn. 2015) (quotation omitted). An appellate court reviews jury instructions "as a whole to determine whether [they] accurately state the law in a manner that can be understood by the jury." *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014). A district court has "considerable latitude" in selecting the language of jury instructions. *State v. Gatson*, 801 N.W.2d 134, 147 (Minn. 2011) (quotation omitted). Accordingly, this court applies an abuse-of-discretion standard of review to a district court's jury instructions. *Koppi*, 798 N.W.2d at 361.

Crockett concedes that he did not assert objections in the district court to the instructions that he challenges on appeal. The absence of any objection requires this court to review only for plain error. *See* Minn. R. Crim. P. 31.02. Under the plain-error test, an appellant is entitled to relief on an issue to which no objection was made at trial only if

(1) there is an error, (2) the error is plain, and (3) the error affects the appellant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If these three requirements are satisfied, the appellant also must satisfy a fourth requirement: that the error "seriously affects the fairness and integrity of the judicial proceedings." *State v. Little*, 851 N.W.2d 878, 884 (Minn. 2014). If an appellate court concludes that any requirement of the plain-error test is not satisfied, the appellate court need not consider the other requirements. *State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012).

A person is guilty of threatening to commit a crime of violence if he or she "*threatens*, directly or indirectly, *to commit any crime of violence with purpose to terrorize another* or to cause evacuation of a building, place of assembly, vehicle or facility of public transportation or otherwise to cause serious public inconvenience, *or in a reckless disregard of the risk of causing such terror* or inconvenience." Minn. Stat. § 609.713, subd. 1 (emphasis added).

A.

Crockett argues that the district court erred by not accurately instructing the jury on the definition of the word "reckless," which appears in the statute in the clause stating, "in a reckless disregard of the risk of causing . . . terror."

The challenged instruction explains the meaning of the reckless-disregard clause as follows:

> In reckless disregard of the risk of causing such terror means that the defendant, even though not having the specific purpose of terrorizing another, recklessly risks the danger that the statement would be taken as threats by another, and that

> they would cause extreme fear. It need not be proven that [the manager] actually experienced extreme fear.

This instruction is nearly identical to the recommended pattern instruction concerning the reckless-disregard clause in the statute. *See* 10 *Minnesota Practice*, CRIMJIG 13.107 (2020). That pattern instruction was cited with approval by this court in *State v. Bjergum*, 771 N.W.2d 53, 57 (Minn. App. 2009), *review denied* (Minn. Nov. 17, 2009).

Crockett urges this court to adopt more-expansive language concerning recklessness from this court's opinion in *State v. Coleman*, 944 N.W.2d 469 (Minn. App. 2020), *aff'd*, 957 N.W.2d 72 (Minn. 2021). But our *Coleman* opinion is not concerned with the offense of threatening to commit a crime of violence; rather, it is concerned with the offense of third-degree depraved-mind murder. *Id.* at 477.

Crockett also contends that a proper instruction would have established a higher or stricter standard of recklessness by requiring the state to prove that he was "aware that his conduct created a substantial and unjustifiable risk . . . and consciously disregarded that risk." *See id.* at 479. For this contention, he cites *Bjergum*, a case concerning a prosecution of the same type as in this case, in which we stated, "Recklessness requires deliberate action in disregard of a known, substantial risk." 771 N.W.2d at 57. That statement is not inconsistent with the district court's instruction in this case. The statement in *Bjergum* may be a more-detailed explanation of the concept of recklessness, but a district court is not always required to instruct a jury in the most-detailed manner. For example, in *Peterson v. State*, 282 N.W.2d 878 (Minn. 1979), the supreme court stated that a challenged instruction was not erroneous because it was "sufficient to convey the essentials of the

element to the jury" and was consistent with a statutory definition. *See id.* at 881-82. Crockett cites no caselaw holding that a more-detailed instruction concerning "reckless disregard" is required in a prosecution for threatening to commit a crime of violence. Thus, he cannot establish that the district court's instruction is erroneous, let alone plainly erroneous.

Even if Crockett could establish the first and second requirements of the plain-error test, he could not establish the third requirement, that the alleged error affected his substantial rights. *See Griller*, 583 N.W.2d at 741. An error affects a defendant's substantial rights "if the error was prejudicial and affected the outcome of the case." *Id.* "In the context of jury instructions, . . . an error affects substantial rights when there is a reasonable likelihood that a more accurate instruction would have changed the outcome in this case." *State v. Gutierrez*, 667 N.W.2d 426, 434-35 (Minn. 2003) (quotation omitted). An appellant bears a "heavy burden" in seeking to satisfy the third requirement of the plain-error test. *State v. Davis*, 820 N.W.2d 525, 535 (Minn. 2012) (quotation omitted).

The jury could have found Crockett guilty for either of two reasons: first, because he threatened the store manager "with purpose to terrorize" him or, second, because he threatened the store manager "in a reckless disregard of the risk of causing such terror." *See* Minn. Stat. § 609.713, subd. 1. In closing argument, the prosecutor argued that the state had proved both "purpose" and "reckless disregard." But the prosecutor emphasized the evidence that tends to prove that Crockett's threat was made with the purpose of causing terror and merely noted that "reckless disregard" could be an alternative means of finding guilt. Indeed, the state introduced strong evidence that Crockett threatened the manager

with the purpose of terrorizing him in order to dissuade him from taking action so that Crockett and his sister could evade the police. In closing argument, the prosecutor emphasized the evidence that Crockett reached for his waistband, which communicated to the manager that he might remove a handgun. The prosecutor also emphasized the timing of the threat, which occurred after the manager said he would call the police. The strength of the state's evidence of a purposeful threat makes it unlikely that the jury rested its verdict on the alternative means of committing the offense with a reckless disregard for the risk of causing terror. Thus, Crockett has not carried his "heavy burden" of establishing that there is a "reasonable likelihood" that a different instruction "would have changed the outcome in this case." *See Davis*, 820 N.W.2d at 535; *Gutierrez*, 667 N.W.2d at 434-35.

B.

Crockett also argues that the district court erred by not accurately instructing the jury on the law of assault.

The instruction that Crockett challenges states as follows:

> The elements of Assault in the Second Degree are, first, the defendant assaulted [the manager]. The term assault, as used in this case, means an act done with intent to cause [the manager] to fear immediate bodily harm or death. Bodily harm means physical pain or injury, illness, or any impairment of a person's physical condition. It is not necessary for the State to prove that the defendant intended to inflict bodily harm or death, but only that the defendant would so act. In order for an assault to have been committed, it is not necessary that there have been any physical contact with the body of the person assaulted.

Crockett contends that the district court erred by instructing the jury on the law concerning assault-by-causing-fear but not the law concerning assault-by-causing-harm.

Assault-by-causing-fear is "an act done with intent to cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.02, subd. 10(1) (2020). Assault-by-causing-harm is "the intentional infliction of . . . bodily harm upon another." Minn. Stat. § 609.02, subd. 10(2). Crockett asserts or implies that the state alleged only a threat to commit the latter form of assault (assault-harm) and that the former form of assault (assault-fear) was "not at issue." But there is no basis for that assertion. In fact, the record reveals that the state sought to prove that Crockett threatened to commit the assault-fear form of assault.

The complaint does not refer to either form of assault but merely recites the language of the statute by alleging that Crockett threatened to commit a "crime of violence." *See* Minn. Stat. § 609.713, subd. 1. The particular crime of violence threatened—second-degree assault by causing fear—was identified in the jury instructions. In closing argument, the prosecutor stated that the term "assault" means "an act with the intent to cause fear of immediate bodily harm or death." She stated further that "pointing a gun at someone, that's an assault, if you are putting that person in fear that you're going to cause them bodily harm." At a later point in the argument, she emphasized the evidence that Crockett reached for his waistband, thereby indicating that he might remove a handgun. The prosecutor's closing argument indicates that the state sought to prove that Crockett threatened to commit assault-by-causing-fear. It is logically possible to do so, especially if Crockett's movement toward his waistband was intended to indicate that he might remove a handgun, which likely would have caused the manager to fear bodily harm or death. Thus, in light of the state's theory, the district court's instruction on the law of assault is not erroneous, let alone plainly erroneous.

Even if Crockett could establish the first and second requirements of the plain-error test, he could not establish the third requirement, that the alleged error affected his substantial rights. In essence, Crockett challenges the instruction on the ground that it is too narrow because it was limited to assault-fear and omitted assault-harm. The consequence of a narrower instruction is that the jury had only one basis on which to find Crockett guilty of threatening a crime (assault-fear), not two bases (assault-fear or assault-harm). As a result, a conviction was less likely, not more likely. Thus, Crockett has not carried his "heavy burden" of establishing that there is a "reasonable likelihood" that a different instruction "would have changed the outcome in this case." *See Davis*, 820 N.W.2d at 535; *Gutierrez*, 667 N.W.2d at 434-35.

In sum, the district court did not commit plain error in its jury instructions on the elements of the offense.

Affirmed.