STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0681

State of Minnesota,
Respondent,

vs.

Payam Naderipour,
Appellant.

Filed June 5, 2023
Affirmed
Wheelock, Judge

Clay County District Court
File No. 14-CR-16-4433

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

Brian J. Melton, Clay County Attorney, Charles J. Drapeaux, Assistant County Attorney, Moorhead, Minnesota (for respondent)

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

Considered and decided by Wheelock, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges his convictions for the attempted murder of his parents, arguing that the district court committed reversible error when it answered questions from the jury outside his presence and abused its discretion when it formulated and clarified its

instructions on appellant's mental-illness defense. Appellant raises additional issues in a supplemental brief. We affirm because (1) the district court's communications with the jury outside appellant's presence constituted harmless error, (2) the district court's instruction on appellant's mental-illness defense adequately and accurately stated the law, and (3) the arguments in appellant's supplemental brief are not supported by relevant authority.

FACTS

Respondent State of Minnesota charged appellant Payam Naderipour with two counts of attempted first-degree murder after he poured gasoline on his parents and attempted to light them on fire. In January 2019, a jury found Naderipour guilty of committing these offenses, but we reversed his convictions and remanded for a new trial because the district court tried Naderipour while he was unrepresented without first obtaining from him a valid waiver of his right to be represented by counsel. *State v. Naderipour*, No. A19-0608 (Minn. App. May 4, 2020).

On remand, the district court held a second trial, and Naderipour, now represented by counsel, asserted a mental-illness defense. In phase one of the bifurcated trial, the jury found Naderipour guilty of both counts of attempted first-degree murder. During phase two of the trial, which related to Naderipour's mental-illness defense, both parties elicited expert-witness testimony on Naderipour's mental state at the time of the offense.

Following this testimony, the district court verbally instructed the jury on Naderipour's mental-illness defense and later provided the jury with the following written instructions:

> The defendant has asserted a defense of mental illness.
>
> Under Minnesota law, a person is not criminally liable for an act when, at the time of committing the act, the person did not know the nature of the act, or did not know that it was wrong, because of a defect of reason caused by a mental illness.
>
> The defense of mental illness is as follows:
>
> First, the defendant did not know the nature of the act. This means the defendant did not understand what the defendant was doing. If, because of a defect of reason, the defendant did not know what action the defendant was taking or what the consequences of the defendant's action would be, then the defendant did not know the nature of the act, or;
>
> Second, even if the defendant knew the nature of the act, the defendant did not understand that the act was wrong. The word "wrong" is used in the moral sense and does not simply refer to a violation of a statute. Stated another way, even if the defendant realized that the act violated the law, the defendant is not criminally liable if, because of a defect of reason, the defendant did not understand that the act was morally wrong; and,
>
> Third, the failure of the defendant to know the nature of the act or that it was wrong, must have been the result of a defect of reason caused by mental illness.
>
> The defendant has the burden of proving the defense of mental illness. If you find that it is more likely true than not true that the defendant, at the time of committing the act(s):
>
> 1.) Did not know the nature of the act(s), or did not know that the act(s) was/were wrong, and,
>
> 2.) That lack of understanding was the result of a defect of reason caused by mental illness,

> then the defendant is not guilty of the crimes of Attempted Murder. . . .
>
> In order for you to return a verdict, each juror must agree with that verdict. Your verdict must be unanimous.

The jury asked two questions during its deliberation: "We are currently undecided at this point. We are deadlocked with different opinions. What is the next step?" and "Can we please get clarification on page two? If we agree on point one (first) do we have to continue to next section (second)? Is it point one versus points two and three together? After point one it says 'or' and after point two it says 'and.'" The district court answered these questions outside Naderipour's presence,[1] and it made a record of the questions and its answers. In response to the questions, the district court bracketed the instructions it had previously given to the jury and made one annotation on the page containing the elements of Naderipour's mental-illness defense. The jury determined that the mental-illness defense did not apply and found Naderipour guilty of both counts of attempted murder.

Naderipour filed a motion for a new trial based on the district court's answering jury questions outside his presence.[2] The district court admitted that it erred but determined that the error was harmless and denied Naderipour's motion. Naderipour also alleged juror misconduct, asserting that one of the jurors knew him and one of the witnesses and then

[1] It appears that counsel for neither party was present given the district court's statement that "the jurors did have two questions this afternoon. I did not feel I needed to bring the lawyers in to respond to those questions, but I do want to make a record of both the questions asked and the response that was given."

[2] Naderipour also challenged the sufficiency of the evidence to convict, but the district court determined that this argument lacked merit, and Naderipour does not challenge the sufficiency of the evidence on appeal.

lied about it during voir dire. Following a *Schwartz*[3] hearing, the district court determined that the juror did not know Naderipour or the witness and denied Naderipour's request for a new trial.

Naderipour appeals.

DECISION

I. The district court committed harmless error by communicating with the jury outside Naderipour's presence.

The state conceded that the district court erred by answering questions from the jury outside of Naderipour's presence. *See* Minn. R. Crim. P. 26.03, subd. 1(1) (requiring defendant to be present "for every stage of the trial including . . . any jury questions dealing with evidence or law"); *Rushen v. Spain*, 464 U.S. 114, 117-18 (1983); *State v. Sessions*, 621 N.W.2d 751, 755-56 (Minn. 2001). In evaluating whether "the denial of a defendant's right to be present for all communications with the jury" warrants reversal, appellate courts apply a harmless-error analysis. *Brown v. State*, 682 N.W.2d 162, 167 (Minn. 2004); *see also Sessions*, 621 N.W.2d at 756 ("Even if a defendant is wrongfully denied the right to be present at every stage of trial, a new trial is warranted only if the error was not harmless."). "If the verdict was surely unattributable to the error, the error is harmless beyond a reasonable doubt." *Sessions*, 621 N.W.2d at 756. When considering whether the erroneous exclusion of a defendant from judge-jury communications constitutes harmless

[3] A *Schwartz* hearing is a posttrial proceeding in which jurors are examined under oath to address concerns of juror misconduct. *See Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960) (adopting procedure).

error, we consider (1) the strength of the evidence and (2) the substance of the judge's response. *Id.*

As to the strength of the evidence, the state presented expert testimony that undermined Naderipour's mental-illness defense. The state's expert opined that Naderipour's actions on the day of the offense suggested that he possessed "rational thought" when he committed the offense and that he understood the wrongness of what he did. Naderipour's expert, however, concluded that Naderipour did not understand the wrongness of his actions, basing her conclusion on Naderipour's postoffense diagnosis of posttraumatic stress disorder and not on his actions the day of the offense. The conflicting evidence does not weigh in favor of either party; thus, the first factor is neutral.

The second factor we must consider is the substance of the judge's response, and it weighs strongly in favor of the state and of harmless error. The district court's response was not substantial or inaccurate; the district court did not modify the jury instructions to which both parties agreed; and when the jury asked the district court to clarify these instructions, it bracketed the relevant instructions and wrote, "One or two and three," beneath them. The district court's annotation, "One or two and three," accurately reflects the unobjected-to instructions the district court initially read to the jury and did not substantially change the instructions. These instructions required the jury to find (1) that Naderipour did not know the nature of his acts or (2) that he did not know the acts were wrong, and (3) his failure to know the nature of his acts or that they were wrong was due to a defect in reason caused by mental illness. Although the jury may have been confused about the instructions, the district court's response attempted to clarify that the jury needed

to decide "[o]ne or two" and then consider "three." This minor—and accurate—clarification in response to the jury's questions, without providing additional instruction, was not substantively significant. Although Naderipour argues that he could have clarified the instruction for the jury in a less confusing manner, the district court would not have been obligated to adopt Naderipour's clarification had he proffered one. *State v. Murphy*, 380 N.W.2d 766, 772 (Minn. 1986) ("The court has the discretion to decide whether to amplify previous instructions, reread previous instructions, or give no response at all."). This factor therefore weighs strongly in favor of the state and of harmless error.

The evidence supporting Naderipour's defense was not particularly strong, and the district court's response to the jury's question was not substantial. We therefore conclude that the district court committed harmless error by answering the jury's questions outside Naderipour's presence, and we decline to reverse and remand for a new trial.

II. The district court did not abuse its discretion when it instructed the jury on the elements of Naderipour's mental-illness defense or when it clarified its previous instructions.

Naderipour argues that the instructions to the jury were confusing even after the district court responded to the jury's questions and clarified the elements of Naderipour's mental-illness defense. A district court has "considerable latitude in selecting jury instructions, including the specific language of those instructions." *State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016). However, "jury instructions must fairly and adequately explain the law of the case." *Id.* We review jury instructions for an abuse of discretion, and a district court abuses its discretion when its instructions are an erroneous statement of the law. *See State v. Koppi*, 798 N.W.2d 358, 361-62, 364 (Minn. 2011); *State*

v. Vang, 774 N.W.2d 566, 581 (Minn. 2009) (stating that a district court errs in instructing the jury when its instructions "confuse, mislead, or materially misstate the law"). An appellate court reviews jury instructions as a whole to determine whether they accurately reflect the law. *Koppi*, 798 N.W.2d at 362. In response to a question from the jury, the district court may "give additional instructions." Minn. R. Crim. P. 26.03, subd. 20(3). As explained previously, the court may also "amplify previous instructions, reread previous instructions, or give no response at all." *Murphy*, 380 N.W.2d at 772; *see also* Minn. R. Crim. P. 26.03, subd. 20(3)(b).

As noted above, the district court chose to provide a minimal response to the jury's questions: it bracketed the relevant language in the previously given instructions and added the annotation, "One or two and three." Naderipour argues that these instructions were confusing and required the jury "to agree on more than what was required for Naderipour to prove his defense." Naderipour points out that part three of the instructions required the jury to find that he did not understand the nature or wrongness of his acts because of a defect in reason caused by mental illness, and the lack-of-understanding requirement was already present in parts one and two. Although the instructions did include redundant information, this redundancy does not represent a misstatement of the law.

Naderipour was required to prove that "at the time of committing the alleged criminal act [he] was laboring under such a defect of reason, from [mental illness], as not to know the nature of the act, or that it was wrong." Minn. Stat. § 611.026 (2016); *see also* Minn. R. Crim. P. 20.02, subd. 7(c); *State v. Roberts*, 876 N.W.2d 863, 867 (Minn. 2016) (placing burden of proof on defendant to prove mental-illness defense by a preponderance

of the evidence). The instructions accurately reflect the elements set forth in the statute: (1) Naderipour did not know the nature of his actions or that they were wrong, and (2) his lack of knowledge was caused by a defect in reason due to mental illness. Although parts one and two of the instructions contained elements of the defense also present in part three, the inclusion of this redundancy did not force Naderipour to prove more than what was required of him to successfully assert his defense or change the burden of proof applicable to his mental-illness defense from a preponderance of the evidence to a different standard.

The instructions provided to the jury accurately stated the law and sufficiently enabled the jury to "resolve their concerns." *State v. Harwell*, 515 N.W.2d 105, 109 (Minn. App. 1994), *rev. denied* (Minn. June 15, 1994). Given the wide latitude the district court possesses to formulate jury instructions, we discern no abuse of discretion in either the original or annotated instructions the district court provided to the jury.

III. Naderipour's pro se arguments are inadequately briefed, and we decline to address them.

We construe Naderipour's pro se brief to raise three additional arguments: (1) Naderipour was denied his right to testify, (2) one of the jurors knew him, and (3) he received ineffective assistance of counsel. But his brief contains only unsupported assertions and no citation to relevant legal authority or the record. We therefore decline to address these arguments. *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) (reviewing court does not review issues that are inadequately briefed and not supported by authority).

Affirmed.