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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1936**

State of Minnesota,
Respondent,

vs.

Ron Wesley Epps,
Appellant.

**Filed December 23, 2013
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-11-38319

Lori Swanson, Attorney General, St. Paul, Minnesota; and

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Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his conviction of felony violation of a domestic abuse no contact order (DANCO). Because the district court did not err in refusing to order a Rule 20.01 competency evaluation and because appellant's other arguments fail, we affirm.

FACTS

In December 2011, officers responded to a call that two men were arguing and going in and out of a house in Minneapolis. They witnessed appellant Ron Wesley Epps run from the yard into an alley, where they apprehended him. The officers learned that Epps had an existing DANCO prohibiting him from going to the address or contacting T.R., who lived at the address. T.R. told the officers that Epps had come to his home to retrieve some personal property.

Prior to trial, Epps discharged his public defender and was assigned a replacement. Epps then rejected the state's plea offer and moved to discharge his second public defender and to proceed pro se with standby counsel. The district court granted his motions to discharge his public defender and to proceed pro se, but denied his motion for standby counsel.

Before voir dire, the state requested that the district court order a Rule 20.01 competency evaluation. The state based its motion on T.R.'s account of Epps's mental-health history. Epps objected, arguing that he had already been deemed competent to stand trial, that the state's motion was based on hearsay, that his prior psychiatric

treatment was due to stress resulting from unemployment, and that the treatment was not related to hearing voices.

Although the district court expressed concern regarding Epps's mental health, it denied the motion. Epps's behavior during the pretrial and trial proceedings was disruptive. To manage his behavior, the district court repeatedly threatened to remove him from the courtroom, stay the proceedings for a Rule 20.01 competency evaluation, or order him "muzzled." The district court observed, however, that when in front of the jury, Epps's behavior calmed.

During its final jury instructions, the court recited the elements of a felony-level DANCO violation:

First, there was an existing court domestic abuse no contact order.

Second, the defendant violated a term or condition of the order.

Third, the defendant knew of the existence of the order.

Fourth, the defendant's act took place on or about December 8, 2011, in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

If you find the defendant is guilty, you have an additional issue to determine, and it will be put to you in the form of a question on the verdict form. The question is: Did the defendant knowingly commit this crime within ten years of the first of defendant's two or more previous qualified domestic violence related offense convictions?

Neither party objected to these instructions.

The jury submitted two questions during deliberations. First, the jury asked, “[H]ow close does the defendant need to be to the victim’s residence to violate the no contact order?” Second, the jury asked, “[H]ow close is the defendant allowed to come to the victim’s residence when under the jurisdiction of a domestic no contact order?” The district court told the jury that it should use common sense when interpreting the trial exhibits and the elements of the offense. The district court then repeated the first four elements of the offense, but omitted the instruction regarding the “additional issue” contained on the verdict form.

The jury found that Epps was guilty of violating the DANCO and that he knowingly violated the DANCO within ten years of at least two prior qualifying domestic-violence convictions. The district court sentenced Epps to 21 months in prison and stayed execution of the sentence. This appeal follows.

D E C I S I O N

I.

Epps argues that the district court erred when it declined the state’s motion to order a Rule 20.01 competency evaluation. Criminal defendants have the right not to be convicted of a crime while legally incompetent to stand trial. *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 903 (1975). “A district court’s failure to observe procedures adequate to protect [this right] deprives [the defendant] of [the] due process right to a fair trial.” *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011) (quotation

omitted). When a party appeals the district court's decision not to conduct a competency evaluation, the issue is "only whether the trial court, in fulfilling its protective duty, should have conducted further inquiry." *State v. Bauer*, 310 Minn. 103, 108, 245 N.W.2d 848, 852 (1976). Because the parties do not dispute the evidence relevant to Epps's competency, we "review the record to determine whether [the district court] gave proper weight to the information suggesting incompetence in concluding that there was not sufficient doubt of the defendant's fitness to stand trial." *Id.* at 856 (quotation omitted).

A defendant is incompetent to stand trial if he cannot "(a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense due to mental illness or deficiency." Minn. R. Crim. P. 20.01, subd. 2. If at any time the district court determines "that reason exists to doubt the defendant's competency" it shall "suspend the criminal proceedings" and, in felony or gross misdemeanor cases, "order an examination of the defendant's mental condition." *Id.*, subd. 3. Whether there is reason to doubt the defendant's competency "depends entirely on the surrounding circumstances," including "evidence of irrational behavior, any prior medical opinion on competence and the defendant's demeanor." *Bonga*, 797 N.W.2d at 720.

On appeal, Epps argues that the district court should have ordered a competency evaluation, in light of T.R.'s description of Epps's mental-health history, Epps's disruptive behavior at trial, the district court's concerns about his mental condition, and the district court's repeated threats to muzzle him or order an evaluation. T.R. reported to the prosecutor that Epps had twice been hospitalized for mental-health issues that were possibly related to suicide; that, after hospitalization, he had not followed medical

recommendations for further treatment and medication; that he had reported hearing voices; and that he has a tendency to deny or refuse to accept responsibility for his prior actions.

But the record contains a number of countervailing circumstances. The district court specifically observed that neither of Epps's two discharged public defenders had raised any concerns about Epps's competency. And it took into consideration the fact that Epps preferred to proceed to trial and opposed a competency hearing. In response to the state's motion, Epps disputed T.R.'s account of his mental-health history, arguing that his hospitalizations resulted from stress caused by unemployment rather than suicidal thoughts or hearing voices. When Epps petitioned to proceed pro se—before the state moved for a competency hearing—he similarly noted that his hospitalizations were due to stress. Finally, Epps argued that he had recently been assessed as competent to stand trial and the district court appeared not to dispute this fact.

The record also reflects that Epps understood the proceedings and was able to present a defense. Although he was disruptive, the district court observed that his behavior changed when he was in front of the jury. During cross-examination, Epps asked the state's witnesses questions aimed at demonstrating that he was never at T.R.'s address. At closing argument, he similarly argued that he was only in the surrounding neighborhood, not at T.R.'s residence. He also successfully objected to the state's attempt to impeach him with certain prior convictions. The record, therefore, demonstrates that Epps understood the case, employed a defense, and had at least some understanding of the law.

Epps also argues that the district court improperly denied him standby counsel and that the lack of standby counsel “exacerbated the situation” because “the [district] court could not gauge whether [Epps] was capable of understanding the proceedings.”¹ But Epps cites no legal authority for the proposition that a district court cannot, without an intermediary, conclude that an evaluation is unnecessary. The record in this case demonstrates that the district court engaged in numerous discussions with Epps, which were sufficient to allow it to adequately assess whether there was reason to doubt his competency.

Our review is limited to identifying factors that the district court improperly weighed. *Bauer*, 245 N.W.2d at 856. Epps does not cite any particular factor to which the district court gave improper weight. Instead, he argues that “the surrounding circumstances proved the need for further inquiry,” an argument that calls for this court to reweigh all the relevant factors and substitute its own judgment for that of the district court. We decline to do so. *See Arundel v. Arundel*, 281 N.W.2d 663, 667 (Minn. 1979) (“[W]e are not free to substitute our judgment for that of the trial court absent a clear abuse of its discretion.”). Because the record does not suggest that the district court improperly weighed any factor, there is no basis to conclude that it should have inquired further into Epps’s competency.

¹ Epps does not argue that the district court’s denial of standby counsel is an independent basis for reversal in this case, but only raises this issue within the context of the district court’s decision not to order a competency hearing. Appointing standby counsel is a decision within the district court’s discretion. *State v. Clark*, 722 N.W.2d 460, 466 (Minn. 2006).

II.

Epps argues that the jury instructions were erroneous and affected his substantial rights because the district court neglected to instruct the jury that it could not convict him unless the state proved that he knowingly violated the DANCO. Because Epps did not object to the jury instructions at trial, we review for plain error. *See State v. O'Meara*, 755 N.W.2d 29, 36 (Minn. App. 2008). “The plain error doctrine is satisfied by (1) an error, (2) that is plain, and (3) affects a party’s substantial rights.” *State v. Watkins*, 820 N.W.2d 264, 267 (Minn. App. 2012), *aff’d on other grounds* (Minn. Dec. 4, 2012). We will not reverse a conviction on the basis of plain error unless “a new trial is required to ensure the fairness and integrity of the judicial proceedings.” *Id.* at 269.

A jury instruction is erroneous if it “materially misstates the law.” *State v. Vance*, 734 N.W.2d 650, 656 (Minn. 2007), *overruled on other grounds by State v. Fleck*, 810 N.W.2d 303 (Minn. 2012). An error is plain if it was clearly or obviously erroneous. *State v. Ihle*, 640 N.W.2d 910, 917 (Minn. 2002). Although the district court has broad discretion in selecting jury instructions, it must at least “define the crime charged and explain the elements of the offense to the jury.” *Vance*, 734 N.W.2d at 656. When reviewing jury instructions for error, this court examines them “in their entirety to determine whether they fairly and adequately explain the law.” *Id.*

Recently, this court explained the elements of a felony-level DANCO violation and the appropriate jury instructions:

Under the statute, felony DANCO violation requires proof (1) of an existing DANCO; (2) that the defendant had knowledge of the DANCO; (3) that the defendant violated the

DANCO; (4) of venue; (5) of either two or more previous qualified domestic-violence-related offense convictions or possession of a dangerous weapon; and (6) that the defendant *knowingly* violated the order.

Watkins, 820 N.W.2d at 267. It is error to omit from the instructions the element requiring that the defendant “knowingly” violated the DANCO. *Id.* To convict a defendant of a felony-level DANCO violation, the jury must find that the defendant “was aware that his behavior was prohibited by the order.” *Id.*

The record does not support Epps’s claim that the jury was never instructed that it must find that he knowingly violated the DANCO. The district court instructed the jury that, if it found that Epps violated the DANCO, it must answer the question: “Did the defendant knowingly commit this crime within ten years of the first of defendant’s two or more previous qualified domestic violence related offense convictions?” This “additional issue”—which includes the “knowingly” element—refers to the statutory distinction between felony- and misdemeanor-level DANCO violations. *Compare* Minn. Stat. § 629.75, subd. 2(b) (2010) (defining misdemeanor-level DANCO violation) *with* Minn. Stat. § 629.75, subd. 2(d) (2010) (defining felony-level DANCO violation). Unlike in *Watkins*, the district court here specifically instructed the jury that, before convicting Epps of a felony, it must determine an “additional issue,” i.e. whether Epps knowingly committed the crime.

The district court *did* omit the additional issue when it repeated the elements of a DANCO violation in response to the jury’s questions. But, when looking for error in the jury instructions, we view them as a whole, and “an error in one part of the jury

instruction may be cured by other instructions.” *State v. Collins*, 580 N.W.2d 36, 43 (Minn. App. 1998), *review denied* (Minn. July 16, 1998). The district court did not commit plain error because the jury instructions, when viewed as a whole, did not omit an element of the offense.

Even if the district court erred, that error cannot have affected Epps’s substantial rights in this case. Plain error affects the defendant’s substantial rights when “there is a reasonable likelihood that the error had a significant effect on the jury’s verdict.” *Vance*, 734 N.W.2d at 656. As described above, the jury initially received an adequate jury instruction. And on its verdict form, the jury answered “yes” to the question “[D]id the defendant knowingly commit this crime within ten years of the first of the defendant’s two or more previous qualified domestic violence related offense convictions?” The district court’s error, if any, did not affect the jury’s verdict because the jury specifically considered and answered the question corresponding to the felony-level DANCO violation elements.

Epps argues that, under *Watkins*, an omitted jury instruction violates a defendant’s substantial rights as a matter of law. According to this argument, if the district court’s instructions were plainly erroneous, it does not matter that the jury actually considered all the elements because omitting an element from the jury instructions is per se plain error affecting a defendant’s substantial rights. Application of the *Watkins* rule in this case, however, would conflict with supreme court precedent stating that there is no prejudice to a defendant’s substantial rights when the jury instructions omit an element that is nevertheless included on a special verdict form. *See Ihle*, 640 N.W.2d at 917

("[A]ppellant . . . is not entitled to a new trial because it is not reasonably likely that the error had a significant effect on the verdict in view of the jury's answer to the special verdict question.").

Finally, even if we accept Epps's argument that *Watkins* requires us to find that any error was prejudicial, this error does not call into question the fairness or integrity of the proceedings leading to Epps's conviction. In *Watkins*, the omission of an element required reversal because that error "prevented the jury from weighing the competing evidence and considering a disputed element of the crime." *Watkins*, 820 N.W.2d at 269. Here, not only was the jury instructed that a guilty verdict requires Epps to have knowingly violated his DANCO, the verdict form specifically found that he had done so. When, as here, the jury specifically answers the question posed by the omitted element, there is no reason to worry that the erroneous instruction prevented it from considering a disputed element of the crime. In the absence of that concern, an omitted jury instruction is not an error that requires reversal. *See State v. Griller*, 583 N.W.2d 736, 742 (Minn. 1998) (declining to reverse for plain error where doing so "would be an exercise in futility and a waste of judicial resources").

III.

Epps argues that the district court's reply to the jury's questions warrants reversal because the district court did not clarify that a guilty verdict required the state to prove that Epps either contacted T.R. or went to T.R.'s residence. Epps also argues that the district court's response failed to clarify that he had to knowingly violate the DANCO.

We review a district court's failure to give a proposed jury instruction for an abuse of discretion. *State v. Anderson*, 789 N.W.2d 227, 239 (Minn. 2010). We will not reverse a conviction if the error was harmless. *See State v. Harwell*, 515 N.W.2d 105, 109 (Minn. App. 1994), *review denied* (Minn. June 15, 1994). "In response to a jury's request for supplemental instructions, a trial court enjoys the discretion to amplify previous instructions, reread previous instructions, or not respond." *State v. Crims*, 540 N.W.2d 860, 864 (Minn. App. 1985). The district court acts within its discretion by referring the jury to the original instructions if they "provide[] the jury with the guidance necessary to resolve its confusion." *Id.* at 864-65.

Epps argues that the district court's response to the jury was an abuse of discretion because it left open the possibility that the jury could base a conviction "on the fact that he was in the alley near [T.R.'s] home" instead of being at T.R.'s residence as prohibited by the DANCO. This argument is unpersuasive. The district court's answer directed the jury to the trial exhibits, which included the DANCO. In addition to prohibiting Epps from contacting T.R., the DANCO stated, "[y]ou may not go to the following location(s):" and then listed T.R.'s street address. This language is plain and unambiguous; following the DANCO's terms, the jury could only have found Epps guilty if it was satisfied that the state proved he was at that specific address.

The district court's response to the jury that it should examine the elements of the offense and the trial exhibits, therefore, was not an abuse of discretion because the DANCO's actual language sufficiently instructed the jury that in order to violate the DANCO, Epps had to be at T.R.'s address or in contact with T.R. A district court does

not abuse its discretion when its response is legally accurate and is sufficient to resolve the jury's question. *See Harwell*, 515 N.W.2d at 109.

Epps also argues that the district court's response to the jury omitted the knowingly element of a felony-level DANCO violation. But that error was harmless because the district court's response referred the jury to its original instructions, which did include the knowingly element. Moreover, the jury's affirmative answer to the special verdict question eliminates any concern that the district court's response prejudiced Epps.

Finally, Epps argues that his case is controlled by *State v. Shannon*, 514 N.W.2d 790 (Minn. 1994). *Shannon* is distinguishable, however, because there the prosecutor misled the jury on a question of law which the jury later asked the district court to clarify. *Id.* at 793. Here, the district court did not fail to correct an erroneous description of the law or an erroneous instruction. The district court had correctly instructed the jury on the elements of the offense.

IV.

Epps makes a number of additional arguments in a pro se supplemental brief. First, he argues that the state failed to present sufficient evidence to support his conviction. "In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to allow the jurors to reach the verdict that they did." *State v. Brandes*, 781 N.W.2d 603, 606 (Minn. App. 2010). In doing so, this court assumes the jury believed the state's witnesses and disbelieved

contrary evidence; this court will not disturb the verdict if the jury could “reasonably conclude that the defendant was guilty of the charged offense.” *Id.*

In this case, the evidence presented must support the conclusions that Epps knowingly violated an existing DANCO, that the violation occurred within ten years of two prior qualifying domestic-violence related convictions, and that the violation occurred in Hennepin County. *See Watkins*, 820 N.W.2d at 267. Viewed in the light most favorable to the jury’s verdict, there was sufficient evidence to support Epps’s conviction.

The district court admitted into evidence a copy of the DANCO prohibiting Epps from contacting T.R. or going to his residence. Epps testified that he went to T.R.’s residence and that he knew the DANCO prohibited him from doing so. T.R. testified that Epps came inside his home, and the testifying officers stated that they saw Epps on the southern part of T.R.’s yard. One of the officers testified that he traced footprints in the snow from where Epps was apprehended to T.R.’s front door. The district court also admitted evidence of two prior convictions for domestic-violence related offenses occurring in 2011, and there was testimony that T.R.’s residence was located in Hennepin County. Assuming the jury believed this evidence, the evidence was sufficient to find Epps guilty of a felony-level DANCO violation.

Epps also asserts that (1) there is no transcript of his initial appearance; (2) a prior case is actually the parent of the current proceedings; (3) the record does not adequately reflect the reasons that caused him to discharge his defense counsel; (4) there was no court reporter present at his sentencing hearing; (5) various government offices have

abused their authority; and (6) this court's opinion in *State v. Epps*, No. A12-1426, 2013 WL 1943021 (Minn. App. May 13, 2013) (reversing the district court's decision to deny appellant's motion to withdraw a guilty plea) "renders [the current case] moot." We decline to consider these claims because they are unsupported by argument or citation to legal authority. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008).

Affirmed.