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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1496**

State of Minnesota,
Respondent,

vs.

Andre Anthony Weston,
Appellant.

**Filed August 13, 2012
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File No. 27-CR-09-41228

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth Johnston, Assistant Hennepin County Attorney, Minneapolis, Minnesota (for respondent)

Bradford Colbert, Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct, arguing that the district court committed plain and prejudicial error by failing to instruct

the jury on the definitions of “force” and “coercion.” Because appellant did not request such instructions and because the district court’s failure to give the instruction sua sponte was not error, the issue is waived, and we affirm.

FACTS

Shortly after 12:30 a.m. on a morning in August 2009, T.F., who was walking home from a friend’s house, saw appellant Andre Anthony Weston stumble out of a house and come toward her. T.F. was talking to her boyfriend on her cellular telephone when Weston approached. T.F. told her boyfriend to call the police. Weston put his arm around T.F. He took the telephone from her and shut it off. T.F. offered him her purse. Weston took the purse but threw it aside and told T.F. he wanted her pants off.

T.F. tried to move away but Weston kept approaching her. She threw the can of soda that she was holding at him. Weston then chased T.F. up steps and into a yard where they began to fight. Weston hit T.F. and she struggled to get away from him. Weston pulled off her shorts as they struggled on the steps to a porch. T.F. reached the door of the house and pushed the doorbell several times. Weston swung at her, but he hit and shattered the glass window of the storm door. T.F. tried to push him over the railing, but it broke and they both fell. Weston grabbed T.F. by her hair and pulled her towards the side of the house. He forced her to have oral sex while he yelled obscenities at her, called her names, and hit her. Weston then took T.F. to the back of the house where T.F. was able to free herself. She ran to the backdoor of the house and rang the doorbell. Weston reached her and attempted to penetrate her from behind. The homeowner turned

on an outside floodlight and opened the door. Weston fled. T.F. ran into the house stating, “I’m being raped.” The homeowner called 911, and T.F. talked to the dispatcher.

Police patrolling nearby got a radio call and stopped Weston on the street two houses away from the house T.F. had entered. Other officers went to that house to talk to T.F. T.F. was asked to step outside for a “field show-up.” T.F. identified Weston as her attacker. Weston was arrested and searched. T.F.’s cell phone was in his pocket.

Weston was ultimately charged with two counts of first-degree criminal sexual conduct, two counts of attempted first-degree criminal sexual conduct, and one count of kidnapping. The kidnapping charge was dismissed before the case went to the jury. The jury found Weston guilty of one count of first-degree criminal sexual conduct (penetration causing personal injury, using force or coercion) and one count of attempted first-degree criminal sexual conduct (attempted penetration causing personal injury, using force or coercion). The district court convicted Weston of first-degree criminal sexual conduct and sentenced him to 144 months in prison. This appeal followed.

D E C I S I O N

I. Jury instructions

Weston argues that the district court committed plain, reversible error by failing to sua sponte instruct the jury on the definitions of “force” and “coercion” when instructing the jury on the elements of first-degree criminal sexual conduct and attempted first-degree criminal sexual conduct involving penetration using force or coercion. District courts are allowed “considerable latitude” in the selection of language for the jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). This court reviews the

district court's jury instructions in their entirety and will reverse only if the instructions failed to fairly and adequately explain the relevant law. *State v. Vance*, 765 N.W.2d 390, 393 (Minn. 2009).

“A defendant's failure to propose specific jury instructions or to object to instructions before they are given to the jury generally constitutes a waiver of the right to appeal.” *State v. White*, 684 N.W.2d 500, 508 (Minn. 2004). Because Weston did not request an instruction on the definitions of “force” and “coercion” and did not object to the instructions as given, we must first address whether to use our discretion to consider the purported error on appeal. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

Under the plain-error standard set forth in *Griller*, this court will address unobjected-to error only if three prongs are met: (1) there must have been error, (2) that was plain, and (3) that affected the defendant's substantial rights. *See id.* If the three *Griller* prongs are met, “the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.” *Id.*

“[D]istrict courts have considerable latitude in selecting language for jury instructions; a particular instruction is therefore error only if it materially misstates the law.” *State v. Caine*, 746 N.W.2d 339, 353 (Minn. 2008) (quotation omitted). For there to be plain error in a jury instruction, the jury instruction must be misleading or confusing on fundamental points of law. *Id.*

The term “force” is defined in Minn. Stat. § 609.341, subd. 3 (2010), and the term “coercion” is defined in subdivision 14. The statutory definitions are encompassed in a pattern jury instruction. *See 10 Minnesota Practice*, CRIMJIG 12.01 (2006). But

Weston provides no authority to support his argument that a district court's failure to instruct a jury on a term that is defined in a statute is per se plain, reversible error. And the supreme court has "indicated that . . . detailed definitions of the elements to the crime need not be given in the jury instructions if the instructions do not mislead the jury or allow it to speculate over the meaning of the elements." *Peterson v. State*, 282 N.W.2d 878, 881 (Minn. 1979) (holding that the failure to instruct the jury on the definition of "great bodily harm" contained in Minn. Stat. § 609.02, subd. 8 (1978), was not erroneous or prejudicial).

Force and coercion, particularly in the context of T.F.'s testimony, are easily understandable terms. The absence of definitions of those terms did not result in instructions that were misleading or confusing to the jury. We conclude that the district court did not commit plain error by failing to sua sponte instruct the jury on the definition of these terms and that Weston's challenge to the instructions is waived.

II. Weston's pro se supplemental brief

In his supplemental pro se brief, Weston appears to challenge the sufficiency of the evidence to support his convictions. But Weston does not present any argument or authority to support this challenge, and prejudicial error is not obvious on mere inspection of the record. An assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (citation omitted), *aff'd on other grounds*, 728 N.W.2d 243 (Minn. 2007). To the extent that

Weston has raised issues in his pro se brief, those issues are waived for lack of adequate briefing.

Affirmed.