STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2296

State of Minnesota,
Respondent,

vs.

Stanley Scales,
Appellant.

Filed March 4, 2008
Affirmed
Schellhas, Judge

Swift County District Court
File No. 76-CR-06-119

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Robin W. Finke, Swift County Attorney, 114 – 14th Street North, Benson, MN 56215 (for respondent)

John Stuart, State Public Defender, Sara L. Martin, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant challenges his conviction of fourth-degree assault, arguing that the district court abused its discretion by refusing to instruct the jury that a corrections officer who engages in an illegal activity is not engaged in a "duty imposed by law." Because we find that the district court did not err in refusing to give this instruction, we affirm.

FACTS

Appellant Stanley Scales, an inmate at a correctional facility, was involved in a physical altercation with a corrections officer on January 9, 2006. While the corrections officer was monitoring inmates in the prison yard, appellant assaulted him. Appellant claims that the corrections officer pushed him and that he reflexively pushed back, which caused both men to fall to the ground, but that he did not otherwise strike the corrections officer.

Appellant was charged with and convicted of fourth-degree assault of a corrections officer. At trial, the district court instructed the jury as to the elements of fourth-degree assault of a corrections officer, including that the corrections officer must be engaged in a "duty imposed by law" when the assault occurs. Appellant requested that the court further instruct the jury that a corrections officer who engages in an illegal activity is not engaged in a "duty imposed by law." Appellant argued that because the record contained evidence that the corrections officer had pushed him, the lawfulness of the officer's conduct at the time of the assault was at issue.

Appellant based his request on a footnote to a 1999 version of CRIMJIG 13.22, which read, "[n]ormally the court will state the legal duty the officer was performing. If there is a claim that the officer was intentionally using his position to do an illegal act, further instructions may be necessary." 10 *Minnesota Practice,* CRIMJIG 13.22 n.1 (1999). The footnote was contained in a part of CRIMJIG 13.22 that applied to peace officers, not the part that applied to corrections officers. By appellant's admission, this footnote does not appear in the 2004 version of CRIMJIG 13.22. The district court refused to give appellant's requested instruction, explaining that including the instruction would invite undue speculation by the jury. The district court did instruct the jury that appellant was presumed innocent unless the prosecution proved his guilt beyond a reasonable doubt, and allowed appellant to address the issue of the corrections officer's alleged illegal conduct in his closing argument.

D E C I S I O N

I. Standard of Review

The refusal to give a requested jury instruction lies within the discretion of the district court and will not be reversed unless the district court has abused that discretion. *State v. Dobbins*, 725 N.W.2d 492, 506 (Minn. 2006). The focus of the analysis is on whether the refusal resulted in error. *State v. Kuhnau*, 622 N.W.2d 552, 555 (Minn. 2001). To determine whether the district court erred in its refusal to give a jury instruction, this court reviews the instructions in their entirety to examine whether they fairly and adequately explain the law of the case. *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). The instructions must define the elements of the crime charged, and "it is desirable for the

court to explain the elements of the offense rather than simply to read statutes." *Kuhnau*, 622 N.W.2d at 556. If the exclusion was erroneous, this court must determine whether the error was harmless because appellant requested the instruction. *State v. Shoop*, 441 N.W.2d 475, 480-81 (Minn. 1989). Therefore, if this court finds that the district court abused its discretion in excluding the jury instruction, appellant will be entitled to a new trial unless this court finds beyond a reasonable doubt that the error did not have a significant impact on the jury's verdict. *Id*. at 480.

II. Did the District Court Abuse its Discretion in Excluding Appellant's Jury Instruction?

A. Was the Instruction Applicable as Part of a CRIMJIG?

While the use of CRIMJIGs by the courts is not mandatory, departures from the CRIMJIGs must be done with "considerable care so as not to impair fundamental principles of law." *State v. Smith*, 674 N.W.2d 398, 401, 403 (Minn. 2004). The district court's instructions to the jury in this case incorporated the elements of fourth-degree assault on a corrections officer as contained in CRIMJIG 13.22, but did not incorporate the footnote on which appellant based his request for additional instructions. Appellant concedes that this footnote was removed from the 2004 version of CRIMJIG 13.22. Regardless of whether a footnote from a section of a CRIMJIG that applies to peace officers should apply to corrections officers, since the footnote was removed long before the date of the offense and the time of trial, it is not applicable to this case as part of CRIMJIG 13.22.

B. Did the District Court Abuse its Discretion in Excluding Appellant's Jury Instruction?

Even if the footnote applied to this case as part of a CRIMJIG, a refusal to instruct the jury on it is not an error per se. Jury instruction guides are guidelines and not mandatory rules; although jury instruction guides are instructive, they are not binding on this court. *See State v. Kelley*, 734 N.W.2d 689, 695 (Minn. App. 2007*)* (stating that jury instruction guides merely provide guidelines and are not mandatory rules; they are instructive but not precedential or binding on the court), *review denied* (Minn. Sept. 18, 2007). Likewise, if the footnote did not apply, this court must still consider whether appellant's requested instruction to the jury was necessary to fairly and adequately explain the law of the case. *Flores*, 418 N.W.2d at 155.

Appellant argues that presenting the phrase, "duties imposed by law," to the jury without an explanation of how to interpret the phrase allowed the jury to improperly conclude that a corrections officer is afforded extra protection under the law while engaging in illegal acts. The fact that the 1999 CRIMJIG 13.22 footnote is permissive in its phrasing, stating that the district court *may* give further instructions to the jury if there is a claim that the officer intentionally committed an illegal act, indicates that the law does not require further instructions to the jury to explain "duties imposed by law." Additionally, the fact that the footnote was removed from later versions of CRIMJIG 13.22 indicates that the additional instructions it allows are not essential to explaining the elements of the crime. Moreover, the phrase, "duties imposed by law," does not need any

additional explanation. In explaining the elements of a crime, a district court need not define words that are within the ordinary understanding of the jurors. *State v. Heinzer*, 347 N.W.2d 535, 537 (Minn. App. 1984), *review denied* (Minn. July 26, 1984). Finally, while the district court refused to instruct the jury that "duties imposed by law" does not include illegal acts, the jury was not without guidance as to what the phrase included or excluded. Where, as in this case, the appellant had the opportunity to argue the meaning of the phrase in the jury instructions before the jury, this court has found that refusal to instruct the jury on the meaning of the phrase is not error. *State v. Houston*, 654 N.W.2d 727, 735 (Minn. App. 2003), *review denied* (Minn. Mar. 26, 2003). Therefore, we conclude that the district court did not abuse its discretion in refusing to include appellant's proposed language in the jury instructions.

Affirmed.