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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1590

State of Minnesota,
Respondent,

vs.

Douglas Allen Rust,
Appellant.

Filed August 18, 2009
Affirmed
Worke, Judge

Brown County District Court
File No. 08-CR-08-22

Lori Swanson, Attorney General, Peter R. Marker, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

James R. Olson, Brown County Attorney, 519 Center Street, New Ulm, MN 56073 (for respondent)

Melissa Sheridan, Assistant State Public Defender, 1380 Corporate Center Curve, Suite 320, Eagan, MN 55121 (for appellant)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

WORKE, Judge

Appellant challenges his convictions of third- and fifth-degree assault and disorderly conduct, arguing that the district court committed prejudicial error by failing (1) to give the lesser-crimes instruction, and (2) to define "intent." We affirm.

D E C I S I O N

Lesser-Crimes Instruction

Appellant Douglas Allen Rust argues that the district court erred by failing to give the lesser-crimes instruction, which instructs the jury that if reasonable doubt exists as to the greater-crime elements, then appellant is guilty of only the lesser crime. Appellant was charged with third-degree assault after an argument with his girlfriend D.T., wherein he struck her in the face breaking her nose. Appellant testified that he never intended to hurt D.T. Prior to trial, appellant requested that the court include fifth-degree assault and disorderly conduct as lesser-included charges when instructing the jury.

Appellant concedes that he failed to offer specific instructions that the court refused to give or object to the instructions given at trial. These failures generally constitute waiver of the right to appeal. *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). Nevertheless, we may consider a plain error affecting substantial rights not brought to the attention of the district court. Minn. R. Crim. P. 31.02; *see also State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Before we review unobjected-to error, "there must be (1) error; (2) that is plain; and (3) the error must affect substantial rights." *Griller*, 583 N.W.2d at 740. "If these three prongs are met, [we] then assess[] whether

[we] should address the error to ensure fairness and the integrity of the judicial proceedings." *Id.*

We review jury instructions "in their entirety to determine whether they fairly and adequately explain the law of the case." *State v. Peterson*, 673 N.W.2d 482, 486 (Minn. 2004). "A jury instruction is erroneous if it materially misstates the law." *State v. Goodloe*, 718 N.W.2d 413, 421 (Minn. 2006).

> The law provides that upon the prosecution of a person for a crime, if the person is not guilty of that crime, [he] may be guilty of a lesser crime.
>
> (A) (the) lesser crime(s) in this case [] are: _____.
>
> The presumption of innocence and the requirement of proof beyond a reasonable doubt apply to these lesser crimes. *If you find beyond a reasonable doubt that the defendant has committed each element of the lesser crime, but you have a reasonable doubt about any different element of the greater crime, the defendant is guilty only of the lesser crime.*

10 *Minnesota Practice*, CRIMJIG 3.20 (2006) (emphasis added). The state concedes that it was error for the district court to not give this instruction. Although the district court committed plain error, we must still determine whether the error affected appellant's substantial rights. We will reverse only if there is a "reasonable likelihood that the [error] had a significant effect on the jury's verdict." *State v. Darris*, 648 N.W.2d 232, 240 (Minn. 2002).

In *State v. Hughes*, the appellant argued that the district court erred by failing to give the lesser-crimes instruction. 749 N.W.2d 307, 316-17 (Minn. 2008). The supreme court held that there was no plain error because the instructions on first- and second-

degree murder were read in their entirety and those instructions accurately described the elements of the offenses, emphasized the state's burden of proof, and informed the jury that it must find the defendant not guilty if it found that the state failed to meet its burden of proof on any element of a charge. *Id.* at 317-18.

As in *Hughes*, the district court's instructions here accurately described the elements of third- and fifth-degree assault and disorderly conduct. *See id.* at 317. The district court also highlighted the distinction between the crimes and emphasized the state's burden of proof. *See id.* Further, the district court instructed the jury on three separate occasions that if it found that the state had not met its burden of proof on any element of a charge, then the jury must find appellant not guilty. *See id.* at 317-18. Although the district court did not explain which offense is the lesser charge, the instructions gave the jurors enough information to allow them to correctly evaluate the charges. While third-degree assault requires substantial bodily harm, fifth-degree assault requires only proof of bodily harm. Minn. Stat. §§ 609.223, subd. 1, .224, subd. 1(2) (2006). Therefore, the jury was able to easily determine that third-degree assault is more serious than fifth-degree assault and a special instruction was not required. The record contains no basis for concluding that there is a reasonable likelihood that failing to give the instruction had a significant effect on the jury's verdict.

Defining Intent

Appellant also argues that the district court committed plain error by failing to instruct the jury on the definition of intent. Appellant failed to object to the instructions at trial; thus, we review for plain error. *Griller*, 583 N.W.2d at 740.

The district court instructed the jury in accord with pattern jury instructions found in CRIMJIGs 13.15 and 13.16 (third-degree assault), and CRIMJIGs 13.29 and 13.30 (fifth-degree assault), which set forth the statutory definitions and elements of the respective offenses. *See* 10 *Minnesota Practice,* CRIMJIGs 13.15, .16, .29, .30 (2006).

The district court need not provide detailed definitions of all of the elements of the offense if the jury 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); *see also State v. Clobes*, 417 N.W.2d 735, 738 (Minn. App. 1988) (concluding that the district court did not err by failing to define "specific intent" in assault case when the "jury instructions, viewed in their entirety, explained the law of the case fairly and accurately"), *rev'd on other grounds*, 422 N.W.2d 252 (Minn. 1988). In this case, the district court did not materially misstate the law. The instructions explained the elements of the crime fairly and accurately. Further, the lack of definition does not automatically constitute error if a commonly understood meaning of the term can convey the essentials of the element to the jury. *Peterson*, 282 N.W.2d at 881. Appellant has failed to show that there was an error of fundamental law or controlling principle and that the instructions given prejudiced his rights. The district court's jury instructions, viewed in their entirety, explained the law of the case fairly and accurately. *Peterson*, 673 N.W.2d at 486. We conclude that the district court did not err in failing to include a separate definition of "intent"; without error, the plain-error analysis ends.

Affirmed.