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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-328

State of Minnesota,
Respondent,

vs.

Joel Mitchel Rinne,
Appellant.

Filed March 1, 2011
Affirmed
Stauber, Judge

St. Louis County District Court
File No. 69DUCR093630

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

Mark Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Joseph E. Trojack, Assistant Public Defender, West St. Paul, Minnesota (for appellant)

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

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

STAUBER, Judge

On appeal from his conviction of fleeing a peace officer in a motor vehicle in violation of Minn. Stat. § 609.487 (2008), appellant argues that (1) the district court committed plain error by failing to provide the specific-intent instruction sua sponte and

(2) the failure to provide the specific-intent instruction frustrated the legislative intent behind the fleeing statute. We affirm.

FACTS

On July 30, 2009, appellant Joel Rinne was charged with one count of fleeing a police officer in a motor vehicle in violation of Minn. Stat. § 609.487, subd. 3. A jury trial ensued where Deputy Troy Fralich testified that he was traveling south on Highway 44 in a "fully marked squad car" when he came around a corner and "observed an off-highway motorcycle, a dirt bike, ahead of me also traveling south." Deputy Fralich testified that after the driver, later identified as appellant, "looked back towards my squad car," the "distance between [me] and the motorcycle" began to widen. Appellant then looked back over his left shoulder and turned left into a ditch that leads to a logging road.

After appellant turned into the ditch, Deputy Fralich activated his squad car's lights to "phase three, which is all the emergency lights on the vehicle . . . fully lit up." Appellant, however, continued driving about 40 feet in the ditch until he came to the logging road. Deputy Fralich testified that when appellant reached the logging road, he stopped, put his left leg down, looked at the squad car, and then accelerated down the logging road. Deputy Fralich testified that he then activated his siren and pursued appellant down the logging road.

During the pursuit on the logging road, Deputy Fralich observed appellant again turn to look back at the squad car. Deputy Fralich also observed that there was a gate at the end of the logging road with an opening wide enough for the motorcycle to fit through, but not wide enough for the squad car. According to Deputy Fralich, appellant

slowed down as he approached the gate, which allowed Fralich "to pull up right along the right side of the motorcycle." Appellant then stopped the motorcycle and put his hands on his head in the "arrest position."

Deputy Fralich estimated that the total distance that he and the motorcycle traveled on the logging road was about 100 yards. Deputy Fralich also testified that upon being asked why he did not stop, appellant claimed that he did not see the squad car "until it pulled up next to him" on the logging road. Although Deputy Fralich admitted on cross-examination that appellant was wearing earplugs and that he did not observe any rear-view mirrors on the motorcycle, Fralich testified that he observed appellant look back at the squad car five times during the chase.

The jury found appellant guilty of the charged offense. The district court fined appellant $150 and sentenced him to one year and one day in prison. Execution of the sentence was stayed and appellant was ordered to perform 80 hours of community service and placed on probation for two years. This appeal followed.

D E C I S I O N

I.

The district court has significant discretion in crafting jury instructions. *State v. Broulik*, 606 N.W.2d 64, 68 (Minn. 2000). A jury instruction is erroneous if it "materially misstates the law." *State v. Moore*, 699 N.W.2d 733, 736 (Minn. 2005). This court examines the jury instructions "in their entirety to determine if they fairly and adequately explain the law and define the crime charged and explain the elements of the

offense to the jury." *State v. Dalbec*, 789 N.W.2d 508, 511 (Minn. App. 2010) (quotations omitted), *review denied* (Minn. Dec. 22, 2010).

Appellant argues that the district court erred by failing to instruct the jury on the element of intent. But appellant did not object to the jury instructions at the time of trial. Generally, the failure to object to the district court's jury instructions results in forfeiture of the right to appeal based on the instructions, unless the defendant can show plain error affecting substantial rights or an error of fundamental law. *State v. Vance*, 734 N.W.2d 650, 654-55 (Minn. 2007).

Here, the district court gave the standard jury instruction, as agreed upon by the prosecution and the defense. Specifically, the court instructed the jury as follows:

> The elements of fleeing a peace officer in a motor vehicle are: First, the defendant, by means of a motor vehicle, fled or attempted to flee peace office Troy Fralich. To flee means to increase speed or refuse to stop the vehicle with intent - - with intent to attempt to elude a peace officer following a signal given by any peace officer to the driver of a motor vehicle.

Appellant argues that fleeing a peace officer is a specific-intent crime which requires a specific intent instruction, but that the district court only "instructed the jury to apply the common meaning of intent." Thus, appellant argues that the district court's failure to supply a specific-intent instruction constituted plain error.

To support his claim, appellant cites *State v. Johnson*, in which this court reversed a conviction of fleeing a police officer because the district court failed to sua sponte instruct on the specific intent required. 374 N.W.2d 285, 288–89 (Minn. App. 1985) (holding that, by defining the statutory terms "flee" and "elude" but not defining "intent,"

the district court "allow[ed] the jury to speculate over the meaning of 'intent'"). But the holding in *Johnson* was subsequently limited by this court's holding in *State v. Erdman*, 383 N.W.2d 331, 333 (Minn. App. 1986), *review denied* (Minn. Apr. 24, 1986). The *Erdman* court stated: "We decline to extend *Johnson* to these facts and hold that failure to request a specific intent instruction in a prosecution under § 609.487 precludes review of any claimed error on this point." *Id.*

Appellant argues that *Erdman* was wrongly decided because it precludes review of cases in which an intent instruction is critical, such as when the entire defense rests upon intent. Appellant argues that in such situations, the jury should be instructed on specific intent as defined by Minn. Stat. § 609.02, subd. 9(4) (2008).

We disagree. The instruction provided by the district court is essentially a verbatim recitation of the definition of fleeing as set forth in CRIMJIG 24.17. *See* 10A *Minnesota Practice*, CRIMGJIG 24.17 (2006). The language contained in CRIMJIG 24.17 comports with Minn. Stat. § 609.487, subd. 1, which defines "flee" as "to increase speed, extinguish motor vehicle headlights or taillights, refuse to stop the vehicle, or use other means *with intent* to attempt to elude a peace officer following a signal given by any peace officer to the driver of a motor vehicle." (Emphasis added.) Similarly, section 609.02, subdivision 9(4) defines "with intent to" as meaning "the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Appellant points to no appreciable difference between the language contained in Minn. Stat. § 609.487, subd. 1, and Minn. Stat. § 609.02, subd.

9(4). Moreover, *Erdman* is settled law in this state, and we see no reason to distinguish this case from *Erdman*.

Appellant further argues that even if this court does not find *Erdman* to be distinguishable, his conviction should be reversed because the facts of this case mirror the "peculiar facts" in *Johnson*. *See Johnson*, 374 N.W.2d at 289 (emphasizing that "our holding is limited to the peculiar facts of this case"). But the facts here are readily distinguishable from the facts in *Johnson*. In *Johnson*, the defendant, who was pulling a trailer full of soybeans with his pickup, actually stopped for the police officer, and then left the scene driving approximately 15 miles per hour after telling the officer that "he did not carry his wallet when he worked in the fields" and that "if he was going to give him a ticket, he knew where to find him." *Id.* at 286–87. The defendant also testified that after he drove off, "he intended to drive to his farm for the license." *Id.* In contrast, appellant was on a dirt-bike, was traveling at a higher rate of speed than the defendant in *Johnson*, made evasive maneuvers such as driving in a ditch and then onto a logging road, and then claimed that he did not see the officer despite glancing back at Deputy Fralich several times, and the squad car's emergency lights being activated.

Therefore, because the facts here are sufficiently distinguishable from the "peculiar facts" in *Johnson*, we conclude that the district court did not err by failing to sua sponte provide a specific-intent instruction.

II.

The object of statutory interpretation is to determine and give effect to the legislature's intent. Minn. Stat. § 645.16 (2010). When the legislature's intent is clearly

discernible from a statute's plain and unambiguous language, the court interprets the language according to its plain meaning without resorting to other principles of statutory construction. *State v. Kelbel*, 648 N.W.2d 690, 701 (Minn. 2002). Construction of a criminal statute is a question of law, which this court reviews de novo. *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002).

Appellant argues that because fleeing a peace officer is a specific-intent crime, the legislature intended that the jury be instructed on specific intent as defined in Minn. Stat. § 609.02, subd. 9(4). Appellant argues that by omitting this definition, the legislative intent behind the fleeing statute was frustrated because the jury was free to use the common meaning of "intent" in finding appellant guilty of a specific-intent crime.

We disagree. Elements of the offense that are stated correctly, although without detailed definition are not erroneous. *Peterson v. State*, 282 N.W.2d 878, 881 (Minn. 1979). Here, the jury instructions provided by the district court accurately stated all of the elements of the offense. Moreover, the instructions were consistent with the instructions provided in the CRIMJIG and included the requirement that appellant must have "intended" to flee the officer. Therefore, because the jury was properly instructed on all of the elements of the offense, the district court's jury instructions did not frustrate the legislative intent behind the fleeing statute.

Affirmed.