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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0833**

State of Minnesota,
Respondent,

vs.

Nashid Asmir Abdul-Zahir,
Appellant.

**Filed June 30, 2025
Affirmed
Bratvold, Judge**

Steele County District Court
File No. 74-CR-23-468

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Robert J. Jarrett, Steele County Attorney, Owatonna, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Andrew C. Wilson, Special Assistant Public Defender, Wilson & Clas, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Reilly, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant Nashid Asmir Abdul-Zahir challenges the final judgment of conviction for second-degree assault with a dangerous weapon. Abdul-Zahir argues that (1) his constitutional rights were violated when respondent State of Minnesota took a saliva sample from him without a search warrant and (2) the district court committed reversible error when it instructed the jury on the definition of “dangerous weapon.” Because Abdul-Zahir forfeited a constitutional challenge to providing the saliva sample, and because any error in the jury instructions did not affect his substantial rights, we affirm.

FACTS

On March 27, 2023, the state charged Abdul-Zahir by complaint with offenses alleged to have occurred from March 12 to 13, 2023, in Steele County. The state later amended the complaint. The amended complaint alleged five counts of criminal sexual conduct under Minn. Stat. §§ 609.342 (force or coercion to engage in sexual penetration with personal injury), .344 (force or coercion to engage in sexual penetration) (2022). The amended complaint also alleged second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2022), and unlawful possession of a firearm under Minn. Stat. § 624.713, subd. 1(2) (2022). Finally, the amended complaint alleged two counts of fifth-degree assault under Minn. Stat. § 609.224, subd. 1(1)-(2) (2022).

Following a trial, a jury found Abdul-Zahir guilty of second-degree assault with a dangerous weapon (count six) and the lesser included assault offenses (counts eight and

nine). The jury acquitted him of all other charges. This appeal contests solely Abdul-Zahir's conviction for second-degree assault with a dangerous weapon.

In October 2023, the state moved for a discovery order to obtain a saliva sample from Abdul-Zahir under Minn. R. Crim. P. 9.02, subd. 2(1)(f). The state also moved for a continuance of the trial date to complete DNA testing of the saliva sample. Abdul-Zahir objected to continuing the trial date, arguing that it would deny him his right to a speedy trial, which he had timely demanded. Abdul-Zahir also stated that, if the district court denied the continuance, he would "object to the DNA swab as it would be pointless as [the state] would not be able to test" the saliva sample. Abdul-Zahir faulted the state, pointing out that the case was "seven months out" and arguing that the state "should have" ensured that the Minnesota Bureau of Criminal Apprehension (BCA) "completed" any testing "in a more timely manner." The district court granted the state's motion for the saliva sample and continued the trial date. The state obtained a saliva sample from Abdul-Zahir and forwarded it to the BCA for DNA analysis.

The district court presided over Abdul-Zahir's jury trial from December 18 to 22, 2023. The state offered testimony from J.C., four law-enforcement officers, a detective, a nurse, and a BCA forensic scientist. After the state rested, Abdul-Zahir did not offer any evidence. The following summarizes the evidence presented at trial.

J.C. testified that, on the evening of March 12, 2023, she went out "drinking" with a group of friends and returned to her home in Austin after the bars closed. J.C. walked from her apartment to a nearby convenience store for snacks. J.C. thought that she recognized the driver of a car in the convenience-store parking lot; a second man was also

in the car, though J.C. did not know him. J.C. got into the car, “passed out,” and woke up as they arrived at a motel in Owatonna.

All three entered a motel room. Shortly after, the driver left. The other man stayed with J.C., who identified him as Abdul-Zahir. J.C. added that her cell phone “was dead.” J.C. testified that Abdul-Zahir pressured her into using cocaine and then sexually assaulted her several times.

After the sexual assaults, Abdul-Zahir accused J.C. of taking his cell phone and speaker; he became angry and repeatedly hit J.C. Abdul-Zahir retrieved “cords or wire looking things” or “a charger” and threatened to “hang” J.C. if she did not return the items. He then grabbed a black nine-millimeter handgun and “held the gun up to [J.C.’s] head and said that he would shoot [her] and kill [her] if [she] didn’t give that stuff back.” Abdul-Zahir also had a “smaller green” butane blowtorch and “held it close to [J.C.] like he was going to burn” her. Abdul-Zahir told J.C., “I will f-cking kill you and I know people that have—that can hide a body.”

J.C. went to the bathroom and vomited. Abdul-Zahir “shoved [her] head in the toilet,” and she could not breathe. He “choked” J.C. “against the wall” with his hand and kicked her. After the bathroom assault ended, someone from the motel entered the room, and Abdul-Zahir told J.C. that they were leaving. They walked to a nearby convenience store.

Two Owatonna law-enforcement officers responded to a reported trespass at the motel around 5:00 p.m. on March 13, 2023. The first officer spoke with the motel owner, who stated that two people had stayed in a room without paying. The second officer drove

around the area looking for the suspects, went to a nearby convenience store, and found J.C. and Abdul-Zahir, who matched the motel owner's description of the suspected trespassers.

The second officer questioned J.C. because she had "fresh bruises and marks on her face," which the second officer described as "a fresh bruise on the right side of her chin," a swollen and split lip, "a bruise on the bridge of her nose," and "two developing black eyes." Eventually, J.C. told the second officer that she and Abdul-Zahir had consensual sex and that afterward he became angry and beat her. The first officer questioned Abdul-Zahir, who denied having sex with J.C. or assaulting her. Abdul-Zahir left the convenience store. J.C. declined the officer's offer to take her to the hospital and went to her family's home.

Later on March 13, J.C. went to the hospital, where she had a sexual-assault examination. A sexual-assault nurse examiner (SANE) collected samples from J.C.; the BCA received the samples for DNA analysis.

J.C. gave four statements to law enforcement and hospital staff, including the interview with the second officer at the Owatonna convenience store. All of J.C.'s statements were received into evidence. While some details in the statements varied, in all statements J.C. described Abdul-Zahir sexually assaulting and beating her. In some but not all statements, J.C. described weapons that Abdul-Zahir used, including a handgun, cords or wires, and a blowtorch. During her trial testimony, J.C. admitted that she lied to the second officer at the convenience store when she said that she and Abdul-Zahir had consensual sex. At one point, J.C. also told law enforcement that she was injured at work, which she admitted was not true during her trial testimony.

A BCA forensic scientist testified about a DNA analysis that compared J.C.’s body samples to Abdul-Zahir’s saliva sample. The samples from J.C.’s mons pubis,¹ neck, and forehead contained a mixture of DNA from “two or more males” and had a “major profile” that matched Abdul-Zahir.

As mentioned, the jury acquitted Abdul Zahir of all criminal-sexual-conduct and firearm-possession charges. The jury found Abdul-Zahir guilty of second-degree assault with a dangerous weapon and both counts of fifth-degree assault, which remain adjudicated. For second-degree assault, the district court sentenced Abdul-Zahir to 57 months in prison.

Abdul-Zahir appeals.

DECISION

I. Abdul-Zahir forfeited his constitutional challenge to DNA evidence obtained without a search warrant.

Abdul-Zahir first argues that his Fourth Amendment rights were violated when the state obtained his saliva sample without a search warrant under Minn. R. Crim. P. 9.02, subd. 2(1)(f). The state counters that Abdul-Zahir “forfeited any Fourth Amendment challenge by not raising it below.” The state also argues that Abdul-Zahir did not identify “any good cause” for this court to consider his constitutional argument for the first time on appeal. Abdul-Zahir does not respond to the state’s forfeiture arguments.

¹ The SANE testified that the “mons pubis” is the “fatty area” “just above” the external genitalia.

Appellate courts review de novo whether an issue is forfeited on appeal. *State v. Loveless*, 987 N.W.2d 224, 236 (Minn. 2023). An appellate court “generally will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure.” *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). But appellate courts may review any matter “as the interests of justice may require.” Minn. R. Crim. P. 28.02, subd. 11; *see Roby*, 547 N.W.2d at 357 (stating that appellate courts have discretion to deviate from the forfeiture rule “when the interests of justice require consideration of such issues and doing so would not unfairly surprise a party to the appeal”).

In district court, Abdul-Zahir objected to the saliva sample on one ground: timeliness. He argued that granting a trial continuance so that the BCA could perform a DNA analysis of the saliva sample would impact his speedy-trial rights. Abdul-Zahir did not object to the saliva sample as a warrantless search under the Fourth Amendment. And on appeal, Abdul-Zahir does not request that this court consider the constitutional issue in the “interests of justice,” nor does he identify a rationale for doing so. Even if he did, Abdul-Zahir’s decision not to raise a constitutional challenge in district court weighs against our review of this issue. *See State v. Williams*, 794 N.W.2d 867, 874-75 (Minn. 2011) (concluding that the interests of justice did not require the court to consider a constitutional challenge that the appellant raised for the first time on appeal).

Because the state offered the DNA evidence to prove the criminal-sexual-conduct charges and Abdul-Zahir was acquitted of those charges, we are unable to discern a reason to consider the constitutional issue for the first time on appeal. We conclude that

Abdul-Zahir forfeited his constitutional challenge to the DNA evidence based on the Fourth Amendment. *See, e.g., State v. Sorenson*, 441 N.W.2d 455, 458-59 (Minn. 1989) (declining to consider a Fourth Amendment challenge, in part because the appellant failed to preserve the error below).

II. The district court did not commit reversible error when it instructed the jury on the definition of “dangerous weapon.”

Abdul-Zahir argues that the district court plainly erred when instructing the jury on the definition of a “dangerous weapon,” which is one element of the second-degree assault conviction.

Abdul-Zahir did not object to the jury instructions during trial. Appellate courts review an unobjected-to jury instruction for plain error. *State v. Kelley*, 855 N.W.2d 269, 273-74 (Minn. 2014). Under the plain-error test, “the appellant must show that there was (1) an error; (2) that is plain; and (3) the error must affect substantial rights.” *Id.* If the first three steps of the plain-error test are satisfied, appellate courts “may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 274 (quotations omitted). But if “any one of the requirements” of the plain-error test is not satisfied, “we need not address any of the others.” *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted).

A. The district court plainly erred when it gave the pattern jury instruction defining “dangerous weapon.”

To establish error, the appellant must show that there has been “a deviation from a legal rule unless the rule has been waived.” *Kelley*, 855 N.W.2d at 274 (quotation omitted). An error in a jury instruction is plain if it is “clear or obvious,” which generally occurs “if

it contravenes case law, a rule or a standard of conduct.” *State v. Smith*, 901 N.W.2d 657, 661 (Minn. App. 2017) (quotation omitted), *rev. denied* (Minn. Nov. 14, 2017). To determine whether an error contravenes the law, appellate courts examine “the law in existence at the time of appellate review, not the law in existence at the time of the district court’s error.” *Kelley*, 855 N.W.2d at 277.

Abdul-Zahir argues that the district court plainly erred in instructing the jury on the applicable law when it defined “dangerous weapon.” The state concedes that the district court’s definition was an “unintended error” that occurred “[w]ithout the benefit of” a recent supreme court decision but urges that a new trial is not required.

After closing arguments, the district court gave the pattern dangerous-weapon instruction based on the jury-instruction guide at the time of trial:

Dangerous weapon means any device designed as a weapon and capable of producing death or great bodily harm or *any other device or instrumentality that*, in the manner that it is used or intended to be used, *is known to be capable of* producing death or great bodily harm. A firearm, whether loaded or unloaded or even temporarily inoperable, is a dangerous weapon.

(Emphasis added.) *See* 10 *Minnesota Practice*, CRIMJIG 8.05 (2023). Abdul-Zahir urges that the jury instruction was plain error, citing *State v. Abdus-Salam*, which was decided while this appeal was pending. 1 N.W.3d 871 (Minn. 2024).

In *Abdus-Salam*, the district court dismissed charges of riot with a dangerous weapon; the charges involved maneuvers with cars during intersection “takeovers.”² *Id.* at

² The supreme court explained that, “during these ‘takeovers,’ dozens of vehicles and large crowds of pedestrians intentionally blocked off a predetermined urban intersection, which

873-74. The district court determined that “probable cause did not exist for the dangerous weapon element of the [riot] offenses because there was no evidence that the vehicles were used in a manner *calculated to produce* death or great bodily harm.” *Id.* at 874 (emphasis added). This court reversed, and the supreme court affirmed. *Id.* at 874, 879.

The supreme court stated that the district court failed to consider whether the vehicles were “*likely* to produce death or great bodily harm” as provided in the statutory definition. *Id.* at 875 (emphasis added). The supreme court examined the following statutory definition of a “dangerous weapon”:

any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm[.]

Id. at 874-75 (emphasis added and omitted) (quoting Minn. Stat. § 609.02, subd. 6 (2022)).

The supreme court focused on the part of the definition explaining “other device or instrumentality that . . . is calculated or likely to produce death or great bodily harm.” *Id.* at 875 (emphasis omitted) (quoting Minn. Stat. § 609.02, subd. 6). After some discussion of caselaw, the supreme court held that, in this context, “likely” does *not* mean “known to be capable of,” as stated in the pattern jury instruction for “dangerous weapon.” *Id.* at 876. The supreme court reasoned that defining a “dangerous weapon” as one that is “known to be capable of” producing death or great bodily harm “arguably creates a lower threshold

allowed drivers—typically driving rear-wheel-drive passenger cars—to spin ‘donuts’ while the crowd cheered and filmed the action from both inside and outside the circle of the ‘donut.’” *Id.* at 873-74.

for the State to meet when asserting that a device or instrumentality is a ‘dangerous weapon.’” *Id.* The supreme court held that “likely” in the definition of “dangerous weapon” means “probable or reasonably expected.” *Id.* at 877.

Abdul-Zahir’s argument for plain error is persuasive. The same statutory definition of “dangerous weapon” that was analyzed in *Abdus-Salam* applies to the second-degree assault charge against Abdul-Zahir. *See* Minn. Stat. § 609.02, subd. 6 (defining “dangerous weapon” for purposes of crimes in Minnesota). And Abdul-Zahir challenges the jury instruction defining “dangerous weapon” as any device that “is *known to be capable of* producing death or great bodily injury.” (Emphasis added.) This phrasing is materially different from the statutory language “*likely* to produce death or great bodily harm” because it creates a lower threshold for the state’s burden of proof. *Abdus-Salam*, 1 N.W.3d at 875-76 (citing Minn. Stat. § 609.02, subd. 6).

Even though the supreme court’s ruling in *Abdus-Salam* occurred after Abdul-Zahir’s trial, it is the caselaw that governs our analysis. *See Kelley*, 855 N.W.2d at 277 (holding that appellate courts review for plain error based on caselaw in existence at the time of appellate review). Thus, we conclude that the district court’s jury instructions contravened caselaw and that the error is “clear or obvious.” *Smith*, 901 N.W.2d at 661. Therefore, the district court plainly erred in instructing the jury on the definition of dangerous weapon.

B. Any plain error in the dangerous-weapon jury instruction did not affect Abdul-Zahir’s substantial rights.

“An erroneous jury instruction affects a defendant’s substantial rights if the error was prejudicial and affected the outcome of the case.” *State v. Huber*, 877 N.W.2d 519, 525 (Minn. 2016). An error is prejudicial “if there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury’s verdict.” *Id.*; *see, e.g., State v. Wenthe*, 865 N.W.2d 293, 298-302 (Minn. 2015) (upholding conviction because there was no reasonable likelihood, given the record evidence, that the jury’s verdict would have been different had the district court not plainly erred by omitting a specific-unanimity instruction); *State v. Gebremariam*, 590 N.W.2d 781, 783-84 (Minn. 1999) (reversing and remanding for a new trial where the district court repeatedly erred in the jury instructions for second-degree assault regarding the definition of “dangerous weapon”). Abdul-Zahir bears the “heavy burden” to prove prejudice. *Huber*, 877 N.W.2d at 525.

Abdul-Zahir argues that “[d]iluting a statutory definition to ease [the state’s] burden at trial affects [his] substantial right to a fair trial, including the right to a finding of guilt only upon a showing of proof beyond a reasonable doubt that a specific criminal law was violated.” Abdul-Zahir also maintains that, because the jury acquitted him of illegally possessing a firearm under Minn. Stat. § 624.713, subd. 1(2), “the only device(s) on which it could have based its guilty verdict” for second-degree assault with a dangerous weapon “were charging cables/wires, a butane lighter/torch, or a pocket knife.”³ Abdul-Zahir

³ To support this argument, Abdul-Zahir notes that the district court inferred that Abdul-Zahir did not have a firearm. At sentencing, the district court stated, “we don’t have a firearm involved here. We have a dangerous weapon. I mean, the inference is that he

contends that, because none of the non-firearm weapons were “designed as a weapon,” the jury should have decided whether they satisfied the statutory definition of a “dangerous weapon”: a “device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.” Minn. Stat. § 609.02, subd. 6.

The state counters that Abdul-Zahir incorrectly assumes that this court is bound to conclude that the jury found Abdul-Zahir did not have a firearm at the motel when it acquitted him of unlawful firearm possession. The state argues that this court cannot “make assumptions about a jury’s factual determinations associated with a *not-guilty* verdict” because of the jury’s power of lenity. The state emphasizes that its theory at trial was that Abdul-Zahir committed second-degree assault when he threatened J.C. with a *firearm*, not when he assaulted J.C. using the other non-firearm weapons in the motel room.

The state’s argument is persuasive for three reasons that rest on long-standing caselaw and this record. First, a jury may find a defendant guilty of one charge and not guilty of another charge, even if those verdicts are “logically inconsistent.” *State v. Stay*, 923 N.W.2d 355, 365 (Minn. App. 2019), *aff’d*, 935 N.W.2d 428 (Minn. 2019); *see State v. Bahtuoh*, 840 N.W.2d 804, 821 (Minn. 2013) (stating that reversal is not available “in cases of alleged conflict between guilty and not-guilty verdicts”). This is because “the jury in a criminal case has the power of lenity—that is, the power to bring in a verdict of not

would have been convicted of possession of the firearm if he had used the firearm to assault, right?” The district court eliminated a “firearm modifier” because “the jury had to have found that the blowtorch was the dangerous weapon that was used in the assault.” While this inference—which was unchallenged by the state—may have affected the district court’s sentencing decision, it does not alter our analysis of the issue on appeal.

guilty despite the law and the facts.” *State v. Perkins*, 353 N.W.2d 557, 561 (Minn. 1984). Second, “[a]ppellate courts generally do not engage in postverdict inquiry into the thought processes of jurors.” *Stay*, 923 N.W.2d at 365 (quotation omitted). Thus, while the jury’s acquittal of Abdul-Zahir on the unlawful-firearm-possession charge is inconsistent with Abdul-Zahir threatening J.C. with a firearm, it is a logical inconsistency that does not support reversal. *See Bahtuoh*, 840 N.W.2d at 821.

Third, the record sustains the state’s claim that it supported the second-degree assault charge by offering evidence of a firearm. J.C. testified that Abdul-Zahir threatened to kill her with a nine-millimeter handgun. This testimony was corroborated by J.C.’s statements to police and hospital staff after the assault. During closing arguments, the prosecuting attorney argued that Abdul-Zahir committed second-degree assault with a dangerous weapon when he took “a gun out to intimidate” J.C. The prosecuting attorney did not mention any other weapon in arguments related to the second-degree assault charge.

Based on applicable caselaw and this record, we conclude that Abdul-Zahir’s conviction for second-degree assault with a dangerous weapon rests on evidence that he threatened J.C. with a firearm. We cannot presume that Abdul-Zahir had no firearm based on the jury’s acquittal of him on the unlawful-firearm-possession charge; the jury could have believed that Abdul-Zahir possessed a firearm and found him not guilty out of lenity. *Id.*

Because the jury’s guilty verdict on the second-degree assault charge is supported by evidence that Abdul-Zahir threatened J.C. with a firearm, the plainly erroneous instruction about other devices or instrumentalities would not have affected the outcome

of the jury’s verdict. A firearm is a “dangerous weapon” under the applicable statutory definition. *See* Minn. Stat. § 609.02, subd. 6 (defining “dangerous weapon,” in part, as “any firearm, whether loaded or unloaded”); CRIMJIG 8.05 (same). The district court instructed the jury that a “firearm, whether loaded or unloaded or even temporarily inoperable, is a dangerous weapon.”

Because there is no reasonable likelihood that the plain error in the jury instructions significantly affected the verdict, we conclude that the error did not affect Abdul-Zahir’s substantial rights.⁴ And because Abdul-Zahir did not satisfy the third step in the plain-error analysis, “we need not address” the fourth step—whether the error seriously affected the fairness and integrity of judicial proceedings. *Lilienthal*, 889 N.W.2d at 785 (quotation omitted).

Affirmed.

⁴ Because we conclude that any error did not affect Abdul-Zahir’s substantial rights, we need not address the state’s concessions that (1) “there was no evidence presented showing that” the cords or wires were “capable of producing death or bodily harm” under the instructed definition of “dangerous weapon” and (2) “there was no evidence that [Abdul-Zahir] threatened J.C. with a knife.” We also need not address the state’s argument that “the jury could have found that [threatened] burns from a torch . . . satisfied the great bodily harm standard.”