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STATE OF MINNESOTA

IN SUPREME COURT

A19-0708

Court of Appeals

Chutich, J.
Concurring, Gildea, C.J.

State of Minnesota,

Appellant/Cross-Respondent,

vs.

Filed: March 31, 2021
Office of Appellate Courts

Eric Joseph Coleman,

Respondent/Cross-Appellant.

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Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Janet Reiter, Chisago County Attorney, David Hemming, Assistant County Attorney, Center City, Minnesota, for appellant/cross-respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant State Public Defender, Saint Paul, Minnesota, for respondent/cross-appellant.

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S Y L L A B U S

1. The mental-state element of third-degree depraved mind murder, Minnesota Statutes section 609.195(a) (2020), is met when the attending circumstances show that the defendant was indifferent to the loss of life that his eminently dangerous act could cause.

2. The defendant has not met his heavy burden of showing that the erroneous unobjected-to jury instruction affected his substantial rights.

Affirmed.

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# O P I N I O N

CHUTICH, Justice.

This case presents the issue of whether Eric Coleman established that the instruction given at his trial for third-degree murder, to which he did not object, materially misstated well-established law and, if so, affected his substantial rights. A Chisago County grand jury indicted Coleman on charges of third-degree depraved mind murder under Minnesota Statutes section 609.195(a) (2020). This statute prohibits a person from "perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard to human life." *Id.* The indictment alleged that after consuming enough alcohol to raise his alcohol concentration to twice the legal limit, Coleman drove his snowmobile at nearly 60 miles per hour across a populated frozen lake, hitting and fatally injuring an 8-year-old boy, A.G. Coleman pleaded not guilty and a jury trial ensued.

When instructing the jury, the district court used the model jury instruction for third-degree depraved mind murder. The model instruction tells the jurors, among other things, that the underlying act must be "committed in a reckless or wanton manner with the knowledge that someone may be killed." Coleman did not object to this instruction, and the jury found him guilty as charged. He appealed, and the court of appeals affirmed. Having granted review, we now also affirm.

## FACTS

A Chisago County grand jury indicted Eric Coleman for several offenses, including third-degree depraved mind murder. *See* Minn. Stat. § 609.195(a) (2020). Coleman pleaded not guilty and demanded a jury trial.

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At trial, the State presented the following evidence. At 7:30 p.m. on January 26, 2018, the family of 8-year-old A.G. was setting up its portable ice-fishing house on South Chisago Lake. Although the sun had set, it was "exceptionally bright" on the lake that night. There were "a lot of other fish houses" in the area.

As A.G.'s father arranged the inside of the icehouse, which was over 6 feet tall and had reflectors on all four corners, A.G. and his mother stood nearby, next to the family's parked pickup truck. When A.G. heard a snowmobile start "a little ways" from the pickup, he "walked down to the end of the truck to watch the snowmobile go by." His mother then observed a snowmobile "coming right towards" them. As she tried to warn A.G., the snowmobile hit the truck and A.G. before driving straight through the icehouse. A.G. and his father were injured.

A.G. was airlifted to a hospital, where he died several days later. A.G.'s injuries included fractured legs, internal bleeding, and a traumatic brain injury.

When police officers arrived at the scene, they spoke to Coleman, the driver of the snowmobile, who was also injured during the crash. He told an officer that he "didn't see the vehicle[,] . . . the ice house[,] . . . or the people outside [of] the pick-up truck" and that the truck "came out of nowhere and [he] didn't have time to react." After observing indicia of impairment, including bloodshot and watery glassy eyes, the officers secured a sample of Coleman's blood, which later revealed that he had an alcohol concentration of 0.165 (more than twice the legal limit). The State's expert testified that Coleman's alcohol concentration "could only have been higher" when the accident occurred.

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Coleman chose to testify at trial. He told jurors that on the day of the deadly collision, he drank several higher-alcohol-content beers, which he called "grenades," before driving his snowmobile on South Chisago Lake. There, he visited with his son and his daughter's boyfriend. During the visit, he consumed another beer. Coleman testified that he had allowed both his son and his daughter's boyfriend to take his snowmobile for a ride. The boyfriend testified that, about 20 minutes before the accident, he had ridden the same trail that Coleman would later take and had not seen any icehouses on the path. The timeline provided by the family of A.G. suggests that they arrived at the lake and set up their icehouse sometime after Coleman got there.

After the visit, Coleman sped away on his snowmobile, reaching the speed of 58 miles per hour just before hitting the parked pickup truck and A.G. He acknowledged that he had an alcohol concentration of more than twice the legal limit when the crash occurred. Coleman also admitted that he knew that drinking and driving is dangerous and that people die from accidents caused by drunken driving. After acknowledging that these facts were "general, public knowledge," he told the jury that he had "a specific knowledge" of the dangers of drinking and driving because on November 2, 2017 (less than 3 months before the crash at issue here), he was involved in an alcohol-related crash in which the driver of the other vehicle was seriously injured. Coleman testified to being "blacked out" during that accident; the responding officer testified at trial that Coleman had an alcohol concentration of 0.304 after that crash. The other driver was taken to the hospital by ambulance.

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After Coleman and all other witnesses testified, the district court instructed the jury on the standard to apply to determine Coleman's guilt. Before doing so, the district court discussed the proposed jury instructions with the parties on several occasions. Regarding the third-degree depraved mind murder charge, the court proposed the following language to describe the third element of the offense:

> The defendant's intentional act which caused the death of [A.G.] was eminently dangerous to human beings and was performed without regard for human life.
>
> Such an act may not be specifically intended to cause death and may not be specifically directed at [A.G.], but it was committed in a *reckless or wanton manner* with the knowledge that *someone may be killed* and with a heedless disregard of that happening.

(Emphasis added.) The proposed language essentially inserted A.G.'s name into the model jury instruction, *see* 10 Minn. Dist. Judges Ass'n, *Minnesota Practice—Jury Instruction Guides, Criminal*, CRIMJIG 11.38 (6th ed. 2015). Coleman's attorney did not object to the final instructions proposed by the district court, and this instruction was read to the jury. The jury found Coleman guilty on the third-degree murder charge, and the district court imposed a presumptive 150-month prison sentence.

On appeal, Coleman argued that the district court committed plain error when it instructed the jurors that Coleman need only have acted "with the knowledge that someone *may* be killed." According to Coleman, the above-quoted phrase incorrectly defined recklessness, which he claimed was the required mental state for third-degree depraved

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mind murder.[1] Quoting *State v. Zupetz*, 322 N.W.2d 730, 733–34 (Minn. 1982), Coleman explained that "a person acts 'recklessly' when he consciously disregards *a substantial and unjustifiable risk* that the element of the offense exists or will result from the conduct." (Emphasis added.) Because the phrase "someone *may* be killed" allowed the jurors to find him guilty of third-degree depraved mind murder if they found that he disregarded "some or any level of risk," as opposed to a "substantial and unjustifiable risk," Coleman argued that the district court misstated the law.

Quoting *State v. Barnes*, 713 N.W.2d 325, 331 (Minn. 2006), the State conceded that the mental state "for depraved mind is equivalent" to the mental state "for recklessness."[2] Nevertheless, it claimed that Coleman was arguing that a defendant must know that his reckless act *would* cause death. According to the State, such a heightened standard of proof would effectively change third-degree depraved mind murder from an unintentional crime to an intentional crime.

The court of appeals affirmed Coleman's conviction of third-degree depraved mind murder. *State v. Coleman*, 944 N.W.2d 469 (Minn. App. 2020). The court said, "[A]s both parties recognize, the supreme court has held that the mental state required for third-degree

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[1] We use the term "mental state" instead of the Latin phrase "mens rea." *See* Bryan A. Garner, *A Dictionary of Modern Legal Usage* 501–02 (2nd ed. 1995) ("As a general linguistic truth, the use of archaic Latin phrases does not facilitate understanding of the adjudicatory process and should be avoided."). As used in this opinion, the two terms are synonymous.

[2] After a "more careful and thorough review of the law," the State has withdrawn this earlier concession. It now asserts that the required mental state for third-degree depraved mind murder is higher than recklessness.

depraved-mind murder is 'equivalent to a reckless standard.' " *Id.* at 478 (quoting *Barnes*, 713 N.W.2d at 332). Given that standard, the court of appeals concluded that because the district court's instruction allowed the jury "to find Coleman guilty if it found that Coleman acted in a careless manner, and knew only that his conduct *may* result in someone being killed," the instruction did not "properly explain an element of the charged offense." *Coleman*, 944 N.W.2d at 479. According to the court, the district court was required "to instruct the jury that it could find Coleman guilty *only if* it found that Coleman was aware that his conduct presented a substantial and unjustifiable risk of causing the death of another and he consciously disregarded that risk." *Id.* at 477 (emphasis added).

In assessing whether the error was plain, the court of appeals shifted its focus from the district court's *use* of the phrase "someone may be killed" to the district court's *failure to use* the phrase "substantial and unjustifiable risk of death to another person." *See id*. at 480. Citing *State v. Milton*, 821 N.W.2d 789, 806 (Minn. 2012), the court of appeals reasoned that a failure to provide a specific explanation of an element of the offense is not plain if an appellate court has not yet clearly required such an explanation. *Coleman*, 944 N.W.2d at 480. Because no appellate court had ever required a district court to define "recklessly" as a "conscious disregard of a substantial and unjustifiable risk" in the context of a charge of third-degree depraved mind murder, the court concluded that the failure to include that phrase in the jury instruction was not plain error. *Id*.

The State filed a petition for review and Coleman filed a cross-petition for review. We granted both petitions.

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## ANALYSIS

On appeal, the State contends that the jury instruction, taken as a whole, accurately defined the required mental state by using terms that are consistent with the statutory language, describing an "eminently dangerous act without regard for human life" that was "committed in a reckless or wanton manner." Even if the instruction was erroneous, the State asserts that any error was not plain and did not affect Coleman's substantial rights.

Coleman contends, by contrast, that the instruction was plainly erroneous because it allowed a conviction if his mental state was merely careless or negligent, which is impermissibly lower than a recklessness standard, which he claims is the proper mental state. He asserts that this error affected his substantial rights.

"We review a district court's jury instructions for an abuse of discretion." *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). Although a district court has "considerable latitude in selecting jury instructions and the language of those instructions," *id.*, they must, when reviewed in their entirety, fairly and adequately explain the law. *State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016). A district court abuses its discretion "when its jury instruction *materially misstates* the law when read as a whole." *State v. Schoenrock*, 899 N.W.2d 462, 466 (Minn. 2017) (emphasis added).

A defendant who fails to object to a jury instruction at trial forfeits review of the instruction. *State v. Zinski*, 927 N.W.2d 272, 275 (Minn. 2019). An appellate court, however, has discretion to consider a forfeited issue if the defendant establishes: (1) an error; (2) that was plain; (3) that affects the defendant's substantial rights. *Id*. If all three

prongs are satisfied, then the court evaluates "whether reversal is required to ensure the fairness, integrity, or public reputation of the judicial proceedings." *Id.* at 275 n.5.

I.

Before we consider whether the jury instruction materially misstated the law, we must first determine the proper mental state for third-degree depraved mind murder. If after clarifying the mental state, we conclude that an error occurred that did not affect Coleman's substantial rights, we need not decide whether the error was plain. *See, e.g.*, *State v. Griller*, 583 N.W.2d 736, 742 (Minn. 1998).

The third-degree depraved mind murder statute reads:

> Whoever, without intent to effect the death of any person, causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life, is guilty of murder in the third degree and may be sentenced to imprisonment for not more than 25 years.

Minn. Stat. § 609.195(a) (2020). The State must establish that the defendant committed an act that (1) caused the death of another, (2) was eminently dangerous to others, and (3) evinced a depraved mind without regard for human life. *State v. Hall*, 931 N.W.2d 737, 741 (Minn. 2019). The phrase "without the intent to effect the death of any person" is not an element of the offense of third-degree depraved mind murder; instead, if the intent referenced in this phrase exists, the offense at issue is elevated to a different, more serious, criminal offense than third-degree murder, for example, second-degree intentional murder. *Id.* at 741–43.

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As noted above, the district court instructed the jury on the required mental state as follows:

> Third, the defendant's intentional act which caused the death of [A.G.] was eminently dangerous to human beings and was performed without regard for human life.
>
> Such an act may not be specifically intended to cause death and may not be specifically directed at [A.G.], but it was committed in a *reckless or wanton manner* with the knowledge that *someone may be killed* and with a heedless disregard of that happening.

(Emphasis added.) The district court's instruction and CRIMJIG 11.38 include the phrase "committed in a *reckless or wanton manner* with the knowledge that someone *may* be killed." This part of the instruction is an apparent effort to help jurors understand the statutory language "causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard to human life."[3] As explained below, the additional guidance misconstrues our precedent, including *State v. Lowe*, 68 N.W. 1094 (Minn. 1896), *State v. Weltz*, 193 N.W. 42 (Minn. 1923), and *Barnes*, 713 N.W.2d 325.

In one of our earliest cases using the term "reckless," *State v. Lowe*, we considered, under the statute then in effect, whether an indictment sufficiently stated facts supporting third-degree depraved mind murder. Similar to the current statute, Section 6440 prohibited "[s]uch killing of a human being, when perpetrated by an act eminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a

[3] *See* 10 Minn. Dist. Judges Ass'n, *Minnesota Practice—Jury instructions Guides, Criminal*, CRIMJIG 11.38 n.2 (6th ed. 2015) ("The phrase 'committed in a reckless or wanton manner' is drawn from *State v. Lowe*, 68 N.W. 1094 (Minn. 1896).").

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premeditated design to effect the death of any individual." 68 N.W. at 1095 (quoting Minn. Gen. Stat., ch. 92a, tit. 9, § 6440 (1894)). We said that the statute "was intended to cover cases where the reckless, mischievous, or wanton *acts* of the accused were committed without special regard to their effect on any particular person or persons, but were committed with a reckless disregard of whether they injured one person or another." *Id.* (emphasis added).

In *Lowe*, we noted that the statutory language focused on acts that "were committed without special regard to their effect on any particular person or persons." *Id*. Because the acts of the defendant in *Lowe* were committed with a "special reference" to a particular victim, we concluded that the indictment failed to state facts that supported a charge of murder in the third degree. *Id.* Having so concluded, we did not consider or determine whether the facts alleged in the indictment satisfied the "reckless, mischievous, or wanton acts" language quoted above, or whether the acts were committed "with a reckless disregard of whether they injured one person or another." *Id.* at 1096. As a result, the "reckless, mischievous, or wanton acts" language is dicta. *See Carlton v. State*, 816 N.W.2d 590, 614 (Minn. 2012) (concluding that a statement in an earlier opinion was dicta because it was not necessary to the court's ultimate holding). The same can be said of our discussion of recklessness in *Weltz*, 193 N.W. at 42–45, and *Barnes*, 713 N.W.2d at 332.

In *Weltz*, the question was whether there must "be proof that one charged with third-degree murder was inherently of depraved mind, or may the act and the attending circumstances be evidence enough of mental depravity?" 193 N.W. at 42. We began our

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analysis with a discussion of the common law concept of "malice," which distinguished murder from manslaughter. *Id.* We said, "The malice which distinguished murder from other species of homicide was not limited to particular ill will against the person slain." *Id.* When referring to a wanton and reckless *indifference to human life* that was not directed at the person slain, we used the term "general malice." *See id.* Common illustrations of general malice "were the intentional driving of a carriage in among a crowd at a furious speed, resulting in the death of one in the crowd, or the discharging of a gun among a multitude of people and killing one of them." *Id.* at 42.

After we clarified the concept of general malice in *Weltz*, we considered the question of whether the act and the attending circumstances were enough to prove the required mental state. In answering this question, we said that "the statute was intended to formulate the doctrine of the common law that, although malice was an essential element of the crime of murder, it need not be proved directly, but might be inferred from the perpetration of such an act as is described in the statute." *Id.* at 43. Our conclusion relied on the principle "that a sane [person] is presumed to intend the natural and probable consequence of [the person's] own voluntary acts." *Id.* We also observed that although in "a moral sense the unintentional taking of human life by an act evincing a *wanton and reckless disregard of life* in general [was] less wicked than the premeditated taking of the life of a particular individual[,]" both were murder. *Id.* (emphasis added).

As part of our analysis, we cited approvingly to a New York case interpreting a statute almost identical to the Minnesota statute, *id*. at 42–43 (citing *Darry v. People*, 10 N.Y. 120 (N.Y. 1854) (interpreting 2 R.S. 651, § 5)). Under the New York statute, the

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killing of a human being was murder when "perpetrated by an act imminently dangerous to others and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual." *Id*. (citing *Darry*, 10 N.Y. 120). In interpreting the statute, the *Darry* court said, the "acts may well be said to evince that reckless disregard of and indifference to human life, which is fully equivalent to a direct design to destroy it." *Darry*, 10 N.Y. at 148.

In summarizing the holding in *Darry*, we said that the "act must evince a depraved mind, regardless of human life. These words are exactly descriptive of general malice. *They define general recklessness*. The act by which death is effected must evince a disregard of human life." *Weltz*, 193 N.W. at 43 (emphasis added). We agreed with the New York court that "[s]uch acts evince a reckless disregard of human life, fully equivalent to a direct design to destroy it." *Id*. This quote accurately describes the requisite mental state; this issue, however, was not the question that we were asked to resolve in *Weltz*.

In *Weltz*, we noted that our decision in *Lowe* said that our statute "was intended to cover cases where reckless, mischievous, or wanton acts were committed without special regard to their effect on a particular person, but with a reckless disregard of whether they injured one person or another." *Weltz*, 193 N.W. at 43. These references to general recklessness and to "reckless, mischievous or wanton acts" were not necessary to our ultimate holding in *Weltz*; thus, they too were dicta. *Carlton*, 816 N.W.2d at 614. In retrospect, the stand-alone reference to general recklessness, as well as the "reckless, mischievous, or wanton acts" language, were ill-advised because they led some to believe that the statute requires a *reckless act*, as opposed to a *mental state of reckless disregard of*

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*life*. This erroneous belief led to ongoing confusion regarding the mental state required for third-degree depraved mind murder.

This mistaken focus on a reckless *act* was carried forward in *Barnes*, when the question before us was whether the first-degree domestic abuse murder statute impermissibly overlapped with the third-degree depraved mind murder statute in violation of the Equal Protection Clause of the Minnesota Constitution. 713 N.W.2d at 329–30. Barnes murdered his girlfriend and tried to cover it up by injecting her with heroin and claiming that she had overdosed. *Id.* at 329. He was ultimately convicted of first-degree domestic abuse murder, and sentenced to life in prison. *Id.* at 329. On appeal, he argued that there was "no significant difference in the culpable mental state required by" the first-degree domestic abuse murder and third-degree depraved mind murder statutes. *Id*. at 330 (internal quotation marks omitted).

We disagreed and first distinguished the two crimes by the acts required and the differences between the types of victims. *Id.* at 331. We next explained that the two crimes differ because the required mental states have a different focus. "Domestic abuse murder requires that the extreme indifference be directed at the specific person. Depraved mind murder, on the other hand, cannot occur where the defendant's actions were focused on a specific person." *Id.*

After we determined that the two crimes were materially distinguishable based on their incompatible focuses, we added, "There is a further basis to distinguish the [required mental states] of the two statutes. We have interpreted the 'depraved mind' standard from depraved mind murder to be equivalent to a reckless standard." *Id.* at 332 (citing *State v.*

*Carlson*, 328 N.W.2d 690, 694 (Minn. 1982)). We then noted that the crimes underlying domestic abuse murder have "an intent element." *Id.* It is unclear whether this ambiguous reference to a "reckless standard" is an acknowledgment that the third-degree depraved mind murder statute requires an act that evinces a mental state of *reckless disregard of life*, or an adoption of the dicta in *Lowe*, and its progeny, which suggests that the third-degree depraved mind murder statute requires a *reckless act*. Regardless, our precedents show that we have established no clear directive as to the mental state required for third-degree depraved mind murder.

We now clarify that the adjectives we first used in *Lowe* to describe the act involved in a third-degree murder ("reckless, mischievous, or wanton") did not create a mental-state element that requires a showing that the *act* was committed in a *reckless manner*. Instead, the mental-state element for third-degree depraved mind murder requires a showing that the eminently dangerous act was committed with a mental state of *reckless disregard of human life*. As Justice Tomljanovich observed in her concurrence in *State v. Netland*, the required recklessness or *indifference* "refer[s] to the risk of death, not to the manner in which the act that produces that result is undertaken." 535 N.W.2d 328, 332 (Minn. 1995) (Tomljanovich, J., concurring).

Accordingly, we hold that a person commits an eminently dangerous act (one that is highly likely to cause death) without regard to human life, when based on the surrounding circumstances one can infer that the defendant was indifferent to the loss of life that the defendant's eminently dangerous act could cause. In other words, a defendant is guilty of third-degree murder, when based on the attending circumstances: (1) he causes the death

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of another without intent; (2) by committing an act eminently dangerous to others, that is, an act that it is highly likely to cause death; and (3) the nature of the act supports an inference that the defendant was indifferent to the loss of life that this eminently dangerous activity *could* cause.

This articulation draws an important distinction between third-degree depraved mind murder and second-degree culpable negligence manslaughter. The manslaughter offense requires the State to prove that the person " 'causes the death of another . . . by the person's culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another.' " *State v. Back*, 775 N.W.2d 866, 869 (Minn. 2009) (quoting Minn. Stat. § 609.205 (2020)). By contrast, third-degree depraved mind murder requires an eminently dangerous act that supports an inference that the defendant was indifferent to the loss of life that the defendant's eminently dangerous activity could cause.

The distinction that we have drawn between third-degree depraved mind murder and second-degree culpable negligence manslaughter is consistent with the views of legal commentator Wayne LaFave, who states that a reckless act alone does not amount to murder. 2 Wayne R. LaFave, Substantive Criminal Law § 14.4(a) (3rd ed. 2018). But when an act is performed "under circumstances manifesting extreme *indifference to human life*," it is sufficient to distinguish third-degree murder from manslaughter. *Id.* (emphasis added).

Our articulation of the mental state required for third-degree depraved mind murder is consistent with our precedent that emphasizes the need to judge a defendant's mental

state based on the attending circumstances. *Weltz*, 193 N.W. at 42. When such circumstances show that the defendant committed an eminently dangerous act with an indifference to the loss of life that the eminently dangerous act could cause, the defendant has the requisite mental state for third-degree murder. This state of mind demands a greater showing than the "unreasonable risk" and "consciously takes a chance" requirements of the second-degree manslaughter statute. Minn. Stat. § 609.205(1).

Both the district court's jury instruction and CRIMJIG 11.38 include the phrase "committed in a *reckless or wanton manner* with the knowledge that someone *may* be killed." This phrase incorrectly attaches the recklessness component to the act itself, and allows for conviction based on an impermissibly low risk of death. Thus, the instruction materially misstated the law.[4]

II.

We need not determine whether the jury instruction error was plain because, even applying our clarified mental-state element here, Coleman has failed to establish that the error affected his substantial rights. *See State v. Kuhlmann*, 806 N.W.2d 844, 853 (Minn. 2011) (explaining that if the error did not affect the defendant's substantial rights, we need

[4] One way to accurately state the law in a jury instruction without using the dicta from *State v. Lowe*, 68 N.W. 1094 (Minn. 1896), could be to use the phrase "but it must have been committed *with an indifference to the loss of human life that the eminently dangerous act could cause*." Such an approach would eliminate the unnecessary and confusing "reckless or wanton" language, and removes the "with the knowledge that someone may be killed" language that we have held materially misstates the required mental state. Acknowledging that the model jury instructions are drafted by the Minnesota District Judges Association, not this court, we merely illustrate one way in which the required mental state could be communicated to a jury.

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not consider whether an error was plain). In determining whether an erroneous jury instruction affected the defendant's substantial rights, we must determine whether there is a reasonable likelihood that the instruction had a "significant effect" on the jury's verdict. *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998); *State v. Watkins*, 840 N.W.2d 21, 28 (Minn. 2013). Coleman bears this "heavy burden." *See Griller*, 583 N.W.2d at 741.

Coleman asserts that the error in the jury instruction was particularly prejudicial because "the question of whether [he] acted with a depraved mind was the only issue he argued the state had not proven at trial, and in effect, the only issue the jury had to decide." He further asserts that a properly instructed jury would have found him not guilty because the evidence shows that he was only aware of an appreciable risk, and not a "substantial and unjustifiable risk" to human life when he drank and drove his snowmobile across the lake that night. Coleman claims that his daughter's boyfriend had also driven the path 20 minutes before, and had not seen anybody, and he therefore believed that he had a clear path. He also asserts that the error was repeatedly reinforced to the jury through the prosecutor's use of the terms "may" and "might" in his closing argument regarding the requisite level of appreciable risk to human life.

The State counters that even if the jury had been instructed that Coleman needed to be aware of a substantial and unjustifiable risk to human life, it would have reached the same result. The State emphasizes that not only did Coleman concede that he had the general public knowledge that drinking and driving is dangerous, he also had specific knowledge of that danger based on his own recent crash. Coleman testified that he knew drinking and driving could kill someone, and yet he drove his snowmobile while

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"extremely intoxicated." The State thus questions how this conduct could support a reasonable inference that Coleman lacked the required mental state, and contends that any reasonable jury would agree.

After carefully reviewing the evidence presented at trial, we conclude that Coleman has not met his heavy burden of proving that the erroneous jury instruction affected his substantial rights. This case is different legally and factually from other cases in which we have concluded that an erroneous jury instruction affected a substantial right.[5] Here, given the overwhelming evidence the State presented at trial that Coleman was indifferent to the loss of human life that his eminently dangerous conduct could cause, no reasonable likelihood exists that the error had a significant effect on the jury's verdict. *See State v. Milton*, 821 N.W.2d 789, 809 (Minn. 2012).

The overwhelming evidence of Coleman's indifference to the loss of human life that his eminently dangerous conduct could cause included the testimony of many witnesses who stated that when the crash occurred the lake was brightly lit and visibility was good even though it was night. A police captain at the scene testified that he could see other

[5] In *Huber*, for example, we determined that an instruction, given in plain error, substantially affected Huber's rights because it would have allowed for a conviction based solely on Huber's presence at the murder scene, without evidence establishing the mental state that the law required. 877 N.W.2d 519, 527 (Minn. 2016). Huber presented testimony that he did not know that the principal was going to commit the murder and that he did not intend his actions to further commission of the crime; under the erroneous instruction requiring mere presence, the jury would have been required to convict him, even if it believed his version of the events. *Id*. at 526. Therefore, the instruction given did not accurately state the law, and no amount of testimony would have allowed the jury to acquit based on permissible grounds. *Id*. at 527. Here, however, the jury had the benefit of Coleman's own testimony as to his mental state, and thus it was not forced to render a verdict contrary to the proper standard even if it believed him.

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objects on the lake without the use of the headlights on his police car. The State's witnesses further testified that many ice-fishing houses were located on the lake where Coleman was driving. Testimony showed that, despite the presence of others on the lake, he was driving fast—almost 60 miles an hour—before striking the family's stationary pick-up truck, parked right next to the 6-foot tall icehouse with reflective markers on all sides, and the father and son. Despite the flat lake and the good visibility, Coleman told the police officers on the scene that he did not see the truck, the icehouse, or the people, and that the parked truck "came out of nowhere."

Coleman admitted that he had been drinking "grenades"—a malt beer with high alcohol content—that night before driving his snowmobile. The evidence showed that he was extremely intoxicated; a full three hours *after* the accident, Coleman had an alcohol concentration of 0.165, more than twice the legal limit. Not only did Coleman concede a general knowledge that drinking and driving can be fatal, he also admitted to having first-hand knowledge of the dangers posed by driving drunk. Less than three months before he hit and killed A.G., Coleman caused a crash that hospitalized another driver when he drove his car with an alcohol concentration of 0.304. Coleman's disregard of this specific knowledge shows that he was indifferent to the loss of human life that his eminently dangerous conduct could cause.

In sum, the level of Coleman's intoxication, the speed at which he was driving, his recent alcohol-related crash, and his general and specific knowledge of the dangers of drinking and driving support but one reasonable inference: Coleman acted with an indifference to the loss of human life that his eminently dangerous act could cause when

he consumed several beers with high alcohol content and then, fully aware that drinking and driving could be fatal, drove his snowmobile nearly 60 miles per hour across a populated frozen lake, fatally injuring an 8-year-old boy, who was standing next to the parked pickup truck and a 6-foot tall icehouse with reflector on all four corners, on an "exceptionally bright" night. This overwhelming evidence eliminates any reasonable likelihood that the erroneous instruction had a significant effect on the jury's verdict. *See State v. Kelley*, 855 N.W.2d 269, 284–85 (Minn. 2014). Because Coleman failed to show that the erroneous instruction affected his substantial rights, we affirm his conviction.

## CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

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# C O N C U R R E N C E

GILDEA, Chief Justice (concurring).

I agree with the majority that we should affirm Coleman's conviction. I write separately because in my view, we need not resolve whether the district court erred in instructing the jury. Even if the instructions were erroneous, as Coleman argues, we must still affirm Coleman's conviction because he has not demonstrated that any such error impacted his substantial rights. *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998) (noting that defendant has "heavy burden" to show error impacted his rights); *State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007) ("If a defendant fails to establish that the claimed error affected his substantial rights, we need not consider the other factors."). As the majority concludes, the evidence of Coleman's guilt was "overwhelming." And even if the district court should have instructed the jury as Coleman argues, no reasonable jury could have concluded, on this record, that Coleman was not guilty. Accordingly, I would affirm Coleman's conviction under the third prong of our plain error analysis. *See Lipka v. Minn. Sch. Emps. Ass'n, Local 1980*, 550 N.W.2d 618, 622 (Minn. 1996) ("[J]udicial restraint bids us to refrain from deciding any issue not essential to the disposition of the particular controversy before us."); *see also United States v. Young*, 470 U.S. 1, 15 (1985) ("Any unwarranted extension of this exacting definition of plain error would skew the Rule's 'careful balancing of our need to encourage all trial participants to seek a fair and accurate trial the first time around against our insistence that obvious injustice be promptly redressed.' " (quoting *United States v. Frady*, 456 U.S. 152, 163 (1982))).