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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2038**

State of Minnesota,
Respondent,

vs.

James Ray Watkins,
Appellant.

**Filed July 17, 2017
Affirmed
Bjorkman, Judge**

Mower County District Court
File No. 50-CR-13-500

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

Kristen Nelson, Mower County Attorney, Scott K. Springer, Assistant County Attorney,
Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Worke, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions for first- and second-degree criminal sexual
conduct, arguing that one of the jury instructions was structurally or plainly erroneous.

Because the challenged instruction did not direct a verdict for the state or suggest that the jury had to deliberate in a particular order, we affirm.

FACTS

On March 1, 2013, four-year-old A.W. reported that her father, appellant James Ray Watkins, had sexually abused her. She was taken to a hospital and told the examining nurse that Watkins had touched her “tootle” (a term she used for her genitals), had touched his own, and had put his “tootle” in hers and in her butt. Analysis of the underwear A.W. was wearing on the day of the incident revealed the presence of Watkins’s semen.

Respondent State of Minnesota charged Watkins with first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a) (2012) (penetration), and second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(a) (2012) (sexual contact). At the conclusion of Watkins’s trial, the jury found him guilty of both offenses. The district court sentenced Watkins to 144 months in prison for the first-degree offense and dismissed the second-degree charge.

Watkins filed a timely petition for postconviction relief asserting, among other things, that he is entitled to a new trial because of error in the jury instructions. He specifically challenged the following instruction:

In this case you have essentially three options. You may find the defendant not guilty of either charge. You may find the defendant guilty of a lesser charge, but not of the more serious charge; or you may find the defendant guilty of both the lesser charge and the more serious charge. The reason that you don’t have a fourth option is because it is logically inconsistent. In other words, the defendant may not be guilty of the more serious charge without being guilty of the lesser charge, because the lesser charge is a part of the more serious charge.

And we want to avoid, obviously, inconsistent verdicts, and so we advise jurors that that's the way the progression is. It may be either not guilty of all charges, guilty of only the lesser charge or guilty of both charges.

Watkins argued that this instruction essentially directed a verdict for the state and suggested an order for the jury's deliberations. The district court denied Watkins's petition. Watkins appeals.

DECISION

We review the denial of a petition for postconviction relief for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015).

We review legal issues de novo, but on factual issues our review is limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings. We will not reverse an order unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.

Id. (quotations and citations omitted).

Watkins's sole argument on appeal relates to one unobjected-to jury instruction. District courts have considerable latitude in selecting the precise language of the jury instructions, and we review instructions as a whole to determine if they fairly and adequately explain the law. *Gulbertson v. State*, 843 N.W.2d 240, 247 (Minn. 2014). And we consider whether the instructions, as a whole, "accurately state the law in a manner that can be understood by the jury." *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014). Because Watkins did not object to any of the instructions at trial, he urges us to apply either

the structural error or the plain error standard of review.¹ We need not decide which heightened standard applies because we discern no error in the challenged instruction.

Watkins first argues that by telling the jury it could reach only three conclusions with respect to Watkins's guilt—not guilty on both charges, guilty on only the lesser charge, or guilty on both charges—the district court essentially directed a verdict for the state. We are not persuaded. Before instructing the jury on the elements of each charged offense, the district court told the jury to consider the two charges, and the evidence pertaining to them, separately. The court appropriately explained the law regarding lesser crimes, and told the jurors that the fact they may find Watkins guilty of one offense should not affect their decision as to the other charge. Unlike *State v. Perkins*, 353 N.W.2d 557 (Minn. 1984), which Watkins cites, the district court did not tell the jury that any elements of the two criminal-sexual-conduct offenses had been proven. The challenged instruction's characterization of a potential finding of guilt as to the more serious charge but not the lesser charge as “logically inconsistent” may be inaccurate. See *State v. Leake*, 699 N.W.2d 312, 326 (Minn. 2005) (finding the defendant was not entitled to a new trial when his verdict involved only logical inconsistencies and not legal inconsistencies). But the instruction, considered in context, does not misstate the law because a defendant cannot,

¹ Structural errors require automatic reversal. *State v. Brown*, 732 N.W.2d 625, 630 (Minn. 2007). “Only a small number of errors have been found to be structural errors.” *State v. Kuhlmann*, 806 N.W.2d 844, 851 (Minn. 2011). Plain error may warrant reversal if it affects the defendant's substantial rights. *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001). Plain error will only be corrected if “it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Kelley*, 855 N.W.2d at 274 (quotations omitted).

as a matter of law, commit a more serious crime without committing the lesser crime. See *State v. Roden*, 384 N.W.2d 456, 457 (Minn. 1986) (“A lesser offense is necessarily included in a greater offense if it is impossible to commit the latter without also committing the former.”). On this record, we conclude that the challenged instruction did not direct a verdict for the state.

Watkins next asserts that the challenged instruction improperly suggested an order in which the jury had to deliberate. This argument fails when the instructions are considered as a whole. The district court told the jury that it was “free to consider the issues in this case in any order that you wish” and that “you are the deciders of fact and you make the decisions, and that includes the order that you proceed.” We presume that juries follow instructions. *State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005). Accordingly, Watkins’s argument fails.

In sum, the challenged jury instruction neither directed a verdict for the state nor told the jury the order in which to conduct its deliberations. And the instructions, as a whole, did not misstate the law or confuse the jury. Accordingly, we affirm.

Affirmed.