

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1007**

State of Minnesota,
Respondent,

vs.

Wyatt Christopher Labeau,
Appellant.

**Filed March 27, 2023
Affirmed
Frisch, Judge**

Stearns County District Court
File No. 73-CR-19-8515

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that he is entitled to a new trial because the district court did not properly instruct the jury as to the elements of the offense. Because we see no error in the district court's jury instructions, we affirm.

FACTS

Respondent State of Minnesota charged appellant Wyatt Christopher Labeau with one count of reckless threats of violence in violation of Minn. Stat. § 609.713, subd. 1 (2018). The following facts were established at a jury trial.

On the day of the incident, Labeau had been drinking heavily and was intoxicated. Labeau's mother, V.L., visited Labeau at his home, which was a duplex that he shared with the victim, W.W. Labeau showed V.L. a shotgun, ammunition, and other dangerous items while expressing that he was upset with W.W. V.L. was inside the residence with Labeau, and W.W. was located on the property outside of the residence. Labeau loaded the shotgun and stated, "This is for [W.W.]." As V.L. was getting ready to leave, Labeau said, "Tell [W.W.] I'm going to kill him." V.L. believed that Labeau was serious about the threat and was concerned because Labeau was intoxicated and loaded the shotgun in front of her.

Labeau and the state did not agree on how to instruct the jury on the elements of threats of violence. Before trial, the state proposed a modification to the model jury instruction, replacing a recitation of the elements of murder with the following: "A threat to commit Murder is a threat to intentionally kill another human being." Labeau objected and requested that the district court read the model jury instruction. At the start of trial, the district court read the model instruction, reciting the elements of murder, and also included the above-quoted language. In its closing instruction, the district court did not recite the elements of murder, as provided in the model jury instruction, but instructed the jury that "[t]he threat to commit murder is a threat to intentionally kill another human

being.” Labeau did not object to this modification at that time. The jury found Labeau guilty. Labeau appeals.

DECISION

I. The district court’s instruction fairly and adequately explained the law and did not materially misstate the law.

Labeau argues that the district court erred by modifying the model jury instruction because it directed the jury to find that Labeau actually made a threat to commit murder and negated his possible defense. Labeau argues that the modified instruction amounts to structural error necessitating a new trial. The state disagrees, arguing that the instruction was not erroneous and that even if it were, our review is for plain error because Labeau failed to object to the instruction at trial. We need not resolve the disagreement as to the applicable standard of error because we identify no error in the district court’s instruction.

We review the adequacy of jury instructions for an abuse of discretion. *State v. Moore*, 699 N.W.2d 733, 736 (Minn. 2005). The district court has “considerable latitude” in determining the language of its jury instructions. *Id.* (citing *State v. Peou*, 579 N.W.2d 471, 475 (Minn. 1998)). We review the 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). An instruction is erroneous if it materially misstates the law. *State v. Pendleton*, 567 N.W.2d 265, 269-70 (Minn. 1997). Because the jury must determine beyond a reasonable doubt that a defendant is guilty of every element constituting a criminal offense, the district court also errs if its instructions direct a verdict in favor of the state on any element of the offense, absent a stipulation by the defendant. *Moore*, 699 N.W.2d at 737.

The state was required to prove that Labeau directly or indirectly threatened to commit a crime of violence against W.W.¹ See Minn. Stat. § 609.713, subd. 1. Labeau argues that the district court directed the jury to find that the state had proved this element by instructing that “[a] threat to commit murder is a threat to intentionally kill another human being” because the chosen language established that “Labeau’s words met the definition of murder.” We disagree. The district court’s chosen language did not misstate the law or direct the jury to find that Labeau had actually made a threat to kill W.W. It is a correct statement of the law that a threat of murder is a threat to kill another human being.² The jury was charged with the task of determining, consistent with the instruction, whether Labeau threatened to commit murder. The jury was free to weigh the credibility of the witnesses and evaluate the veracity of Labeau’s defense that he was just “voicing his anger,” not threatening to commit murder. Nothing in the challenged instruction prevented the jury from concluding that Labeau’s statement to V.L. that he was going to “kill [W.W.]” was something other than a threat; the instruction did not define what constitutes a threat

¹ The jury was instructed that murder is a crime of violence, and Labeau does not contend that this instruction was error.

² All degrees of homicide are crimes of violence. Minn. Stat. §§ 609.713, subd. 1 (defining “crime of violence” as having the same meaning as “violent crime” under Minn. Stat. § 609.1095, subd. 1(d) (quotation omitted)), .1095, subd. 1(d) (defining “violent crime” to include all degrees of homicide (quotation omitted)) (2018); see also *Klimek v. State*, No. A19-0065, 2019 WL 4164900, at *5 (Minn. App. Sept. 3, 2019) (determining that an instruction defining all elements of homicide is unnecessary because all homicide is a crime of violence), *rev. denied* (Minn. Nov. 19, 2019). We cite this nonprecedential opinion for its persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

and the jury was free to decide if Labeau’s words were intended to directly or indirectly threaten W.W.

Labeau argues that the circumstances here are similar to those in *Moore*. We disagree. In *Moore*, the district court instructed the jury that the loss of a tooth constituted the permanent loss of the function of a bodily member, which deprived the jury of its duty to independently determine whether the victim suffered great bodily harm, an element of the offense. 699 N.W.2d at 736-38. Unlike the circumstances in *Moore*, the district court here did not instruct the jury as to any fact in the case, let alone that Labeau’s alleged statement that he was going to “kill [W.W.]” satisfied an element of the offense. Accordingly, the district court’s instruction fairly and adequately explained the law, did not materially misstate the law, and did not impermissibly deprive the jury of its fact-finding function.³

³ Even if we concluded that the instruction was imperfect, we are not persuaded that Labeau would be entitled to a new trial. We disagree that the instruction created a “defect[] in the constitution of the trial mechanism . . . affect[ing] the entire trial from beginning to end and undermin[ing] the structural integrity of the criminal tribunal itself.” *See State v. Watkins*, 840 N.W.2d 21, 25 (Minn. 2013) (quotations and citation omitted) (describing structural error). We note that Labeau did not object after the district court gave the now-disputed closing instruction. The Minnesota Supreme Court recently reasoned that unobjected-to error, including structural error, is subject to a plain-error analysis unless the “failure to correct the error would have an impact beyond the current case by causing the public to seriously question the fairness and integrity of our judicial system.” *Pulczynski v. State*, 972 N.W.2d 347, 356-58 (Minn. 2022); *see also State v. Bey*, 975 N.W.2d 511, 520 (Minn. 2022). Because Labeau in his formal brief on appeal does not contest that he made the threatening statement, trial testimony established that he made it, and his focus at trial related to the intent of his words, we do not discern that any error associated with the instruction affected Labeau’s substantial rights or would cause the public to seriously question the fairness and integrity of the judicial system.

II. The arguments in Labeau's pro se supplemental brief are not supported by adequate authority and we decline to consider them.

Labeau summarily raises additional arguments in a pro se supplemental brief. We liberally construe these arguments as challenges to the sufficiency of the evidence and that he received ineffective assistance of counsel. Mere assertions not supported by authority or further argument are inadequately briefed and are waived unless prejudicial error is obvious. *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015). Labeau provides no citations to relevant authorities or further argument to support his assertions and there is no obvious prejudicial error. Thus, we decline to address these additional arguments.

Affirmed.