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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0107**

State of Minnesota,
Respondent,

vs.

Eric Humberto Sanchez,
Appellant.

**Filed January 8, 2024
Affirmed
Cleary, Judge***

McLeod County District Court
File No. 43-CR-22-879

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Ryan S. Hansch, McLeod County Attorney, Steven R. Ott, Assistant County Attorney,
Glencoe, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa Haley, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Segal, Chief Judge; and Cleary,
Judge.

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

NONPRECEDENTIAL OPINION

CLEARY, Judge

In this direct appeal from the judgment of conviction for second-degree assault, appellant argues (1) the state failed to prove beyond a reasonable doubt that appellant used a dangerous weapon, (2) the state failed to disprove beyond a reasonable doubt self-defense and defense-of-property, (3) the district court erred in failing to instruct the jury on the statutory definition of “great bodily harm” as part of its instruction on whether a dangerous weapon was used in the assault, and (4) the district court erred in its response to a jury question by referring the jury to an element with erroneously included “attempt” language. We affirm.

FACTS

In June 2022, respondent State of Minnesota charged appellant Eric Humberto Sanchez with one count of second-degree assault with a dangerous weapon causing substantial bodily harm in violation of Minn. Stat. § 609.222, subd. 2 (2022). Later, the state amended the complaint to add a second count—first-degree criminal damage to property in violation of Minn. Stat. § 609.595, subd. 1(4) (2022). These charges stemmed from an alleged assault that took place in June 2022. The case proceeded to a jury trial.

At trial, J.S., the victim in this case, testified that he and Sanchez had been friends through a coworker. One evening, Sanchez and J.S. met two women in Minneapolis. After the evening out, J.S. dropped Sanchez off near Sanchez’s home and dropped L.L., one of the women they met, off outside of her home.

Sometime after J.S. arrived home, Sanchez called. Sanchez wanted J.S. to bring him the things he had left in the backseat of J.S.'s car. Sanchez said that "if he had to come looking for his things . . . something was going to happen." J.S. testified that he viewed Sanchez's statement as a threat. J.S. responded that he would bring Sanchez his things the next day, but Sanchez would not agree to that arrangement. J.S. contacted L.L., and L.L. asked J.S. to return Sanchez's things "to avoid problems." At L.L.'s suggestion, J.S. picked her up and drove back to Sanchez's home. J.S. parked in front of Sanchez's home. Sanchez got into the backseat of J.S.'s car, behind the front passenger seat.

J.S. testified that Sanchez told him to start the car, and he refused. He then told Sanchez to get out of his car. J.S. testified that Sanchez got upset, grabbed his things, and got out of the car. J.S. saw that Sanchez had a baseball bat in his right hand. J.S. recounted that Sanchez had the bat down by his side in a position that did not appear to be aggressive. J.S. testified that Sanchez started coming to J.S.'s door, and then J.S. got out of the car to talk with Sanchez. J.S. testified that Sanchez began to respond aggressively, and J.S. observed that Sanchez had characteristics "of a person that [was] very upset." J.S. explained that the two began to circle each other with J.S. moving away from his car and Sanchez moving closer to it. J.S. became worried because Sanchez was now grabbing the bat with "strength" and both hands.

J.S. testified that suddenly Sanchez swung the bat "from . . . downwards up . . . with speed." J.S. recounted that he was hit in the face and that his nose was broken by the bat. J.S. testified that Sanchez continued hitting him with the bat, aiming for his head, while J.S. blocked the blows with his left arm. J.S. said he was hit in the ribs with the bat. J.S.

testified that after he was hit several times with the bat, he and Sanchez fell to the ground and Sanchez started punching him. J.S. testified that, in addition to his broken nose, he had swollen tissue, injuries on his arms, and bruises from being hit with the bat.

When Sanchez walked away, J.S. went back to his car and called 911. While J.S. called 911, he saw Sanchez in front of the house holding a pipe, and J.S. got out of the car and grabbed the bat for the first time. While J.S. was still on the phone with 911, Sanchez dropped the pipe and grabbed a pole saw. J.S. got into his car and Sanchez tried to stab J.S. with the pole saw by thrusting it through the front passenger door. J.S. got out of the car and ran away down the street.

Officers and medical assistance arrived, and J.S. was taken by ambulance to the hospital. The doctor who treated J.S. testified that he became involved with J.S.'s treatment within minutes of J.S. arriving because an assault with a baseball bat heightened the level of concern that J.S. could have had life-threatening injuries. The doctor explained that in trauma cases like J.S.'s they need to "rule out . . . significant injury and . . . life or limb threats." The hospital staff performed CT scans of J.S.'s brain (to check for a brain hemorrhage), neck (to check for a broken neck), face, abdomen (to check for internal organ injuries), and pelvis. The hospital staff also performed a chest x-ray to assess for rib fractures or a collapsed lung. The doctor described J.S.'s injuries as including a nasal fracture; a bloody, swollen, and tender nose; swelling and tenderness on the left forearm; and tenderness in the abdomen. The doctor testified that he was concerned with the mechanism of J.S.'s injuries because when a human is assaulted with a baseball bat there is a potential for significant bodily harm.

At trial, Sanchez testified to his version of the assault. Sanchez testified that after he got out of the car, J.S. got out of the car with the bat and started swinging it at Sanchez. He testified that he wrestled with J.S. over the bat. He testified that he got the bat from J.S. and threw to the side before punching J.S., causing J.S.'s injuries. Sanchez also testified that J.S. bit him during the struggle. He testified that he asked J.S. to leave "like, 20 times." Sanchez never testified to hitting J.S. with the bat. L.L.'s testimony regarding the assault was similar to Sanchez's.

In its instructions to the jury, the district court gave the statutory definition of "dangerous weapon," which includes the term "great bodily harm." But the jury instructions did not include the statutory definition of "great bodily harm." "Bodily harm" and "substantial bodily harm" were defined in the jury instructions. The instructions directed the jury to "apply the common, ordinary meaning" of any word or phrase not defined by the district court. Trial counsel had multiple opportunities to object to the proposed jury instructions and to propose modifications. Defense counsel did not object to the omission of the statutory definition of "great bodily harm."

During deliberations, the district court received a jury question that read: "In regard[] to second degree assault—second point says a dangerous weapon used or intended to be used. Does that weapon [have to] be what pertains to #3—what caused substantial bodily harm? Does dangerous weapon have to be what caused 'substantial bodily harm?'" The district court proposed responding, "No, please refer to the first element." Defense counsel objected and stated, "I guess what I'm asking for in clarifying with them is that either that they find that he did, in fact, attempt to assault [J.S.] with a baseball bat,

specifically, or that he caused him substantial bodily harm with the bat.” Ultimately, the district court wrote back, “No, please refer to 1st element.”

The jury found Sanchez guilty of second-degree assault. Subsequently, Sanchez was sentenced to 36 months in prison on the assault conviction.

Sanchez appeals.

DECISION

I. The state proved there was sufficient evidence to establish that a dangerous weapon was used during the assault.

Sanchez argues that his conviction must be reversed because the state provided insufficient evidence for a reasonable jury to conclude that he used a dangerous weapon during the assault. In a criminal case, due process requires the prosecution to “prove every element of the offense beyond a reasonable doubt.” *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020).

The jury found Sanchez guilty of second-degree assault under Minn. Stat. § 609.222, subd. 2, which provides that a person who “assaults another with a dangerous weapon and inflicts substantial bodily harm” has committed second-degree assault. “Dangerous weapon” is statutorily defined, in relevant part, as “any . . . 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.” Minn. Stat. § 609.02, subd. 6 (2022). The state therefore needed to prove beyond a reasonable doubt that Sanchez used (1) a device or instrumentality (2) in a manner that was calculated or likely to produce death or great bodily harm. “Great bodily harm” is statutorily defined as “bodily injury which creates a

high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” *Id.*, subd. 8 (2022).

A. Sanchez’s use of the baseball bat rendered it a “dangerous weapon” within the meaning of Minn. Stat. § 609.02, subd. 6.

Sanchez argues that the way he used the baseball bat did not convert the baseball bat to a “dangerous weapon.” We disagree. Whether a defendant’s conduct meets the definition of a particular offense presents a question of statutory interpretation that is reviewed de novo. *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013).

Determining whether an object is a dangerous weapon depends on “the nature of the object itself” and “the manner in which it was used.” *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997). An ordinary object may become a “dangerous weapon” if the object is dangerous and “used in a manner calculated to cause great bodily harm.” *State v. Coquette*, 601 N.W.2d 443, 447 (Minn. App. 1999), *rev. denied* (Minn. Dec. 14, 1999); *see, e.g., State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (concluding that a three-foot-long board was a dangerous weapon when used to repeatedly beat the victim); *State v. Moyer*, 298 N.W.2d 768, 770 (Minn. 1980) (concluding that gasoline was a dangerous weapon when intentionally poured and lit in sole exit of apartment in attempt to kill occupants); *State v. Mings*, 289 N.W.2d 497, 498 (Minn. 1980) (concluding that boots were a dangerous weapon when used to kick the victim repeatedly in head and chest).

Sanchez struck J.S. at least ten times with the bat while J.S. was unarmed. He gripped the bat with both hands and struck J.S. in the head and ribs. And while J.S. did not

face extensive hospitalization, he was subjected to extensive testing to rule out life-threatening injury and he suffered a broken nose in addition to redness, swelling, and tenderness to several other parts of his body. Further, Sanchez was not using the baseball bat in a manner similar to how it is intended to be used when he repeatedly struck J.S. *Cf. Coquette*, 601 N.W.2d at 448 (concluding that shooting a paintball gun out of a car window did not transform the paintball gun into a dangerous weapon where the defendant’s intent was to use the paintball gun in a manner consistent with its intended use—to splash unsuspecting targets with washable paint, not cause bodily harm). The circumstances in this case demonstrate that Sanchez used the baseball bat “in a manner calculated to cause great bodily harm.” *See id.* at 447. We therefore conclude that the baseball bat, as used by Sanchez, was a dangerous weapon.

B. The state provided sufficient evidence for the jury to find that Sanchez used the baseball bat in a manner that constituted a dangerous weapon.

We next turn to the question of whether the state provided sufficient evidence for the jury to find that Sanchez used the baseball bat in the manner that constituted a dangerous weapon. When appellate courts evaluate the sufficiency of the evidence, they “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). Appellate courts must view the evidence “in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict.” *Id.* Further, “[t]he

verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense." *Id.*

The dangerous weapon element was established by direct evidence. "[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation and alteration omitted). When an element of an offense is supported by direct evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). The reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). "[A] conviction may be based on a single person's testimony." *State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010).

J.S. testified that Sanchez hit him with the baseball bat at least ten times and that Sanchez broke his nose by hitting him in the face with the bat at least two times. J.S. testified that Sanchez gripped the bat in both hands as he hit J.S. And J.S. testified that Sanchez hit him in the ribs with the bat.

The doctor testified that he became involved within minutes of J.S. arriving because an assault with a baseball bat heightened the level of concern that J.S. could have life-threatening injuries. The doctor further testified about the extensive tests he conducted to

rule out the life-threatening injuries that might have been caused by the assault with the baseball bat.

Neither J.S. nor the doctor gave significantly conflicting testimony on these points. We therefore conclude that, although Sanchez and L.L. testified to the contrary, the direct evidence provided by the state, viewed in the light most favorable to the conviction, was sufficient to allow the jury to conclude that Sanchez used the bat in a manner that rendered it a “dangerous weapon.”

II. The state provided sufficient evidence to disprove self-defense and defense of property.

Sanchez argues that his conviction must be reversed because the state did not provide sufficient evidence for a reasonable jury to conclude that he was not justified in using force against J.S.

A. Self-defense

Minnesota law allows a person to use reasonable force against another to resist an offense against them. Minn. Stat. § 609.06, subd. 1(3) (2022). The elements of self-defense include:

- (1) the absence of aggression or provocation on the part of the defendant;
- (2) the defendant’s actual and honest belief that he or she was in imminent danger of death or great bodily harm;
- (3) the existence of reasonable grounds for that belief; and
- (4) the absence of a reasonable possibility of retreat to avoid the danger.

Basting, 572 N.W.2d at 285. The defendant has the burden of producing evidence to support a self-defense claim. *Id.* at 286. “Once it is raised, the state has the burden of disproving one or more of these elements beyond a reasonable doubt.” *Id.* The state “need

only disprove beyond a reasonable doubt at least one of the elements of self-defense.” *State v. Radke*, 821 N.W.2d 316, 324 (Minn. 2012).

Sanchez argues that the evidence presented demonstrated that he had an honest and actual belief that force was necessary and that his use of force was reasonable. But Sanchez bases his argument on the incorrect assumption that J.S. was the initial aggressor.

A person is the initial aggressor if they “began or induced the incident” by engaging in activity that is a “good deal greater than mere conversation.” *State v. Carridine*, 812 N.W.2d 130, 145 (Minn. 2012) (quotation omitted). “An aggressor in an incident has no right to a claim of self-defense.” *Bellcourt v. State*, 390 N.W.2d 269, 272 (Minn. 1986). J.S. testified that Sanchez was the first to use physical force. The jury’s verdict shows that the jury did not find Sanchez’s testimony credible, and we defer to the jury’s credibility determinations in our sufficiency of the evidence analysis. *See State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016).

Because the initial aggressor element was disproved with J.S.’s testimony about the assault, we apply the direct evidence standard of review. According to J.S., before Sanchez struck him in the face with the baseball bat, the two were just talking. J.S. recounted that suddenly Sanchez swung the bat “from . . . downwards up . . . with speed” and hit J.S. in the face, breaking J.S.’s nose. J.S. recounted that Sanchez repeatedly hit him with the bat and that he was struck on his left arm—which was raised to protect his head—and on his ribs. According to J.S., this is when they fell to the ground. Sanchez started punching J.S., and J.S. finally struck Sanchez back. J.S. did not testify to any other physical altercation between the two after this point to which his extensive injuries could be attributed.

We conclude that J.S.’s testimony, when viewed in the light most favorable to the conviction, was sufficient to prove beyond a reasonable doubt that Sanchez was the initial aggressor. We therefore do not address Sanchez’s contentions about the other elements of self-defense.

B. Defense-of-Property

Minn. Stat. § 609.06, subd. 1(4) (2022), provides that reasonable force may be used “by any person in lawful possession of real or personal property, or by another assisting the person in lawful possession, in resisting a trespass upon or other unlawful interference with such property.”

Sanchez argues that he was “actively trying to defend his home and property from [J.S.’s] verbal and physical threats.”

Applying the direct-evidence standard of review, we conclude that the state’s evidence was sufficient to disprove that J.S. was trespassing or otherwise unlawfully interfering with Sanchez’s property. J.S. testified that he did not move toward the house while holding the bat and that he never stepped onto Sanchez’s property. Because we conclude that the evidence, when viewed in the light most favorable to the conviction, was sufficient to disprove this element of defense-of-property, we do not address whether the state’s evidence was sufficient to disprove the other elements of this defense.

III. The district court did not commit reversible error when it did not instruct the jury on the statutory definition of “great bodily harm.”

Sanchez argues that his conviction must be reversed because the district court’s omission of the statutory definition of “great bodily harm” from the jury instructions was

a plain error affecting his substantial rights. Sanchez’s trial counsel did not object to this omission. When there is no objection to jury instructions at trial, the appellate court has discretion to consider a claim of error on appeal “if there was plain error affecting substantial rights or an error of fundamental law in the jury instructions.” *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (quotation omitted).

A. Omitting the statutory definition of “great bodily harm” was plain error.

An error is plain if it is “clear” or “obvious,” meaning that it “contravenes case law, a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted). “Failure to properly instruct the jury on all elements of the offense charged is plain error.” *State v. Watkins*, 820 N.W.2d 264, 268 (Minn. App. 2012) (quotation omitted), *aff’d on other grounds*, 840 N.W.2d 21 (Minn. 2013).

To prove second-degree assault in violation of Minn. Stat. § 609.222, subd. 2, the state needed to prove that Sanchez used a “dangerous weapon.” Again, “dangerous weapon” is statutorily defined as “any . . . 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. And “great bodily harm” is statutorily defined as “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” *Id.*, subd. 8.

Sanchez argues that omission of the statutory definition of “great bodily harm” was plain error. “[T]he elements of the crime should be explained, but detailed definitions of the elements to the crime need not be given in the jury instructions if the instructions do

not mislead the jury or allow it to speculate over the meaning of the elements.” *Peterson v. State*, 282 N.W.2d 878, 881 (Minn. 1979) (footnote omitted). In *State v. Moore*, this court determined that omitting the statutory definition of “force,” where force was an element of the charged offense, was error because the instructions “failed to include details that are necessary to fully explain the applicable law.” 863 N.W.2d 111, 121-22 (Minn. App. 2015). The district court’s omission of the statutory definition of “great bodily harm” is analogous to the omission in *Moore* because the jury was not given details necessary to fully understand the applicable law. Omitting the definition of great bodily harm from the jury instructions was contrary to the rule set forth in *Moore* and was, therefore, plain error.

B. Omitting the statutory definition of “great bodily harm” did not affect Sanchez’s substantial rights.

An error in instructing the jury “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 erroneous jury instruction “is prejudicial if there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury’s verdict.” *Id.* (quotation omitted). The defendant must prove prejudice, which is “a heavy burden.” *Id.* Sanchez argues that omission of the statutory definition of “great bodily harm” affected his substantial rights because the state was relieved of proving that Sanchez used a dangerous weapon in the assault.

Without knowing the statutory definition, the jury could have found Sanchez guilty of second-degree assault even if it found that the bat, as used, was capable of producing only bodily harm less serious than the statute requires. However, this court must consider

this possibility in light of the evidence presented about the manner in which the bat was used. Contrary to Sanchez's contention, the state produced sufficient evidence on the question of whether Sanchez used the bat as a dangerous weapon. J.S. testified that Sanchez used the bat to hit J.S. in the head at least two times with sufficient force to cause his nose to break. Sanchez also hit J.S. with the bat repeatedly, including striking J.S. in the ribs. Additionally, the doctor testified that an assault with a baseball bat causes heightened concern that the victim could have life-threatening injuries. Given this evidence, which was sufficient to show that the bat was used in a manner capable of causing life-threatening injuries to J.S., there is not a reasonable likelihood that failing to instruct the jury about the definition of "great bodily harm" had a significant effect on the jury's verdict. The district court therefore did not commit reversible error by omitting the definition of "great bodily harm" from the jury instructions.

IV. The district court did not commit reversible error in its response to the jury's question.

Sanchez argues that his conviction must be reversed because the district court's response to the jury's question did not accurately clarify the law and highlighted erroneously included "attempt" language.

The district court may, among other options in its exercise of discretion, respond to a jury's request for additional instructions during deliberation by providing additional instructions or by rereading portions of its original instructions. Minn. R. Crim. P. 26.03, subd. 20(3); *see also State v. Murphy*, 380 N.W.2d 766, 772 (Minn. 1986). The standard of review is abuse of discretion. *State v. Laine*, 715 N.W.2d 425, 433 (Minn. 2006). "A

district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

During deliberations, the district court received a question from the jury that read: “In regard[] to second degree assault—second point says a dangerous weapon used or intended to be used. Does that weapon [have to] be what pertains to #3—what caused substantial bodily harm? Does dangerous weapon have to be what caused ‘substantial bodily harm?’” The district court’s proposed response was: “No, please refer to the first element.” Sanchez’s trial counsel objected to this response. She noted that the first element included “attempt to inflict bodily harm” and asked the district court to “clarify[] with [the jury] that either . . . they find he did, in fact, attempt to assault [J.S.] with a baseball bat, specifically, or that he caused him substantial bodily harm with the bat.”

Minnesota law is clear that the “dangerous weapon” need not cause substantial bodily harm to sustain a conviction of second-degree assault under Minn. Stat. § 609.222, subd. 2. *State v. Harlin*, 771 N.W.2d 46, 50 (Minn. App. 2009), *rev. denied* (Minn. Nov. 17, 2009). The district court therefore did not abuse its discretion by declining to adopt Sanchez’s trial counsel’s proposed response.

Sanchez also argues that “as a result of the court’s response to the jury request for clarification, the jury could have concluded that all that was needed for a guilty verdict was a misdemeanor assault as defined in element one—either the completed assault or an attempted assault.” This argument is unpersuasive. The jury instructions required the jury to find that all four elements were proven beyond a reasonable doubt to conclude that

Sanchez was guilty. The third element in the jury instruction on second-degree assault was that “the defendant inflicted substantial bodily harm on [J.S.].” Because the district court’s response did not clearly contradict or override the remaining jury instructions, we conclude that the response was not an abuse of discretion.

We next turn to the question of whether the inclusion of the “attempt” language in the jury instructions was reversible error. Because Sanchez’s trial counsel did not object, the inclusion of “attempt” in the jury instructions must be reviewed for plain error and its effect on Sanchez’s substantial rights—not abuse of discretion. *See Crowsbreast*, 629 N.W.2d at 437. The inclusion of “attempt” language without an attempt charge, or the definition of “attempt” in the jury instructions is plain error. *See State v. Smith*, 901 N.W.2d 657, 661 (Minn. App. 2017) (explaining that jury instructions must “accurately state the law” and “define the crime charged and explain the elements”), *rev. denied* (Minn. Nov. 14, 2017).

However, this error did not affect Sanchez’s substantial rights. “[A]n error affects substantial rights when there is a reasonable likelihood that a more accurate instruction would have changed the outcome in [the] case.” *Moore*, 863 N.W.2d at 123 (quotation omitted). Sanchez admitted to getting into a fist fight with J.S. but disputed that he hit J.S. with the baseball bat. The factual question before the jury was whether Sanchez used the baseball bat—the dangerous weapon—in the assault. The jury’s guilty verdict demonstrated its conclusion that the state proved that Sanchez used the baseball bat in assaulting J.S. A more accurate instruction therefore would not have changed the outcome in this case. Our precedent does not compel a different conclusion. *See State v. Edwards*,

900 N.W.2d 722, 727 (Minn. App. 2017) (concluding that the inclusion of “attempting to inflict bodily harm” in the jury instructions for second-degree assault with a dangerous weapon charge was not reversible error where the defense conceded that the defendant got into a fist fight and the only dispute was whether the defendant used a knife—the alleged dangerous weapon), *aff’d mem.*, 909 N.W.2d 594 (Minn. 2018). We conclude that inclusion of the “attempt” language in the jury instructions was not reversible error.

Affirmed.