

*This opinion is nonprecedential except as provided by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
A23-0551**

State of Minnesota,
Respondent,

vs.

Emerson Alexander Gonzalez-Rivas,
Appellant.

**Filed February 5, 2024
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-21-13685

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

Christopher P. Renz, Andrew C. Case, Chestnut Cambronne PA, Minneapolis, Minnesota
(for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Gaitas, Judge; and Kirk,
Judge.*

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

NONPRECEDENTIAL OPINION

LARKIN, Judge

A jury found appellant guilty of violating a domestic-abuse no-contact order (DANCO). Appellant argues that his conviction should be reversed because the district court abused its discretion by declining to instruct the jury regarding the use of interpreters at his trial and in responding to a jury question during its deliberations. We affirm.

FACTS

In July 2021, respondent State of Minnesota charged appellant Emerson Alexander Gonzalez-Rivas with a misdemeanor violation of a DANCO. *See* Minn. Stat. § 629.75, subd. 2(b) (2020) (“Except as otherwise provided . . . , a person who knows of the existence of a domestic abuse no contact order issued against the person and violates the order is guilty of a misdemeanor.”).

The district court issued the DANCO on January 29, 2021, when Gonzalez-Rivas made his first appearance on a charge of felony domestic assault. The DANCO prohibited Gonzalez-Rivas from having contact with his wife, MLDR. The district court also set conditions of release, including prohibiting Gonzalez-Rivas from leaving the state of Minnesota without written court approval.

At a subsequent hearing on February 25, 2021, the district court amended the DANCO to prohibit Gonzalez-Rivas from having any contact “directly, indirectly, or through others, in person, by telephone, in writing, electronically or by any other means” with MLDR, unless he had a “police escort to recover prescription medications, personal clothing and toiletries.” The amended DANCO also “provide[d] for third-party

communication regarding parenting time alone.” The district court addressed Gonzalez-Rivas and indicated that MLDR might “disagree with the [c]ourt’s order and wish[] to have some contact.” But the district court informed Gonzalez-Rivas that “for the time-being, you are prohibited from having any contact with her. You understand if you violate that term or the conditions of release, you’re going to be arrested. You’re going to be brought back here, understood?” Gonzalez-Rivas responded, “I understand.”

In July 2021, a Metropolitan Airport police officer received a report that a person was suspected of smoking on an airplane. The officer observed the individual, later identified as Gonzalez-Rivas, exit the plane with a woman and four children. Gonzalez-Rivas first identified the woman as his wife. Then he stated that she was “his girl” and then “his sister.” The officer learned of the DANCO and determined that the woman with Gonzalez-Rivas was MLDR.

The ensuing DANCO-violation charge was tried to a jury. At the beginning of trial, the district court notified the parties that it planned to provide a model instruction regarding the use of interpreters at trial. The state asked the district court to modify the model instruction so it would not imply that Gonzalez-Rivas did not understand previous communications, such as those occurring when the DANCO was issued and modified. The district court proposed a modification. Gonzalez-Rivas objected and asked the court to provide the model instruction as written. The court ultimately decided not to instruct the jury regarding the use of interpreters at trial.

The state called two police officers as witnesses at trial and introduced several exhibits, including the amended February 2021 DANCO and redacted transcripts of the

January and February 2021 hearings. Gonzalez-Rivas testified in his defense. He acknowledged that “leading up to July 15, 2021, there was a DANCO” prohibiting contact with MLDR, but that he nevertheless accompanied MLDR on the flight because “[he] did not understand completely the legal proceedings.”

During jury deliberations, the jury submitted a question to the district court regarding the requirements of the DANCO. Gonzalez-Rivas asked the district court to clarify the DANCO’s requirements for the jury. The district court declined to do so.

The jury found Gonzalez-Rivas guilty as charged. The district court sentenced Gonzalez-Rivas to 90 days in jail and stayed the execution of that sentence for one year.

Gonzalez-Rivas appeals.

DECISION

I.

Gonzales-Rivas contends that the district court’s “refusal to give any instruction regarding the use of interpreters was an abuse of discretion.”

This court reviews “a district court’s refusal to give a requested jury instruction for abuse of discretion.” *State v. Fox*, 868 N.W.2d 206, 222 (Minn. 2015). “A district court abuses its discretion if it fails to properly instruct the jury on all elements of the offense charged.” *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019) (quotation omitted). “Upon review, instructions are viewed in their entirety to determine whether they fairly and adequately explain the law of the case.” *State v. Peterson*, 673 N.W.2d 482, 486 (Minn. 2004).

Model jury instruction guides (JIGs) are prepared by the Minnesota District Judges Association (MDJA) Committee on Criminal Jury Instructions and are intended to reflect the current caselaw of the Minnesota Supreme Court and the Minnesota Court of Appeals, as well as current legislation at the time of publication. 10 Minnesota Practice, CRIMJIG—Preface (Supp. 2022). “Although district courts may favor [model] jury instructions, their use is not required.” *State v. Thao*, 875 N.W.2d 834, 842 (Minn. 2016). The model jury instructions “are not the law; they are merely a committee of the Minnesota District Judges Association’s attempt to summarize the law for the convenience of the parties and the trial court.” *State v. Pierce*, 792 N.W.2d 83, 86 (Minn. App. 2010).

The model instruction at issue here is CRIMJIG 2.05,¹ which provides:

[[Name of language] may be used during this trial.]

Minnesota law provides that a defendant who cannot fully understand or participate in legal proceedings because of a difficulty speaking or comprehending English must be provided a qualified interpreter. This is because a defendant who lacks an understanding of the legal proceedings surrounding [her] [his] case cannot assist in the defense, challenge the accusers, and make informed choices regarding [her] [his] fundamental rights. It is through the use of qualified interpreters that defendants who cannot fully understand English are afforded the same fair treatment and opportunities in their defense as English speaking defendants.

[The state policy is to use [interpreters] [translators] where it is the judgment of the court that it is necessary to ensure fairness in a trial.]

¹ The numbering of this instruction has since changed. See 10 Minnesota Practice CRIMJIG 1.04 (2023) (noting that the use of interpreter jury instruction takes place before trial).

[(Name of person) speaks and understands some English, but it is my judgment that (his)(her) understanding of English is not sufficient to ensure that (he) (she) has a full understanding of the proceedings. I have therefore authorized the use of [an interpreter] [a translator] in this case.]

[The decision to use [an interpreter] [a translator] is my decision.]

[[An interpreter] [A translator] is necessary for a defendant to understand everything that is said in the courtroom. The court instructs the [interpreter] [translator] to interpret every word that is said.]

(Emphasis added.)

Moreover, the use note to that model instruction states:

All or part of this instruction may be given in cases where translators or interpreters are used. The purpose of the instruction is to ensure that the jury understands the reason for using an interpreter or translator, that the decision to use an interpreter or translator is the court's decision and that the jury should not view any party adversely for needing an interpreter or translator.

10 *Minnesota Practice*, CRIMJIG 2.05 use note (2015).

The district court considered that purpose in declining to instruct the jury regarding the use of interpreters, explaining:

[T]he principal reason for the instruction is . . . that the jury doesn't hold it against [] Gonzalez-Rivas for any delays caused by the interpreters. But in this case here [], we have two real-time interpreters using headsets and doing simultaneous interpretation that's not delaying or affecting the trial in any way. So there is just not a reason to give this instruction.

The district court also explained, "I have never spoken a word directly to Mr. Gonzalez-Rivas, so I can't really make any representations about his speaking or comprehension

abilities to the jury. So I just can't give the jury instruction not having done that." And the district court noted that "this instruction is a discretionary instruction, it says the [c]ourt 'may' give it."

Gonzales-Rivas argues that CRIMJIG 2.05 "was clearly applicable to the case and relevant for this particular defendant whose first language was not English and who had two interpreters assisting him throughout the trial." He further argues that "[t]he interpreters were obviously present as part of the trial and potentially affected the jurors' assessment of the going-on in the courtroom, including the evidence." He therefore asserts that he was "entitled" to an instruction regarding the use of interpreters, "because the presence of interpreters in assisting the defendant at his trial supported it." But he does not point to any particular circumstances related to the use of the interpreters that would have caused the jury to view the interpreters—and therefore Gonzales-Rivas—adversely. Instead, he merely notes that the two interpreters occasionally interrupted or asked for clarification or instruction in the presence of the jurors.

Essentially, Gonzalez-Rivas argues that an interpreter instruction was necessary simply because interpreters were used at his trial. But Gonzales-Rivas does not cite, and we are not aware of, any precedent holding that an instruction regarding the use of interpreters is required any time an interpreter is used at trial. Indeed, such a rule would be inconsistent with caselaw. Once again, caselaw instructs that the district court must "properly instruct the jury on all elements of the offense charged," *Stay*, 935 N.W.2d at 430 (quotation omitted), and must "fairly and adequately explain the law of the case," *Peterson*, 673 N.W.2d at 486. An instruction explaining the use of interpreters at trial is

not necessary to meet either of those requirements. And caselaw instructs that the use of model jury instructions is not required. *Thao*, 875 N.W.2d at 842. That fact is buttressed by the use note to CRIMJIG 2.05, which states that the instruction “may” be given if an interpreter is used at trial.

In sum, the district court considered instructing the jury on the use of interpreters at trial but ultimately decided not to do so. In doing so, the district court considered the parties’ positions on the issue, and the district court’s stated reasoning was consistent with the purpose of the optional instruction. We therefore discern no abuse of discretion.

To be clear, we do not suggest that a jury instruction regarding the use of interpreters at trial is never appropriate. It depends on the particular facts and circumstances of the case. But in this case, the district court did not abuse its discretion in determining that there was no reason to give such an instruction.

II.

Gonzalez-Rivas also contends that the district court’s “refusal to give [his] requested response to the jury question was an abuse of discretion.” Specifically, Gonzalez-Rivas argues that the jurors “needed an additional, clarifying jury instruction in response to their question” concerning the conditions in the DANCO. The state contends that, because the jury asked a factual question, the district court did not abuse its discretion in its response.

“It is well established that the [district court] may, in [its] discretion, give additional instructions in response to a jury’s question on any point of law. The court has the discretion to decide whether to amplify previous instructions, reread previous instructions, or give no response at all.” *State v. Laine*, 715 N.W.2d 425, 434 (Minn. 2006).

Minnesota Rule of Criminal Procedure 26.03, subdivision 20(3) addresses the court's response to a jury's question during deliberation. It states:

If the jury asks for additional instruction *on the law* during deliberation, the court must give notice to the parties. The court's response must be given in the courtroom.

- (a) The court may give additional instructions.
- (b) The court may reread portions of the original instructions.
- (c) The court may tell the jury that the request deals with matters not in evidence or not related to the law of the case.
- (d) *The court may tell the jury that the request is a factual matter that the jury, not the judge, must determine.*
- (e) The court need not give instructions beyond the jury's request, but may do so to avoid giving undue prominence to the requested instructions.
- (f) The court may give additional instructions without a jury request during deliberations. The court must give notice to the parties of its intent to give additional instructions.

Minn. R. Crim. P. 26.03, subd. 20(3)(a)-(f) (emphasis added).

Here, the jury asked the following question during its deliberations: "We would like to know if leaving the state was carried over to the DANCO. Did the travel restriction from 1/29/21 document carry over to the 2/25/21 document?"

The jury's question appears to stem from the bail conditions set at the January 2021 hearing. The jury heard testimony from an officer regarding that hearing and received a redacted transcript of the hearing, in which the district court stated that it would set bail at \$25,000 with the condition that Gonzalez-Rivas "may not leave the State of Minnesota

without written court approval.” The jury also received the amended DANCO, which did not include or mention any travel restrictions.

Gonzalez-Rivas asked the district court to instruct the jury that the travel restriction applied to his pretrial release, and not to the DANCO, and that the DANCO did not prohibit Gonzalez-Rivas from leaving the state. He expressed concern that “the jury might believe that the DANCO prohibited him from leaving the state . . . but the DANCO did not prohibit him from leaving the State of Minnesota.” The state objected, arguing that the district court should “leave it at [] the facts,” noting that “the jury has the DANCO and the language with them.”

In response to the question, the district court instructed the jury: “You are the judges of the facts of the case. It’s up to you to determine the facts based on the evidence presented to you. You may continue your deliberations.” In doing so, the district court reasoned that the jurors’ question did not appear to ask “a legal question about the application of facts to the law, it’s more . . . [that] they want to know a fact.”

The district court did not abuse its discretion by not instructing the jury regarding the contents of the DANCO. As the district court explained, the jury’s question concerned a fact—whether the travel restriction applied to the amended DANCO—and not a matter of law. See Minn. R. Crim. P. 26.03, subd. 20(3)(d), (“The court may tell the jury that the request is a factual matter that the jury, and not the judge, must determine.”).

Gonzalez-Rivas argues that the district court’s failure to tell the jury that the amended DANCO did not contain a travel restriction “allowed the jury to deliberate while confused about a fundamental concept that the state was required to prove.” Specifically,

he argues that, because the district court failed “to clarify the elements of the offense, the jury may have found the evidence sufficient to convict [him] based on the fact that he had left the state of Minnesota.” But as the state argues, “the evidence in the record and the parties’ closing arguments reveal no emphasis whatsoever of a purported violation of the travel restriction in question.” Instead, the state argued that Gonzalez-Rivas violated the DANCO by having direct contact with MDLR, that an airport police officer saw them together, and Gonzalez-Rivas admitted they were traveling together.

In sum, the record does not suggest that the jury found Gonzalez-Rivas guilty because he left the state without permission. Thus, we have no concern that the district court’s response to the jury’s question prejudiced Gonzalez-Rivas.

Affirmed.