

*This opinion is nonprecedential except as provided by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
A24-1353**

State of Minnesota,
Respondent,

vs.

Billy Jean Sledge,
Appellant.

**Filed September 8, 2025
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-18-21919

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

Mary F. Moriarty, Hennepin County Attorney, Robert I. Yount, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Frisch, Chief Judge;
and Johnson, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from the judgment of conviction for threats of violence and second-degree assault with a dangerous weapon, appellant Billy Jean Sledge challenges his convictions on two grounds. First, he argues that the evidence is insufficient to prove that

he did not act in self-defense. Second, he argues that the district court committed reversible plain error in instructing the jury on the threats-of-violence offense. We determine that the evidence is sufficient to disprove Sledge's self-defense claim and that the jury instructions, while plainly erroneous, did not affect Sledge's substantial rights. We therefore affirm.

FACTS

The following facts are drawn from the jury trial in this case.

On August 28, 2018, a man, R.B., was driving a pickup truck in Brooklyn Park with his wife, C.B., as his passenger. As R.B. drove down a two-lane residential street, a sedan began "tailgating" him by closely following behind his truck. The driver of the sedan, later determined to be Sledge, tried to pass R.B. but could not do so because of oncoming traffic. R.B. then sped up, and Sledge caught up to him. R.B. used "brake checking" in an attempt to communicate to Sledge to give him space. Sledge continued to attempt, unsuccessfully, to pass R.B. multiple times.

After Sledge and R.B. had driven about three blocks, R.B. stopped at a T-intersection with a stop sign. Sledge drove up alongside R.B.'s truck and stopped next to R.B. at the intersection, about three or four feet away. With his truck windows rolled up, R.B. raised his middle finger to Sledge and yelled profanities at him. R.B. then noticed that Sledge was displaying a semiautomatic handgun and was "[v]ery, very angry." Sledge held the gun sideways and shook it several times while leaning into the passenger seat and yelling through the open front passenger window of the sedan. C.B. also saw Sledge waving the gun, and she believed that Sledge was "trying to intimidate" her and R.B. In response to seeing the gun, C.B. felt "[a]nxious, nervous, [and] scared."

Sledge then drove away from the intersection, turning left and heading toward his home. Around the time that Sledge left the intersection, R.B. hit the OnStar SOS button in his vehicle and talked to an agent.¹ The OnStar agent was unable to track R.B. and C.B.'s location. Soon after that, R.B. called the police. R.B. reported the incident to the police and, while making his report, followed the sedan for less than a mile to Sledge's house. R.B. and C.B. watched as Sledge parked in the driveway, got out of the sedan, and walked into his house. They waited nearby until a group of six to eight police officers arrived shortly thereafter.

When the police arrived, R.B. and C.B. spoke to the officers, explaining what had happened and also identifying Sledge's house and sedan. The police set a perimeter around Sledge's house and used a squad-car loudspeaker to announce their presence and demand that the occupants exit the house with their hands raised. After about 20 minutes, Sledge and his wife exited the house and cooperated with the police. That same day, the police obtained and executed a warrant to search Sledge's house. In a bedroom, the police found a box of ammunition with some rounds missing. In the kitchen, they found a semiautomatic handgun loaded with 11 rounds; the handgun matched the description that R.B. had given to officers of the gun that was waved at him.

Respondent State of Minnesota charged Sledge with one count of threats of violence in violation of Minnesota Statutes section 609.713, subdivision 1 (2018). Sledge filed

¹ As R.B. testified, OnStar is a system in certain vehicles that connects drivers to an agent who provides step-by-step directions or makes phone calls for drivers. It also includes an "SOS" function that, in the event of an accident, is "supposed to pin [a driver's] location at" the time the button is pressed.

notice that he intended to argue that he acted in self-defense. The state filed an amended complaint that added a charge of second-degree assault with a dangerous weapon in violation of Minnesota Statutes section 609.222, subdivision 1 (2018).

The district court held a jury trial in February 2020. The state called R.B. and C.B. as witnesses, in addition to five police officers involved in investigating the incident. The testimony of those witnesses was consistent with the above recitation of facts.

After the state's case-in-chief, Sledge waived his right to remain silent and testified in his own defense as follows. On the day of the incident, while Sledge was driving, he encountered R.B.'s truck on a residential road. Sledge drove up behind the truck, which did not move for about 30 or 40 seconds. Sledge honked his horn twice at the truck, but it still did not move. He then attempted to pass the truck, but at that moment the truck moved forward. Sledge followed behind the truck and noticed that it was decelerating. R.B. suddenly slammed on his brakes at least three times while Sledge was behind him. Sledge attempted to pass the truck again, but R.B. swerved and blocked Sledge from entering the other lane, almost resulting in an accident. Sledge was afraid that R.B. would hit his sedan with the truck. Eventually, Sledge pulled his sedan alongside R.B.'s truck at the T-intersection, noticed that R.B.'s window was rolled down, and rolled his passenger-side window down. Sledge heard R.B., who is White, yell a racial epithet at Sledge, who is Black, and Sledge saw that R.B. had a gun in his hand. Sledge then retrieved his own gun from the center console, where it had been holstered and unloaded. After leaving the scene, Sledge arrived home, took the gun inside, and then loaded it. The remainder of Sledge's testimony was generally consistent with R.B.'s, C.B.'s, and the officers' testimonies.

At the close of trial, the district court provided the jury with instructions, including an instruction on the elements of the threats-of-violence charge that largely reflected the Minnesota Jury Instruction Guide in effect at the time of trial. *See 10 Minnesota Practice*, CRIMJIG 13.107 (2015). After jury instructions and closing arguments, the jury returned guilty verdicts on both counts charged.

Sledge failed to appear at a sentencing hearing in June 2020. When Sledge was taken into custody four years later, the district court convicted Sledge of both offenses but sentenced Sledge for the second-degree assault conviction only. It granted Sledge's unopposed motion for a downward dispositional departure, imposed 36 months' imprisonment, stayed execution of the sentence, and placed him on probation for five years. The district court ordered Sledge to serve 365 days in the workhouse, with credit for 61 days already served, as a consequence of his failure to appear for the initial 2020 sentencing hearing.

Sledge appeals.

DECISION

We begin with Sledge's argument that the state failed to disprove beyond a reasonable doubt that he acted in self-defense. We then turn to his argument that the district court committed reversible plain error in instructing the jury on the threats-of-violence offense.

I. The evidence is sufficient to disprove that Sledge acted in self-defense.

Sledge contends that his convictions must be reversed because the state failed to prove beyond a reasonable doubt that he was not acting in self-defense.

Minnesota law establishes a right to self-defense under specific circumstances. Minn. Stat. § 609.06 (2018); *e.g.*, *State v. Basting*, 572 N.W.2d 281, 285-86 (Minn. 1997). A defendant who claims self-defense bears the initial burden to produce evidence to support his self-defense claim. *Basting*, 572 N.W.2d at 286. If that burden of production is met, the burden shifts to the state to prove, beyond a reasonable doubt, that the defendant was not acting in self-defense. *Id.*; *see also State v. Trifiletti*, 6 N.W.3d 79, 96 (Minn. 2024).

Self-defense has four elements:

- (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. In addition to those four elements, the degree of force used in self-defense must be objectively reasonable under the circumstances. *Id.* at 286. The state meets its burden to disprove self-defense if it disproves beyond a reasonable doubt any of the four elements or the reasonable-force requirement. *State v. Baker*, 13 N.W.3d 401, 409 (Minn. 2024).

The state argues that it disproved three of the elements of Sledge’s self-defense claim—specifically, the first, third, and fourth elements. The state asserts that it disproved these elements by direct evidence and that the traditional standard of review therefore applies. Under that standard, the reviewing court performs “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). The reviewing court assumes

that “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). Sledge does not dispute that the traditional standard of review applies to the three challenged elements,² but he contends that the evidence was insufficient to disprove any of those elements. We consider each of the three relevant elements in turn.

A. Absence of Aggression or Provocation

The initial aggressor in an incident generally does not have a right to claim self-defense. *Bellcourt v. State*, 390 N.W.2d 269, 272 (Minn. 1986). However, even if the defendant was the initial aggressor, self-defense is available as a defense if the defendant withdraws from the conflict and communicates the withdrawal to the intended victim. *Id.*

Sledge argues that the state failed to prove that he was the initial aggressor because he testified that R.B. acted as the initial aggressor by driving erratically and cursing at him while he had a gun when the vehicles were stopped alongside each other at the T-intersection. The state counters that, under the appellate standard of review, it must be assumed that the jury believed the state’s witnesses and, here, the state’s witnesses’ testimonies proved that Sledge aggressively provoked the incident. We agree with the state.

R.B. and C.B. testified that Sledge tailgated R.B. and C.B.’s truck, acted with aggression by attempting to pass them against oncoming traffic, rolled down his window to yell at them, and threateningly brandished a semiautomatic handgun at them. Sledge

² In addition to arguing that the state failed to disprove the first, third, and fourth elements, Sledge also argues that the state failed to disprove the second element—his actual and honest belief that harm was imminent. Because we decide this case based on the three elements that relied on direct evidence, we do not address the second element.

acknowledges that his description of events differs from R.B.’s and C.B.’s but nonetheless insists that the state failed to prove that he was the initial aggressor. But we must assume that the jury believed the state’s witnesses and disbelieved Sledge’s account. *See Moore*, 438 N.W.2d at 108. And viewing the state’s evidence in the light most favorable to the conviction, *see Horst*, 880 N.W.2d at 40, we conclude that the evidence is sufficient to prove that Sledge was the initial aggressor. The state thus disproved the first element of Sledge’s self-defense claim.

B. Reasonableness of Belief of Imminent Harm

“The third element of a self-defense claim is the existence of reasonable grounds for the defendant’s belief that the danger of death or great bodily harm is imminent. This is an objective test.” *State v. Johnson*, 719 N.W.2d 619, 631 (Minn. 2006).

Sledge argues that the state did not disprove that his subjective belief that he faced imminent danger of death or great bodily harm was objectively reasonable. He points to two facts to underscore the reasonableness of his subjective fear—the sedan he was driving was “much smaller” than R.B.’s truck and Sledge was alone in his vehicle. He also points to his testimony that he saw that R.B. had a gun in his hand.

As to Sledge’s testimony that R.B. was holding a gun, that testimony conflicts with R.B.’s testimony that he did not have a gun with him in the truck. Again, we assume that the jury believed the state’s witness and disbelieved Sledge’s testimony. *See Moore*, 438 N.W.2d at 108.

As to the rest of Sledge’s argument, the state persuasively argues that the evidence as a whole disproves the objective reasonableness of Sledge’s subjective belief that he

faced imminent harm or death. R.B.'s and C.B.'s testimonies establish that they did not threaten or take steps to harm Sledge. They testified that they did not exit their vehicle, roll down their windows, display a gun or other weapon, or drive or swerve toward Sledge's vehicle. R.B. did acknowledge "brake-checking" Sledge, but R.B.'s description of tapping his brakes to communicate that Sledge should allow more space between the vehicles does not support an inference that Sledge was put in danger of death or severe harm as a result. The state provided sufficient evidence to disprove that Sledge had an objectively reasonable belief of death or imminent harm by R.B. and C.B. and thus disproved the third element.

C. Reasonable Opportunity for Retreat

A valid self-defense claim requires "the absence of a reasonable possibility of retreat to avoid the danger." *Basting*, 572 N.W.2d at 285. A reasonable opportunity for safe retreat may exist if there are "options for escape or avoidance of peril . . . rather than directly confronting" the victim. *See State v. Austin*, 332 N.W.2d 21, 24 (Minn. 1983).

Sledge argues that the state failed to prove beyond a reasonable doubt that it was feasible for him to retreat before R.B. escalated the interaction when the parties' vehicles were stopped at the T-intersection. Sledge contends that his testimony proves that he retreated "as fast as he reasonably could" when he drove away from the T-intersection toward his house. The state argues that it disproved that Sledge had no reasonable possibility for retreat because the record shows that Sledge could have extricated himself from the conflict by slowing down, turning off the road sooner, or pulling over to allow R.B. and C.B. to drive away, rather than continuing to closely follow their vehicle and

engaging in threatening behaviors when the vehicles were stopped at the T-intersection. We are persuaded by the state's argument.

R.B.'s testimony established that Sledge tailgated R.B. and C.B., tried to pass R.B. and C.B. in a manner that R.B. testified "almost [resulted in] a head-on collision," sped up when R.B. increased his speed to put distance between himself and Sledge, and then pulled alongside R.B. and C.B. at the T-intersection before pulling out his gun and waving it at R.B. and C.B. while yelling at them with his window rolled down. This evidence supports that Sledge had multiple "options for escape or avoidance of peril" that he could have taken to avoid the direct confrontation at the intersection. *See id.* The state therefore disproved the fourth element of self-defense.

In sum, because the state presented sufficient evidence to disprove three elements of Sledge's self-defense claim, the evidence is sufficient to disprove that Sledge acted in self-defense.³

³ Sledge also argues that, even if the evidence against him "was technically sufficient," his convictions should be reversed outright or a new trial should be granted because "grave doubts" exist about his guilt. The argument is unpersuasive. First, in arguing for a "grave doubts" standard for reversal, Sledge cites four cases that use that phrase—specifically, *State v. Housley*, 322 N.W.2d 746 (Minn. 1982); *State v. Kallestad*, 206 N.W.2d 557 (Minn. 1973); *State v. Boyce*, 170 N.W.2d 104 (Minn. 1969); and *State v. Johnson*, 152 N.W.2d 529 (Minn. 1967)—but he does not explain how those cases compare to his circumstances or how they support reversal of his convictions despite the presence of sufficient evidence. Second, the reasons for grave doubts that Sledge advances—the alleged incompleteness of an officer's report, the alleged lack of investigation into whether R.B. had a firearm, and the absence of documentation of R.B.'s location from OnStar—were all matters that the defense raised at trial and which, in the circumstances of this case, do not give rise to grave doubts about Sledge's guilt.

II. The jury instructions on threats of violence were plainly erroneous, but the error does not warrant reversal.

Sledge argues that his threats-of-violence conviction must be reversed because the district court committed plain error in instructing the jury on the elements of that crime.

Jury instructions are reviewed as a whole “to determine whether they fairly and adequately explained the law of the case.” *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). “A jury instruction is erroneous if it materially misstates the applicable law.” *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011). Jury instructions must define any charged crime and should describe the elements of the offense, rather than simply supply the language of the applicable statute. *State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002).

“[Appellate courts] review unobjected-to jury instructions for plain error.” *State v. Reek*, 942 N.W.2d 148, 158 (Minn. 2020); *see also* Minn. R. Crim. P. 31.02. Under that standard of review, appellate courts determine “whether the jury instructions contained an (1) error (2) that was plain and (3) that affected the defendant’s substantial rights.” *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). If those prongs are met, the appellate court determines whether reversal is necessary to preserve “the fairness, integrity, or public reputation of judicial proceedings.” *Pulczynski v. State*, 972 N.W.2d 347, 356 (Minn. 2022). When reviewing for plain error, appellate courts “examine[] the law in existence at the time of appellate review, not the law in existence at the time of the district court’s error.” *State v. Kelley*, 855 N.W.2d 269, 277 (Minn. 2014).

A. Plain Error

We first provide some background to contextualize Sledge’s argument. Under Minnesota Statutes section 609.713, subdivision 1—the subdivision under which Sledge

was charged—a person is guilty of threats of violence if the person “threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror.” The term “crime of violence” refers to the definition of “violent crime” in Minnesota Statutes section 609.1095, subdivision 1(d) (2018). Minn. Stat. § 609.713, subd. 1. Section 609.1095 in turn provides a list of more than 40 Minnesota criminal offenses satisfying that definition, including second-degree assault under Minnesota Statutes section 609.222. Minn. Stat. § 609.1095, subd. 1(d). To rise to the level of a “threat” for purposes of section 609.713, the person’s words or conduct must communicate “an intention to injure another or [their] property by some unlawful act.” *State v. Mrozinski*, 971 N.W.2d 233, 239 (Minn. 2022) (quotation omitted). “A communication is threatening when, considered in context, it creates reasonable apprehension that the defendant will carry through with or act on the threat.” *Id.*

In instructing the jury on the elements of the threats-of-violence offense under section 609.713, subdivision 1, the district court followed the model jury instructions that were in effect at the time of trial. *See* CRIMJIG 13.107. The district court instructed:

First element, the defendant threatened directly or indirectly to commit a crime of violence against [R.B.] You are instructed that assault in the second degree is a crime of violence. Assault in the second degree is defined as the assault of another with a dangerous weapon.

The elements of assault in the second degree are listed in the next paragraph of these instructions. You should refer to those elements to determine whether a threat by defendant, if any threat was made, was a threat to commit assault in the second degree. . . .

. . . .

Second element, the defendant made the threat with intent to terrorize another or in reckless disregard of the risk of causing such terror. To terrorize means to cause extreme fear by use of violence or threats.

With intent to terrorize means to have the specific purpose or intention of causing extreme fear. In reckless disregard of the risk of causing such terror means that the defendant, even though not having the specific purpose of terrorizing another recklessly risks the danger that the statements would be taken as threats by another and that they would cause extreme fear. It need not be proven that [R.B.] actually experienced extreme fear.

Third element, the defendant's act took place on or about August 28, 2018, in Hennepin County.

Two years after Sledge's trial, in *Mrozinski*, the Minnesota Supreme Court addressed the elements of threats of violence under the "reckless disregard" provision of section 609.713, subdivision 1. 971 N.W.2d at 239-40. There, the appellant asserted a facial challenge to the constitutionality of the part of the statute discussing "reckless disregard," arguing that it was overbroad in violation of her First Amendment rights. *Id.* at 236. In upholding the constitutionality of the statute, the supreme court first described the nature of the offense. *Id.* at 236-37. The supreme court explained that, in previous caselaw, it had defined what it means for a communication to be threatening: "A communication is threatening when, considered in context, it creates reasonable apprehension that the defendant will carry through with or act on the threat." *Id.* at 239 (citing *State v. Schweppe*, 237 N.W.2d 609, 613 (Minn. 1975)). The supreme court then noted the statutory definition of "crime of violence" and the meaning, established through caselaw, of "caus[ing] terror." *Id.* at 239-40. Finally, the supreme court went on to define, for the first time, what "acting

recklessly” means under the statute. *Id.* at 240. It concluded by describing the elements of the offense as follows:

In sum, a person recklessly makes threats of violence, in violation of section 609.713, subdivision 1, when (1) through words or actions, [the person] communicates an intention to injure another or their property; (2) the threat is to commit a statutorily defined crime of violence; (3) in context, those words or conduct create a reasonable apprehension that [the person] will follow through with or act on the threat; and (4) [the person] makes the violent threat in conscious disregard of a substantial and unjustifiable risk that [the person’s] words or conduct will cause extreme fear.

*Id.*⁴

Sledge argues that the district court’s instructions were plainly erroneous under the law as explained in *Mrozinski*. He observes that the district court did not instruct the jury on the third element described in *Mrozinski*—namely, that “in context, those words or conduct create a reasonable apprehension that [the person] will follow through with or act on the threat.” 971 N.W.2d at 240. Sledge asserts that, “[i]nstead, the instructions read, in part, that ‘[i]t need not be proven that the defendant had the actual intention of carrying out the threat.’” He contends that “[t]his was error because it is not merely inconsistent, it is wholly at odds with the language from *Mrozinski*.”

⁴ Following the supreme court’s decision in *Mrozinski*, the model criminal jury instruction guide on the crime of threats of violence under section 609.713, subdivision 1, was modified, to add an additional element. See 10 *Minnesota Practice*, CRIMJIG 15.01 (2024). The added element per the updated version of the model instruction, which was inserted between what were previously elements two and three, requires that the state prove that “the defendant’s words or actions created a reasonable apprehension that the defendant would follow through with or act on the threat.” *Id.* The model jury instruction cites *Mrozinski* as the source of this additional element. *Id.* n.7.

We disagree with Sledge that the instruction stating that the state did not have to prove that the “defendant had the actual intention of carrying out the threat” is inconsistent with the element of the victim’s reasonable apprehension, as outlined in *Mrozinski*, and was thus plainly erroneous. “Reasonable apprehension” refers to a *victim’s* reasonable fear that a defendant will follow through on their threat. The other instruction addresses the *defendant’s* actual intention (or lack thereof) to commit a crime of violence.⁵ The inclusion of the instruction that, to prove a threat of violence, the state need not prove the defendant’s actual intention to commit violence did not make the district court’s instructions here plainly erroneous.

But, if we read Sledge’s argument more broadly, he seems to argue that it was also plain error to exclude an instruction on reasonable apprehension. On that point, we agree. *Mrozinski* makes clear that an element of threats of violence is that a defendant’s “words or conduct create a reasonable apprehension that [the defendant] will follow through with or act on the threat.” 971 N.W.2d at 240. The state argues that *Mrozinski* “did not break any new ground” but instead, merely reaffirmed the ruling in *Schweppe* that “whether a given statement is a threat turns on whether the communication in its context would have a reasonable tendency to create apprehension that its originator will act according to its tenor.” *Schweppe*, 237 N.W.2d at 613 (quotations omitted).

⁵ We note that the model jury instruction post-*Mrozinski* continues to include the instruction that “[i]t need not be proven that the defendant had the actual intention of carrying out the threat.” CRIMJIG 15.01. We also note that “model jury instructions are not the law and are merely an attempt to summarize the law for the convenience of the parties and the district court.” *State v. Valdez*, 997 N.W.2d 557, 563 n.3 (Minn. App. 2023) (quotation omitted), *aff’d*, 12 N.W.3d 191 (Minn. 2024).

But the question before us is not whether *Mrozinski* broke new ground in identifying the elements; the question is whether the absence of an instruction on the third element materially misstated the law. A jury instruction materially misstates the law if it omits an element of the offense. *See State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016). *Mrozinski* makes clear that an element of the offense is that “in context, [the defendant’s] words or conduct create a reasonable apprehension that [the defendant] will follow through with or act on the threat.” 971 N.W.2d at 240. Because we examine the law as it exists at the time of appeal, rather than at the time the error was made, *see Kelley*, 855 N.W.2d at 277, we apply *Mrozinski* to the jury instructions given by the district court as if that case existed at the time of trial. As a result, we conclude that the district court plainly erred by omitting the reasonable-apprehension element outlined in *Mrozinski*.

B. Substantial Rights

“[T]he omission of an element of a crime in a jury instruction does not automatically require a new trial.” *State v. Watkins*, 840 N.W.2d 21, 28 (Minn. 2013). The appellant must establish that the error of omitting the element affected the defendant’s substantial rights—in other words, that it was prejudicial. *See Milton*, 821 N.W.2d at 805, 809. “An error in instructing the jury is prejudicial if there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury verdict.” *State v. Gomez*, 721 N.W.2d 871, 880 (Minn. 2006).

Sledge argues that the error was prejudicial because R.B. told the police officer at the scene that R.B. “wasn’t afraid that [Sledge] was going to shoot [him]” and that the jury, if properly instructed, could have determined that Sledge’s act of waving a gun did not

create a subjective, reasonable apprehension on R.B.’s part that Sledge was going to shoot. But the evidence at trial includes R.B.’s testimony that he felt that Sledge “was definitely threatening [R.B.] with the handgun” and that Sledge’s demeanor was “[v]ery, very angry” while he was waving the gun. And C.B. testified that she believed that Sledge was “waving [the gun] at [her and R.B.] trying to intimidate [them]” and that, as a result, she felt “[a]nxious, nervous, [and] scared.” The evidence also includes that R.B. hit the “SOS” button on the vehicle’s OnStar system and reported Sledge’s conduct to the police. On this record, even if the jury had been instructed that the state needed to prove that Sledge’s conduct “created a reasonable apprehension that [Sledge] would follow through with or act on the threat,” there is no reasonable probability that the jury’s verdict would have been different. *See* CRIMJIG 15.01.

Because Sledge fails to show that his substantial rights were affected by the district court’s plain error in instructing the jury, his argument that his threats-of-violence conviction must be reversed fails.⁶

Affirmed.

⁶ Even if Sledge had shown that his substantial rights were affected, we would reverse only if he carried his burden to show that failure to correct the error “will cause the public to seriously question the fairness and integrity of our judicial system.” *Pulczinski*, 972 N.W.2d at 359. The state makes a compelling argument why Sledge has failed to do so. As it notes, at his 2020 trial, Sledge affirmatively agreed to have the jury instructed using the then-current model jury instruction and the district court followed the model jury instruction. Moreover, the incident occurred in 2018, and after the trial was held in 2020, the case stalled for four years due to Sledge’s absconding. Thus, Sledge’s request for a retrial is being made four years later than it would have been had he not absconded. Given all of these circumstances, it seems unlikely that the public would seriously question the fairness and integrity of our judicial system if we did not reverse.