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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-799**

State of Minnesota,
Respondent,

vs.

Michael Gerome Salgado,
Appellant.

**Filed June 4, 2012
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CR-09-44358

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Richard Schmitz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Halbrooks, Judge; and
Ross, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his first- and second-degree assault convictions, arguing that
the district court committed reversible error by, in one instance, omitting the word

“great” when instructing the jury on the requirement that the state prove that he inflicted “great bodily harm” in order to find him guilty of first-degree assault. Because we conclude that the district court did not err, we affirm.

FACTS

R.B. and T.P. have one child together, and R.B. helps T.P. take care of T.P.’s second child. On a late August evening in 2009, R.B. and T.P. walked by the townhouse of Y.B., a relative with whom R.B. and the two children had recently lived. Y.B. approached R.B. and T.P. and started “exchanging words” with R.B. Appellant Michael Salgado, Y.B.’s boyfriend, stood in the doorway. T.P. tried to pull R.B. from the altercation, but R.B. broke away and ran toward Salgado. T.P. saw a gun in Salgado’s hand that suddenly “went off.” T.P. was shot in the stomach. When R.B. heard T.P. screaming, he called 911 twice. The police found T.P. lying on the sidewalk and later recovered a discharged cartridge casing. T.P. was hospitalized for eight days for injuries to her liver, kidney, and ribs. The injury to her liver was life-threatening.

Salgado was charged with first-degree assault, two counts of second-degree assault, and one count of carrying a weapon without a permit. The first jury trial, held in September 2010, resulted in a hung jury, and the district court declared a mistrial. A second jury trial was held in November and December of 2010, resulting in guilty verdicts on the assault charges and a not-guilty verdict on the count of carrying a weapon without a permit. This appeal follows.

DECISION

Salgado's only challenge to his convictions relates to the district court's oral instructions that were given to the jury at the end of the second trial. We review the district court's jury instructions in their entirety and will only reverse if the instructions failed to fairly and adequately explain the relevant law. *State v. Vance*, 765 N.W.2d 390, 393 (Minn. 2009). When there is no objection made to the instructions at trial, as was the case here, we apply the plain-error standard set forth in *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). This court will only address unobjected-to error if we conclude that the alleged error was plain error affecting the defendant's substantial rights, and that we should assess it to ensure fairness and integrity in judicial proceedings. 583 N.W.2d at 740.

Salgado argues that the district court committed reversible error by omitting the word "great" in one instance when instructing the jury on the element of "great bodily harm." For there to be plain error in a jury instruction, the jury instruction must be misleading or confusing on fundamental points of law. *State v. Caine*, 746 N.W.2d 339, 353 (Minn. 2008). Although the district court omitted the word "great" once, it is clear from the instructions as a whole that the district court properly instructed the jury on the state's burden to prove great bodily harm.

First, the district court instructed the jury to consider the instructions as a whole and in light of the other instructions. Second, the district court referred to assault in the first degree as "assault with great bodily harm" twice while instructing the jury. In relevant part, the district court stated:

Assault in the first degree, assault with great bodily harm defined. The statutes of Minnesota provide that whoever assaults another person and inflicts great bodily harm is guilty of a crime.

Assault in the first degree, assault with great bodily harm elements. The elements of assault in the first degree are, first, the defendant assaulted [T.P.]. An assault is the intentional infliction of bodily harm upon another or an intentional attempt to inflict bodily harm upon another, or an act done with intent to cause fear or—fear of immediate bodily harm or death in another.

Second, the defendant inflicted bodily harm on [T.P.] Great bodily harm means bodily harm that creates a high probability of death, causes serious permanent disfigurement or causes a permanent or protracted lost or impairment of the function of any of the—let me start that over. Or impairment of the function of any part of the body or other serious bodily harm. It is not necessary for the state to prove that the defendant intended to inflict great bodily harm but only that the defendant intended to commit the assault.

Finally, and most significantly, written jury instructions accompanied the jury to the jury room for deliberation, and those instructions did not omit the word “great.” For these reasons, we conclude that the district court did not err.

Affirmed.