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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-720

State of Minnesota,
Respondent,

vs.

Rondie Antwon King,
Appellant.

Filed April 23, 2012
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-CR-10-1302

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Worke, Judge; and Harten, Judge.[*]

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

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant challenges his first-degree-assault conviction, arguing that the district court erred by instructing the jury that he had a duty to retreat before defending himself, and impermissibly precluded him from impeaching the victim's testimony. We affirm.

D E C I S I O N

A jury found appellant Rondie Antwon King guilty of first-degree assault for hitting his girlfriend, J.B., in the head with a baseball bat, causing her to suffer brain hemorrhaging and a skull fracture, and requiring her to undergo two brain surgeries. Appellant challenges his conviction, arguing that the district court plainly erred in instructing the jury on self-defense.

Appellant failed to object to the district court's jury instructions, which generally constitutes a waiver of the right to challenge the instructions on appeal. *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). But such failure "will not cause an appeal to fail if the instructions contain plain error affecting substantial rights or an error of fundamental law." *Id.* Appellant bears the burden of showing plain error, which is "clear or obvious" because it "contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). A plain error affects substantial rights if it influenced the outcome. *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). Still, we are not required to review plain error unless we determine that we should "to ensure fairness and the integrity of the judicial proceedings." *Id.* at 740.

Appellant argues that the district court misled the jury by instructing that appellant had a duty to retreat before defending himself. *See State v. Caine*, 746 N.W.2d 339, 353 (Minn. 2008) (stating that plain error occurs in jury instructions when they are misleading or confusing on fundamental points of law). Appellant claims that he had no such duty because the incident occurred outside of his residence. "The legal excuse of self-defense is available only to those who act honestly and in good faith. This includes the duty to retreat or avoid the danger if reasonably possible." 10 *Minnesota Practice*, CRIMJIG 7.08 (2006). But "[t]here is no duty to retreat from one's own home when acting in self-defense in the home, regardless of whether the aggressor is a co-resident." *State v. Glowacki*, 630 N.W.2d 392, 402 (Minn. 2001).

J.B. testified that on February 21, 2010, she and appellant were arguing. J.B. and appellant shared a vehicle and J.B. also had her own vehicle. During the argument, J.B. hit the shared vehicle with a stick. Appellant went inside the residence, returned with a baseball bat, and walked towards J.B.'s car. Appellant did not hit J.B.'s car; instead, he walked back toward the residence where J.B. was standing holding the stick. Appellant told J.B., "If you hit me with that, I'll kill you where you stand." J.B. then hit appellant on his back with the stick. Appellant swung the bat at J.B. and hit her in the head.

R.B., J.B.'s father, testified that J.B. "smacked" the shared vehicle with a stick. Appellant then retrieved a baseball bat from inside the residence. J.B. hit appellant with the stick. Appellant said: "Get away from me. I'll f*****g kill you" before swinging the bat at J.B.'s head. R.B. testified that he tried to lunge at appellant, but appellant swung

the bat at him. R.B. ducked and went in the house, returning with a machete. R.B. threw the machete at appellant, but missed him.

Appellant testified that he was packing his belongings in the shared vehicle. As he returned to the house to retrieve more of his belongings, J.B. was standing near the house holding a board. Appellant went into the house, grabbed a baseball bat, and walked out of the house towards J.B.'s car, but turned around. As he approached the house, appellant saw R.B. holding a machete. Appellant testified that he bent down to grab a bag and J.B. hit him on his back with the board. At the time, appellant believed that R.B. hit him with the machete. Appellant claimed that he turned around and saw J.B. standing behind R.B. He swung the bat at R.B. in self-defense, but R.B. ducked and appellant unintentionally hit J.B. The district court's self-defense instruction included the following:

> The state has the burden of proving beyond a reasonable doubt that [appellant] did not act in self-defense. The rule of self-defense does not authorize one to seek revenge or to take into his . . . own hands the punishment of an offender. The legal excuse of self-defense is available only to those who act honestly and in good faith. This includes the duty to retreat or avoid the danger, if reasonably possible.

Appellant claims that the district court should not have given the "duty-to-retreat" instruction because the incident occurred at his residence. *See id.* But one has a duty to retreat in self-defense claims "*outside* the home because the law presumes that there is somewhere safer to go—home." *Id.* at 401 (emphasis added). Appellant fails to show plain error here because the jury instruction does not contravene the standard jury

instruction or caselaw. As caselaw indicates, one does not have a duty to retreat when an attack occurs *inside* his home; the duty to retreat applies when an attack occurs *outside* of the home when there is a possibility of retreat. Appellant could have retreated inside the home or he could have left the property, as he did after the assault. Thus, the district court did not err in instructing the jury as it did.

Appellant next argues that the district court violated his right to present a complete defense when it precluded him from impeaching J.B.'s testimony. Evidentiary rulings rest within the sound discretion of the district court and will not be reversed absent a clear abuse of that discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). "On appeal, [] appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *Id.*

J.B. testified that appellant struck her deliberately. Appellant claims that the district court prevented him from eliciting testimony from an investigating officer to impeach J.B.'s testimony, claiming that the officer would have testified that J.B. initially reported that appellant hit her accidentally. Appellant also claims that the district court prevented him from eliciting testimony from appellant's mother, P.J., that J.B. told her that she would testify that appellant hit her deliberately if appellant did not accept a plea. The district court ruled that these statements were inadmissible hearsay. Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c).

Appellant's attorney asked J.B. if she remembered telling an officer that appellant hit her accidentally. She testified that she did not remember. Appellant's attorney also

asked J.B.: "Did you ever discuss with anyone the effects of [appellant] taking a plea?" J.B. replied: "No." Appellant's attorney asked P.J.: "Did you have a discussion as to whether [J.B.'s] being struck with the bat was accidental?" She replied: "Yes." Appellant's attorney asked: "[W]as that the factor relative to two different ways that she might testify?" She replied: "Yes." These statements are hearsay because they are J.B.'s statements regarding whether appellant hit her deliberately.

But appellant argues that these statements were admissible to impeach J.B. "The credibility of a witness may be attacked by any party." Minn. R. Evid. 607. A prior inconsistent statement not made under oath is admissible for impeachment purposes but inadmissible as substantive evidence. *See* Minn. R. Evid. 801(c), (d)(1)(A). Appellant's attorney sought to impeach J.B.'s testimony that appellant hit her intentionally. But J.B. testified that she initially did not want to cooperate with the police. And even with the district court's limitations, P.J.'s testimony potentially challenged J.B.'s credibility. Furthermore, appellant's attorney sought to elicit testimony that J.B.'s testimony hinged on whether appellant accepted a plea. This testimony is inadmissible under Minn. R. Evid. 410, which states that "[e]vidence of . . . an offer to plead guilty . . . or of statements made in connection with . . . pleas or offers, is not admissible . . . whether offered for or against the person who made the plea or offer." Therefore, the district court did not abuse its discretion in limiting the witnesses' statements.

Affirmed.