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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1242**

State of Minnesota,
Respondent,

vs.

DeMario Antwane Lawrence,
Appellant.

**Filed May 14, 2012
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-10-44098

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

Michael O. Freeman, Hennepin County Attorney, Alan J. Harris, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions of first- and second-degree assault
contending that the state failed to prove beyond a reasonable doubt that he did not act in

self-defense, in defense of another, or in defense of his dwelling. Because there is sufficient evidence that appellant did not exercise his opportunity to retreat, used excessive force, and was not defending his home, we affirm.

FACTS

Appellant DeMario Lawrence was charged with first- and second-degree assault and second-degree attempted murder for stabbing N.B. at a bar in Minneapolis. The two men had been arguing for some time, and N.B. initiated the physical altercation by pushing Lawrence up against a wall and placing his hand on or near Lawrence's throat. At trial, Lawrence admitted that he stabbed N.B. four times but argued that he acted in self-defense and in defense of his female companion, S.W. The jury found Lawrence guilty of first- and second-degree assault but acquitted him of attempted murder. This appeal follows.

DECISION

When evaluating whether the state has met its burden of proof regarding self-defense, we will not disturb a verdict if the jury, acting with due regard for the presumption of innocence, could reasonably conclude that the defendant was guilty. *State v. Peou*, 579 N.W.2d 471, 477 (Minn. 1998). We view the evidence in the light most favorable to the jury's verdict and assume that the jury believed the state's evidence and disbelieved any evidence to the contrary. *Id.*

I. Sufficient evidence supports the jury’s determination that Lawrence did not act in self-defense.

A person is entitled to use force to defend himself. Minn. Stat. § 609.06, subd. 1(3) (2010). The elements of self-defense are (1) the absence of aggression or provocation on the part of the defendant, (2) the defendant’s actual and honest belief that he was in imminent danger of death or great bodily harm, (3) reasonable grounds for that belief, and (4) the absence of a reasonable possibility of retreat to avoid the danger. *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997). Additionally, the degree of force must not exceed that which would appear necessary to a reasonable person acting under similar circumstances. *Id.* at 286. The defendant bears the burden of producing evidence of self-defense, but the state bears the burden of disproving one or more of the elements of self-defense beyond a reasonable doubt. *Id.*

The state contends that Lawrence did not act in self-defense because he failed to retreat and used excessive force. We address each of these self-defense elements in turn.

Failure to Retreat

A person cannot prevail on the issue of self-defense when he chooses not to exercise his reasonable opportunity to retreat and continues to fight while bystanders attempt to separate the attacker from him. *See In re Expulsion of I.A.L.*, 674 N.W.2d 741, 747 (Minn. App. 2004). Lawrence admitted during cross-examination that bystanders and bar security officers pulled N.B. away from him as soon as N.B. pinned him to the wall. Indeed, the surveillance video shows that Lawrence stepped toward N.B. and started stabbing N.B. *after* bystanders had begun to pull N.B. away from Lawrence. And

Lawrence continued stabbing N.B. as bystanders pulled *Lawrence* away from N.B. A reasonable jury, acting with due regard for the presumption of innocence, could conclude that Lawrence did not exercise his opportunity to retreat.

Use of Excessive Force

To prevail on the issue of self-defense, a person must not use more force than a reasonable person would deem necessary under the circumstances. *Basting*, 572 N.W.2d at 286. The surveillance video shows that N.B. pushed Lawrence and S.W. into a wall and put his hand on or near Lawrence's throat. Within one second of being pinned against the wall, Lawrence began stabbing N.B. Even after bystanders pulled the two men away from one another and N.B. began to fall toward the floor, Lawrence stepped toward N.B., stabbing him two more times. In total, Lawrence stabbed N.B. four times in the back-chest area, causing him life-threatening injuries, including a collapsed lung. N.B. did not brandish or use a weapon at any time, and Lawrence sustained no injuries from the altercation. On this record, we conclude that there was ample evidence to support a finding of excessive force. *See State v. Smith*, 374 N.W.2d 520, 522-23 (Minn. App. 1985) (finding sufficient evidence of excessive force where defendant stabbed the unarmed victim in the chest after the victim punched defendant and wrestled him to the ground), *review denied* (Minn. Nov. 26, 1985).

Lawrence contends that using a knife was reasonable because N.B. is much bigger than he is and because S.W. was pinned between the two men. We are not persuaded. Lawrence could have accepted the assistance of bystanders—who almost immediately

intervened to separate the men; and stabbing N.B. four times in the chest was sufficient evidence for a jury to conclude that his response was excessive.

II. There is sufficient evidence that Lawrence did not act in defense of another or in defense of his dwelling to support the verdict.

In a pro se brief, Lawrence explains that he acted in defense of S.W. and in defense of his dwelling, but he makes no specific claims of error. “While an appellant acting *pro se* is usually accorded some leeway in attempting to comply with court rules, he is still not relieved of the burden of, at least, adequately communicating to the court what it is he wants accomplished and by whom.” *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987). Accordingly, we need not address the arguments advanced in Lawrence’s pro se brief.

But even assuming that the pro se brief articulates sufficiency-of-the-evidence challenges, Lawrence is not entitled to relief. First, a defendant must use reasonable force in defending another person, Minn. Stat. § 609.06, subd. 1(3), and as explained above, there was sufficient evidence that Lawrence used excessive force. Second, the defense-of-dwelling defense only applies when the defendant acts to prevent a felony in his home, Minn. Stat. § 609.065 (2010), and it is undisputed that the attack did not occur in Lawrence’s home. Lawrence’s pro se challenges are therefore unavailing.

Affirmed.