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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1002**

State of Minnesota,
Respondent,

vs.

John Leslie Anderson,
Appellant.

**Filed June 25, 2012
Affirmed
Randall, Judge***

Douglas County District Court
File No. 21-CR-10-780

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Chad M. Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Chutich, Judge; and
Randall, Judge.

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

UNPUBLISHED OPINION

RANDALL, Judge

A jury found appellant John Leslie Anderson guilty of first-degree assault-great bodily harm in violation of Minn. Stat. § 609.221, subd. 1 (2008) (count 1), second-degree assault-dangerous weapon and substantial bodily harm in violation of Minn. Stat. § 609.222, subd. 2 (2008) (count 2), second-degree assault-dangerous weapon in violation of Minn. Stat. § 609.222, subd. 1 (2008) (count 3), third-degree assault-substantial bodily harm in violation of Minn. Stat. § 609.223, subd. 1 (2008) (count 4), fifth-degree assault-fear of bodily harm in violation of Minn. Stat. § 609.224, subd. 1(1) (2008) (count 5), and fifth-degree assault-bodily harm in violation of Minn. Stat. § 609.224, subd. 1(2) (count 6). Appellant argues on appeal that certain of his convictions are not supported by evidence that he intended to inflict bodily harm on the victim and that the district court abused its discretion when it refused to give his requested defense-of-dwelling instruction. We affirm.

FACTS

“The Day of the Iguana”

Appellant was staying in his friend, J.L.’s, apartment for several weeks during the spring of 2010 while he helped J.L. fix up a trailer. In March 2010, J.L.’s step-niece, T.K., also came to live with J.L., but a dispute over rent led T.K. to move out abruptly on April 10, 2010. Because she was forced to leave suddenly, T.K. left behind certain items of personal property, including a pet iguana in a glass aquarium. The next day, J.L. told T.K. she would withhold possession of the iguana until T.K. paid the rent she owed, and

according to T.K., J.L. threatened to turn off the iguana's light or heat lamp if T.K. refused to pay.

T.G., who is T.K.'s former boyfriend and the person who gave T.K. the iguana, learned about J.L.'s threat and became concerned about the iguana's well-being. He called his friends W.B. and B.W. to help him retrieve the iguana from J.L.'s apartment. When they arrived, they found J.L. home with appellant. From that moment forward, the undisputed facts are that T.G., W.B., and B.W. (the intruders) entered the apartment and grabbed the iguana and aquarium. An argument broke out between the intruders and J.L. To prevent the intruders from leaving with the iguana, appellant blocked the exit holding a 12" kitchen knife while J.L. called the police. Appellant and W.B. started wrestling and the intruders were able to disarm appellant, but not before W.B. was stabbed in the chest. The intruders ran out of the apartment just as the police arrived. As a result of the stab wound, W.B. suffered a puncture in the right lung and an artery and lost a significant amount of blood.

Each of the participants had a different recollection of how the altercation unfolded. J.L. testified that the intruders entered her apartment without knocking and that she immediately told them to leave. She stated that the intruders then started yelling profanities and racist names and demanded the iguana. According to J.L., when the intruders grabbed the iguana and aquarium, appellant stood in a hallway to block the intruders from leaving with the iguana, but she did not see a knife in appellant's hand or hear appellant make any threats. J.L. stated that W.B. smashed the aquarium into appellant and called him a "worthless n---er ass punk." Then a scuffle broke out, and

appellant ended up on the floor of the bathroom just off the hallway with W.B. and T.G. on top of him. J.L. said she saw T.G. emerge from the bathroom with a knife. J.L. did not see appellant stab W.B. On cross-examination J.L. acknowledged that she had previously given inconsistent statements to the police that the intruders “banged” on the door before entering, that appellant opened the door to let the intruders in, and that she saw a knife in appellant’s hand while he blocked the hallway.

In his statement to police, appellant also cast the intruders as the first aggressors. He stated that he opened the door for the intruders after he heard them knock. The intruders told him that they wanted to talk to J.L., and “rushed in there and picked up a fish tank.” After J.L. and appellant told the intruders not to take the aquarium, appellant stated that W.B. started taunting him about his age and then pushed him with the aquarium. Appellant then grabbed a knife from the kitchen, but dropped it when W.B. threw the aquarium at him. Appellant stated, “[T]he next thing I know they bum rushed me and I’m in the bathroom.” He later reiterated that there was no knife in his hand when he was struggling with W.B, but he also acknowledged that W.B. “might have” been stabbed when he was “tryin[g] to stop the fish tank.” Appellant further admitted, “I did . . . if he got stabbed, I did it.” When asked why he grabbed the knife, appellant stated, “Because I wasn’t gonna let ‘em walk up outta there . . . and he’s getting lippy talkin’ about what he’s gonna do.” And he said, “I was just tryin’ to threaten him and make him put the cage down.”

In contrast, the intruders each testified that appellant was the aggressor. They testified consistently that they knocked on J.L.’s door and were let in by appellant. B.W.

testified that they told J.L. they were there to pick up T.K.'s things and that neither J.L. nor appellant objected to their presence until they attempted to take the iguana and aquarium. He stated that when they grabbed the aquarium, J.L. told them "[y]ou can't take that" and "[y]ou're not leaving with that." When they turned to leave with the aquarium, B.W. testified that appellant was blocking the only exit to the apartment with a knife in his hand. He recalled that appellant was "shaking and taunting" with the knife. According to B.W., appellant said he was a "city n---er" and "he was going to stab us." W.B. also testified that appellant was lunging toward them with the knife "like he was going to stab us," so for protection he kept "the cage in between us." All three intruders testified that they saw appellant lunge at them with the knife, and that W.B. threw the aquarium at appellant to block the knife. The aquarium broke apart on the floor. Appellant and W.B. then began wrestling and fell on the floor into the bathroom.

Only B.W. witnessed how W.B.'s stab wound was inflicted. He explained that "when [appellant and W.B.] were fighting in the hallway, for a split second, after the fish tank initially fell, I saw one stabbing motion, and then right after that they fell, and then I saw another one; but I for sure saw the second one." B.W. stated that once appellant and W.B. landed on the floor,

[W.B.] was on top. [Appellant] was on bottom. [W.B.] had . . . [appellant's] left hand, . . . but he didn't have the hand with the knife, so he got the up, up motion of the blade into [W.B.]. . . . I saw the motion. I saw it come up, and the blade of the knife was bloody.

Before trial, the state requested that the jury be given CRIMJIG 7.07 on the revival of self-defense after initiating an assault. *See 10 Minnesota Practice, CRIMJIG 7.07*

(2006). Appellant requested that the jury be given CRIMJIG 7.06 on self-defense where death does not result, a modified version of CRIMJIG 7.05 for defense of dwelling, and a defense of property instruction. *See id.*, CRIMJIG 7.05, 7.06 (2006). He also requested instructions defining “trespasses” and “burglary.” The district court ruled that the defense-of-dwelling instruction would be confusing and repetitive, and gave only the self-defense, defense of property, and the revival-of-self-defense instructions, along with the definition of “trespasses.” After a jury trial, appellant was convicted of all six assault charges.

DECISION

I.

We first address appellant’s argument that the evidence is insufficient to support the inference that he intended to inflict bodily harm on W.B., and so each of his assault convictions that includes the element of intent to inflict bodily harm must be reversed.¹

¹ In his brief, appellant contends that this includes counts 1 (first-degree assault, great bodily harm), 2 (second-degree assault-dangerous weapon and substantial bodily harm), 4 (third-degree assault-substantial bodily harm), and 6 (fifth-degree assault-bodily harm). He identifies these specific convictions because they require “the intentional infliction of *some degree of bodily harm*” (emphasis added). By extension, he excludes the second-degree assault-dangerous weapon (assault and use of dangerous weapon) and fifth-degree assault-fear (intentional infliction of fear of immediate bodily harm or death) convictions, because these charges do not contain an element of actual harm.

By challenging only the assault convictions that require proof of a specific extent of harm, appellant appears to argue that the state was required to prove that he *intended* to inflict various levels of harm on W.B. To the extent we accurately perceive his argument, we note that appellant’s formulation would transform assault-harm into a specific-intent crime. But the Minnesota Supreme Court recently clarified that assault-harm, as defined by Minn. Stat. § 609.02, subd. 10(2) (2008), is a general-intent crime. *State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012). As such, assault-harm does not require the state to prove that “the defendant meant to violate the law or *cause a*

We review sufficiency-of-the-evidence cases by considering the record “in a light most favorable to the verdict to determine whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt.” *State v. Hanson*, 800 N.W.2d 618, 621 (Minn. 2011) (quotation omitted). In doing so, we distinguish between direct and circumstantial evidence, and review cases based on circumstantial evidence more closely. *See, e.g., State v. Al-Naseer*, 788 N.W.2d 469, 473-74 (Minn. 2010); *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988). “[B]ecause intent is a state of mind, it is generally proved by inferences drawn from a person’s words or actions in light of all the surrounding circumstances.” *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996).

In circumstantial-evidence cases, we consider the circumstances proved and whether the reasonable inferences that can be drawn from those circumstances “support a rational hypothesis other than guilt.” *Al-Naseer*, 788 N.W.2d at 473. The first step in reviewing circumstantial-evidence cases is to identify the circumstances proved. *Hanson*, 800 N.W.2d at 622. At this stage, we must defer to the jury’s assessment of the evidence,

particular result.” Id. (emphasis added). A conviction of assault-harm may rest on proof that “the defendant intended to do the physical act.” *Id.* Thus, appellant’s convictions may stand if the evidence supports an inference that appellant intended to do the physical act that caused W.B. bodily harm. Moreover, counts 1 through 5 may be proven without intent to harm if evidence shows that appellant intended to “cause fear in another of immediate bodily harm or death.” Minn. Stat. § 609.02, subd. 10(1) (defining assault-fear); *see Fleck*, 810 N.W.2d at 309.

Nevertheless, because appellant also argues that the evidence does not prove that he “intentionally stabbed [W.B.]” and that “the stabbing was an accident,” we will construe this as a challenge to the element of intent to do the physical act in counts 1 through 4 and 6.

assuming that it accepted the state's evidence proving circumstances consistent with the verdict and rejected contrary evidence. *Id.* After identifying the circumstances proved, we "examine independently the reasonableness of all inferences that might be drawn from [them], including inferences consistent with a hypothesis other than guilt." *Id.* (quotation omitted). In doing so, we give no deference to the jury's choice between reasonable inferences. *Id.*

[A] conviction based on circumstantial evidence may stand only where the facts and circumstances disclosed by the circumstantial evidence form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt.

State v. Jones, 516 N.W.2d 545, 549 (Minn. 1994) (quotation omitted).

Viewing the evidence in the light most favorable to the state, the circumstances proven here are that the intruders entered J.L.'s apartment with appellant's permission and informed J.L. that they had come to retrieve T.K.'s belongings. When they attempted to remove the iguana, which did not belong to appellant or J.L., J.L. objected and a verbal argument ensued. The intruders made no verbal or physical threats toward J.L. or appellant. According to his own statement, appellant grabbed a knife and blocked the only exit in an effort to scare the intruders into leaving the iguana. He made provocative verbal threats and gestures, and ultimately precipitated the assault by lunging at W.B. with the knife. And most significantly, B.W. observed appellant make two separate stabbing motions with the knife toward W.B. while appellant was grappling with W.B.

From appellant's threatening manner, his admission that he intended to use the knife to scare the intruders, and the deliberate stabbing motion he used to cause W.B.'s injury, we can make no reasonable inference other than that appellant intended to cause W.B. bodily harm.

II.

We next address appellant's jury-instruction claim. Appellant seeks a new trial because he contends that the district court abused its discretion when it refused to give a jury instruction modified from CRIMJIG 7.05 regarding defense of dwelling, which would have included an instruction that he had no duty to retreat before defending against a felony in his home. The district court has discretion to decide whether to give a requested jury instruction. *State v. Broulik*, 606 N.W.2d 64, 68 (Minn. 2000). We review its decision not to give a particular instruction for abuse of discretion. *State v. Kuhnau*, 622 N.W.2d 552, 555 (Minn. 2001).

Appellant's defense at trial was that he grabbed the knife in defense of property, self, and others, and to defend against a burglary in his home, that doing so was a reasonable use of force, and that the stabbing was unintentional. The district court granted appellant's request for a modified self-defense instruction based on CRIMJIG 7.06 and a defense-of-property instruction based on Minn. Stat. § 609.06, subd. 1(4) (2008). At the state's request, and over appellant's objection, the district court instructed the jury regarding the revival of self-defense using CRIMJIG 7.07. That instruction stated:

If the defendant began or induced the assault that led to the necessity of using force in the defendant's own defense, the right to stand the defendant's ground and thus defend himself is not immediately available to him. Instead, the defendant must first have declined to carry on the assault and have honestly tried to escape from it, and must clearly and fairly have informed the adversary of a desire for peace and of abandonment of the assault. Only after the defendant has done that will the law justify the defendant in thereafter standing his ground and using force against the other person.

The state has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.

Appellant requested an additional instruction, modified from CRIMJIG 7.05, pertaining to defense of dwelling. The requested defense-of-dwelling instruction included an explicit instruction that appellant had no duty to retreat, and read in its entirety:

No crime is committed when a person uses deadly force upon another person, even intentionally, if the defendant's action was taken in preventing or in assisting [J.L.] in preventing the commission of a felony in her apartment.

In order for the use of deadly force to be justified for this reason, three conditions must be met. First, the defendant's action was done to prevent the commission of a felony in the dwelling. Second, the defendant's judgment as to the gravity of the situation was reasonable under the circumstances. Third, the defendant's election to defend the dwelling was such as a reasonable person would have made in light of the danger perceived. All three conditions must be met. The defendant has no duty to retreat.

The [s]tate has the burden of proving beyond a reasonable doubt that the defendant did not act in defense of dwelling.

In conjunction with this instruction, appellant requested that the district court provide an instruction defining burglary. The district court denied appellant's request, reasoning that adding the proposed instructions would be confusing to the jury and duplicative of the defense-of-property and self-defense instructions.

Appellant contends that this refusal was an abuse of discretion because the lack of an explicit instruction that he had no duty to retreat in his home, in combination with the revival-of-self-defense instruction under CRIMJIG 7.07, confused the jury into believing that he had an affirmative duty to retreat before he could use reasonable force in defense of self or property and distorted the issue of reasonableness. Appellant's argument has merit.

Minnesota statute provides that reasonable force may be used in resisting an offense to the person. Minn. Stat. § 609.06, subd. 1(3) (2008). There are two versions of the self-defense instruction. CRIMJIG 7.05 is to be given when the defendant argues that he or she acted with intent to kill to resist death or great bodily harm, and CRIMJIG 7.06 is to be given when the defendant contends that he or she acted in self-defense but did not intend to kill. *State v. Hare*, 575 N.W.2d 828, 832-34 (Minn. 1998). A defendant invoking self-defense must have acted in good faith, including the duty to retreat if reasonably possible. *See State v. Baker*, 280 Minn. 518, 524, 160 N.W.2d 240, 243 (1968) (stating that if a defendant has not attempted to retreat from combat, but instead has unnecessarily joined into it, that use of force is not self-defense). Reasonable force may also be used to defend real or personal property against a trespass or other unlawful interference with the property. Minn. Stat. § 609.06, subd. 1(4).

The defense-of-dwelling concept is a version of self-defense, with some differences. Ordinarily, a person claiming self-defense must retreat *if possible* and may use lethal force only if the defender reasonably believes that he is exposed to great bodily harm or death. *State v. Glowacki*, 630 N.W.2d 392, 399 (Minn. 2001). There is no duty to retreat when acting in self-defense in the home. *State v. Carothers*, 594 N.W.2d 897, 903 (Minn. 1999). The same is true when acting in defense of dwelling. *Id.* at 902-03. Unlike self-defense, which only permits the use of lethal force when the person is reasonably in fear of great bodily harm or death, a person who acts in defense of dwelling may use lethal force to prevent the commission of a felony in the home, and need not be in fear of great bodily harm or death. *State v. Pendleton*, 567 N.W.2d 265, 268-69 (Minn. 1997). But the party claiming defense of dwelling must nevertheless act reasonably and use the level of force appropriate under the specific circumstances. *Glowacki*, 630 N.W.2d at 402.

The elements of a defense-of-dwelling claim are:

- (1) At the time the defendant used deadly force against the victim, was the defendant preventing the commission of a felony in his or her home?
- (2) Was the belief reasonable under the circumstances?
- (3) Was the use of deadly force reasonable under the circumstances in light of the danger then to be apprehended?

Pendleton, 567 N.W.2d at 270.

Entitlement to Defense-of-Dwelling Instruction

To be entitled to a new trial, a defendant must show that he was entitled to the requested instruction and that the district court's failure to give the instruction was not harmless. *Id.* A defendant is entitled to an instruction on his theory of the case only if there is evidence to support it. *State v. Coleman*, 373 N.W.2d 777, 781 (Minn. 1985). When reviewing whether a specific jury instruction should have been given, this court views the evidence "in the light most favorable to the party requesting the instruction." *Turnage v. State*, 708 N.W.2d 535, 545-46 (Minn. 2006).

Appellant contends that he presented some evidence to show that the intruders committed felony burglary in his place of abode. *See* Minn. Stat. § 609.582, subd. 3 (2008) (stating that a person commits third-degree burglary if the person "enters a building without consent and with intent to steal or commit any felony or gross misdemeanor . . . or enters a building without consent and steals or commits a felony or gross misdemeanor while in the building, either directly or as an accomplice"). The state does not dispute that appellant met his burden; instead, the state argues appellant was not entitled to a defense-of-dwelling instruction because the substance of the instruction was contained in the defense-of-property and self-defense instructions. Appellant's requested instruction would not have been improper, but when the substance of a particular instruction is already contained in the district court's instructions to the jury, the court is not "required" to give an additional requested instruction. *State v. Auchampach*, 540 N.W.2d 808, 816 (Minn. 1995). The focus of our review is on whether the instructions,

when taken as a whole, fairly and adequately explain the law of the case. *Kuhnau*, 622 N.W.2d at 555-56.

Assuming that appellant met his burden of production that he was defending against a felony burglary in the home, the defense-of-dwelling instruction would have differed from the self-defense and defense-of-property instructions given in two material respects. Neither is relevant here. First, under defense-of-dwelling, the intentional use of deadly force is permitted if reasonable under the circumstances. Because appellant's defense was that the stabbing was unintentional, this distinction is inapplicable.

Second, the defense-of-dwelling instruction would have explicitly stated that appellant had no duty to retreat. But this distinction is irrelevant because the district court did not include duty-to-retreat language in the self-defense instruction. Therefore, the jury was not instructed that appellant had a duty to retreat, and the instructions fairly and adequately explained the law in the context of self-defense and defense of property in the home. *Id.*; cf. *State v. Charles*, 634 N.W.2d 425, 433 (Minn. App. 2001) (“Although the details of this case suggest that a defense[-]of[-]dwelling instruction would have been justified, the district court did not commit plain error by choosing to only instruct the jury on self-defense under CRIMJIG 7.06.”).

Because the jury received the substance of the defense-of-dwelling instruction when the district court gave the self-defense and defense-of-property instructions, the district court did not abuse its discretion in refusing to give the defense-of-dwelling instruction.

Revival-of-Self-Defense Instruction

Finally, appellant argues that the revival-of-self-defense instruction, which provides that an initial aggressor must retreat from the fight before he or she may claim self-defense, misled the jury into believing that appellant had an initial duty to retreat before he could exercise his right of self-defense or defense of property and improperly reframed the jury's reasonableness calculation.

The district court's decision to give the revival instruction did not affect appellant's defense-of-property defense because, by its terms, the revival instruction applies only to self-defense, not defense of property. Consistent with this interpretation, the district court intentionally placed the revival instruction after the self-defense instruction, but before the defense-of-property instruction, to avoid confusion. Having said that, it would have been better not to give the "revival" instruction. It can be confusing on its face, and can require a jury to compose a linear timetable of when the victim was attacked and the extent of force he could use at that time; when did his need to use self-defense end; when did he become an aggressor; and then when did he stop being an aggressor, and once again when did he have the right of self-defense??

But we cannot conclude that appellant's self-defense claim was unfairly compromised. The revival instruction given, which followed CRIMJIG 7.07, accurately stated the law of self-defense. Appellant's implication that the jury was confused about the duty to retreat is based on speculation. *See State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009) ("We assume that the jury followed the court's instructions and properly considered the evidence.").

Contrary to appellant's arguments, the instructions given did not limit his ability to argue that his actions were reasonable. Appellant's trial counsel argued that the intruders were trespassing and that appellant's response was reasonable in light of the fact that a person has "more rights to defend yourself in your residence than you do when you're somewhere else." Thus, with or without the requested instruction, the jury was informed that appellant had a right to stand his ground and the issue was properly framed for the jury in terms of reasonableness.

In his brief, appellant states that without the defense-of-dwelling instruction, the state was able to paint appellant as the aggressor "because he started the fight when he grabbed the knife and therefore had forfeited the right to claim self-defense." This mischaracterizes the state's argument at trial. The state argued that grabbing a knife and blocking the intruders' exit was an unreasonable amount of force considering the nature of the property at stake and the intruders' desire to leave the apartment. This is consistent with the supreme court's statement that, even defending the home, "[i]t may be more reasonable for a person to advance towards or retreat from a danger . . . , and that decision should be left to the jury." *Carothers*, 594 N.W.2d at 897, 904.

Appellant also states that, "[h]ad the jury been properly instructed, the prosecutor would not have been able to reduce the conduct of [T.G.] and his friends to a harmless little mission." But because the evidence was conflicting regarding whether the intruders had consent to enter or stay in the apartment and the nature of the ensuing interaction between the intruders, J.L., and appellant, the state was free to argue that the trespass was

minor. Providing the jury with a definition of burglary would not have altered the ultimate reasonableness analysis.

The instructions given contained all material aspects of the defense-of-dwelling instruction, stated the law, and did not imply appellant had a duty to retreat before exercising his right to defense of property.

Affirmed.