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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1110**

State of Minnesota,
Respondent,

vs.

Derrick Resean Ford,
Appellant.

**Filed May 31, 2011
Affirmed
Ross, Judge**

St. Louis County District Court
File No. 69DU-CR-09-4480

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

Mark S. Rubin, St. Louis County Attorney, Melanie S. Ford, Duluth, Minnesota (for
respondent)

David W. Merchant, Chief Appellate Public Defender, Michael F. Cromett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Harten,
Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

Derrick Resean Ford was convicted of assault after he violently struck two women with a child's scooter. Ford appeals from his assault convictions against one of them, arguing that the district court erred by failing to apply the transferred-intent doctrine to his claim that he injured her while acting in self-defense against the other. He also claims prosecutorial misconduct. Because Ford did not have a valid claim of self defense against the other woman, we hold that the district court appropriately concluded that he could not succeed on a theory of derivative self defense. And because the prosecutor's challenged conduct was not misconduct, Ford's alternative contention also fails. We therefore affirm.

FACTS

Jill Gilderman and Melanie Brown were socializing on Gilderman's porch when they decided to invite their neighbor, Eileen Barry, to join them. Brown knocked on Barry's apartment door and Barry opened it. Derrick Ford, Barry's boyfriend, came to the door. Ford believed that neighborhood women had been spreading rumors about him and he told Brown to leave. Brown and Ford exchanged angry words, and Ford ended the argument by slamming and breaking the apartment door.

But Brown did not leave. She continued yelling and knocking on the broken door. Ford opened it and again he and Brown argued. Then Ford, who stands six-feet-three-inches tall and weighs 250 pounds, pushed Brown, who is five-feet-four-inches tall and 120 pounds, all the way outside and to the front porch. He returned to his apartment. Brown did not relent; she ran to Ford's apartment window, beating on it and yelling

epithets. She taunted Ford, saying, “Come on, you want to hit a woman?” Ford went outside. Brown grabbed a child’s scooter and swung it at Ford, striking and lacerating his head.

Ford wrested the scooter away from Brown and hit her with it. She fell to the ground. He continued to strike her with the scooter at least three times more. Brown begged him to stop. Gilderman threw her arms over Brown to protect her, and Ford swung the scooter again, striking Gilderman’s arm. The blow cut into her flesh and exposed her broken bone. Ford walked away and told Barry to dial 9-1-1. The police arrived and, unconvinced by Ford’s claim that he had been the victim, arrested him. Emergency medical responders took Brown and Gilderman to the hospital by ambulance. Brown received ten staples to close lacerations in her head and was released. She returned to the hospital within days with post-concussive syndrome. Gilderman, hospitalized for two days, underwent surgery to repair the gash and broken wrist. Physicians told her she would experience lifelong pain and have a permanent scar.

The state charged Ford with second- and third-degree assault against both women and first-degree assault against Gilderman. He pleaded not guilty and asserted self-defense. The district court found him guilty after a bench trial. It concluded that because Gilderman never attacked Ford, he had no claim of self-defense against the charges related to her. Ford appeals his convictions only as to Gilderman.

DECISION

I

Ford argues that the district court erred by holding that he could not rely on a self-defense theory against the charges concerning Gilderman. He contends that the doctrine of transferred intent applies to self defense, excusing his allegedly unintentional blow to Gilderman as part of his defense against Brown.

Regardless of whether the doctrine of transferred intent applies to self defense, we hold that statutory limits on the amount of force allowed when acting in self defense defeat Ford's argument. The self-defense statute permits a person to use reasonable force to resist an offense against himself or against a trespass. Minn. Stat. § 609.06, subd. 1(3)–(4) (2008). The doctrine of transferred intent provides that “a defendant may be convicted if it is proved he intended to injure one person but actually harmed another.” *State v. Hall*, 722 N.W.2d 472, 477 (Minn. 2006) (quotation omitted). Given the district court's findings and the statutory “reasonable force” limit to self defense, we need not address Ford's contention that we should merge the two legal concepts so that an actor who unintentionally strikes a bystander while defending himself against another is not criminally liable for injuring the bystander.

The district court found that Ford “did not act in self-defense” against Brown because his use of the scooter and the intensity of his force far exceeded reasonable defensive force under the circumstances. Ford has not challenged that finding on appeal, and it is well founded on the evidence. Without a valid self-defense justification for

Ford's striking of Brown, there is no valid self-defense justification to transfer to his striking of Gilderman.

Ford contends that although the district court found that he did not act in self-defense against Brown, the defense should nonetheless transfer because Gilderman's injury might have occurred "during a lawful exercise of his right of self-defense against Brown." In other words, Ford argues that the district court's finding describes only the assault generally, and fails to rule out the possibility that at some point, specifically when he struck Gilderman, he might have been acting in lawful self defense against Brown. Even without the blow-by-blow findings that Ford implies are inappropriately missing from the district court's decision, the record establishes that once Ford took the scooter from Brown, Brown no longer posed a threat that could justify Ford's violent blows. At that point, he could have defended himself without using the scooter; instead, he became the aggressor wielding a weapon in apparent retaliation and exceeding any notion of reasonableness. We are not unmindful that Brown may have been the primary provocateur and that Ford twice withdrew from her antagonism. But once Ford's conduct became punitive and disproportionate rather than defensive and measured, he lost any legal basis on which to claim self defense.

The state raises additional arguments responding to Ford's transferred-intent theory, but we need not address them because the district court's findings do not support any application of the doctrine of self defense.

II

Ford also argues in a separate pro se brief that the prosecutor intentionally misled the court by failing to introduce exculpatory evidence, including the testimony of two police officers. A prosecutor does not commit misconduct by not calling witnesses. *Cooper v. California*, 386 U.S. 58, 62 n.2, 87 S. Ct. 788, 791 n.2 (1967) (calling defendant's argument that he was deprived of the right to confront a witness because the state did not call him "absolutely devoid of merit"). If Ford was aware of two witnesses whose testimony would have exonerated him, he presumably would have called them to testify in his defense. Ford does not argue that he lacked the opportunity to call these witnesses. The state has a duty to disclose exculpatory evidence, *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196–97 (1963); *State v. Williams*, 593 N.W.2d 227, 234 (Minn. 1999), not to make the defendant's case for him. Ford similarly argues that the state improperly failed to "present all the facts and evidence at trial," including "medical reports [and] mental [health] history of both alleged victims." This argument again erroneously assumes that the state had a burden to advocate on Ford's behalf.

Affirmed.