

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0041

STATE OF MONTANA,

Plaintiff and Appellee,

v.

BENEDICT DALE FREDERICKS,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, The Honorable Donald L. Harris, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE ISSUE.....1

STATEMENT OF THE CASE.....1

STATEMENT OF THE FACTS2

I. The offense2

II. Justifiable use of force4

SUMMARY OF THE ARGUMENT5

STANDARD OF REVIEW6

ARGUMENT6

The district court did not abuse its discretion when it did not instruct the jury
on justifiable use of force.....6

CONCLUSION.....12

CERTIFICATE OF COMPLIANCE.....13

TABLE OF AUTHORITIES

Cases

State v. Daniels,
2011 MT 278, 362 Mont. 426, 265 P.3d 623 7-8

State v. Kaarma,
2017 MT 24, 386 Mont. 243, 390 P.3d 609 7

State v. King,
2013 MT 139, 370 Mont. 277, 304 P.3d 1 11

State v. Marquez,
2021 MT 263, 406 Mont. 9, 496 P.3d 963 passim

State v. Polak,
2018 MT 174, 392 Mont. 90, 422 P.3d 112 8

State v. R.S.A.,
2015 MT 202, 380 Mont. 118, 357 P.3d 899 7, 8

Other Authorities

Montana Code Annotated

§ 45-3-102 7

§ 45-3-115 7

§ 45-5-213(1)(a) 1

§ 46-16-131 8

STATEMENT OF THE ISSUE

Whether the district court abused its discretion when it refused Fredericks's proposed justifiable use of force jury instructions after concluding that Fredericks had not presented sufficient evidence in support.

STATEMENT OF THE CASE

On January 26, 2022, the State of Montana charged Appellant Benedict Dale Fredericks (Fredericks) with Assault with Weapon, a felony, in violation of Mont. Code Ann. § 45-5-213(1)(a). (Doc. 3.) Fredericks subsequently notified the State that he would be relying on the affirmative defense of justifiable use of force. (Doc. 12 at 3.)

Fredericks did not testify, nor did he call any witnesses, to establish his justifiable use of force defense at trial. Instead, Fredericks sought to establish his defense by eliciting evidence of justifiable use of force through cross-examination of the State's witnesses. At the jury instruction settlement conference, however, the district court agreed with the State that Fredericks had not presented sufficient evidence to support instructing the jury on justifiable use of force. (9/13/22 Tr. at 10-11.)

After the jury convicted Fredericks of Assault with Weapon, the district court sentenced Fredericks to the Montana State Prison for a term of 20 years with

5 years suspended. (Docs. 42, 52.) Fredericks now appeals the district court's refusal of Fredericks's proposed justifiable use of force jury instructions.

STATEMENT OF THE FACTS

I. The Offense

Marion Ackerman (Marion) has been a desk clerk at the Bourbon Street Hotel in Billings, Montana, since 2020. (9/12/22 Tr. at 106.)¹ On January 25, 2022, Marion was working the desk clerk shift from 7 a.m. to 3 p.m. (*Id.* at 107-08.) Near the end of his shift, around 2 p.m., Marion received complaints from Bourbon Street Hotel residents of a person "being belligerent, trying to get into a car" that did not appear to belong to him. (*Id.* at 108.) The belligerent person was later identified as Fredericks. (*Id.* at 115-16.)

As Marion went to check out the situation, Marion's brother, Trevor Ackerman (Trevor),² heard Fredericks yelling, which prompted Trevor to step outside of his room. (*Id.* at 108, 134.) Trevor witnessed Marion walk towards Fredericks, and overheard Fredericks say "he was trying to get into his car,"

¹ The Bourbon Street Hotel is mainly inhabited by long-term residents, including Marion and his family. (9/12/22 Tr. at 107.)

² Trevor also resides and works as a front desk clerk at the Bourbon Street Hotel. (*Id.* at 133.)

demanding that someone provide him with the keys. (*Id.* at 134.) Fredericks tried to break the car window with his hands. (*Id.* at 134-35.)

Fredericks appeared intoxicated, slurring his words as he yelled back at Marion. (*Id.* at 110.) Marion told Fredericks that he had to leave. (*Id.* at 109.) Fredericks then shoved Marion, who shoved Fredericks back. (*Id.* at 110.) Fredericks walked away, circled around near room 27, and stood beside another person. (*Id.* at 135.)

By this point, Marion's uncle, Kevin Fisher (Fisher), and Trevor had joined Marion. (*Id.* at 135.) Although there were three of them, Fredericks was not cornered and could have left the situation. (*Id.* at 120.) In fact, the entire time Marion "was just trying to get [Fredericks] off the property, giving him warning after warning, chance after chance." (*Id.* at 123.)

Instead of leaving, Fredericks pulled out a fold-in style knife with a "very sharp, serrated" blade that was "approximately three or four inches long." (*Id.* at 110, 148-49.) With the knife in his hand, Fredericks lunged at Marion. (*Id.* at 111.) In response, Fisher sprayed Fredericks with pepper spray. (*Id.*) Fredericks then targeted Fisher. (*Id.*) Marion intervened and grabbed Fredericks before he could attack Fisher. (*Id.*) Fredericks stabbed Marion on the top of his head, the side of his head, and underneath his armpit. (*Id.*) The assault ended when Trevor put Fredericks on the ground, holding him there until law enforcement arrived. (*Id.* at 136.)

Due to his injuries, Marion had to be transported to the hospital via ambulance. (*Id.* at 114.) At the hospital, Marion had to get stitches in his armpit and staples on the side of his head. (*Id.*) Since the assault, Marion has had nightmares where he wakes “up screaming in cold sweats.” (*Id.* at 115.)

II. Justifiable use of force

Consistent with his noticed defense, Fredericks proposed, in relevant part, jury instructions concerning justifiable use of force. (9/13/22 Tr. at 8.) During the jury instructions settlement conference, the State objected, arguing that Fredericks had not presented sufficient evidence to support the district court instructing the jury on justifiable use of force. (*Id.* at 8.) In support of its assertion, the State explained that Fredericks had not testified, the witnesses testified that only Fredericks had a weapon, the evidence supported Fredericks was the initial aggressor, and there was no evidence presented as to whether Fredericks “was in fear.” (*Id.* at 10.)

Fredericks disagreed with the State. (*Id.* at 9.) To Fredericks, a compelling question of fact existed “as to whether Mr. Fredericks was justified in using force.” (*Id.*) Fredericks based his assertion on the evidence establishing that Marion was younger, multiple people were involved, and Marion may have approached Fredericks “somewhat aggressively.” (*Id.*)

Ultimately, the district court refused Fredericks's proposed instructions concerning justifiable use of force. (*Id.* at 11.) As the district court reiterated, justifiable use of force instructs "that a person is justified in the use of force or threat to use force when and to the extent that he or she reasonably believed that such conduct is necessary to defend him or herself against the imminent use of unlawful force." (*Id.* at 10-11.) Because there was no testimony presented as to what Fredericks was thinking or that any of the witnesses or victim intended to use unlawful force, the district court concluded that insufficient evidence supported the justifiable use of force instructions. (*Id.* at 11.)

SUMMARY OF THE ARGUMENT

At his trial, Fredericks did not present sufficient evidence to establish justifiable use of force. First, the evidence supported that Fredericks was the first aggressor. Fredericks shoved Marion who was asking him to leave the Bourbon Street Hotel and then lunged at Marion with a knife. Furthermore, Fredericks did not present evidence that he reasonably believed that he was in imminent danger of unlawful harm. Nor did Fredericks establish that the force he used was reasonable and necessary to defend himself.

Although Marion responded to Fredericks shoving Marion by shoving Fredericks back, Marion otherwise did not use force or threaten Fredericks.

Instead, Marion continually asked Fredericks to leave the premises. When Fredericks lunged at Marion with a knife, Fischer sprayed Fredericks with pepper spray, which did not deter Fredericks's aggressive conduct. To prevent Fredericks from attacking Fischer, Marion intervened, and Fredericks stabbed him three times. Accordingly, the district court did not abuse its discretion when it refused Fredericks's proposed jury instructions concerning justifiable use of force.

STANDARD OF REVIEW

This Court reviews for abuse of discretion a district court's decisions regarding jury instructions. *State v. Marquez*, 2021 MT 263, ¶ 14, 406 Mont. 9, 496 P.3d 963. This Court considers whether the instructions, taken as a whole, fully and fairly instructed the jury on the law applicable to the case. *Id.* A district court's mistake regarding jury instructions can constitute reversible error if it prejudicially affects the defendant's substantive rights. *Id.*

ARGUMENT

The district court did not abuse its discretion when it did not instruct the jury on justifiable use of force.

Fredericks contends that the district court committed reversible error when it did not instruct on justifiable use of force because Fredericks had elicited sufficient testimony to support the instruction and the district court's failure to instruct the

jury on justifiable use of force relieved the State of its burden of proof.

(Appellant's Br. at 10, 16.)

Justifiable use of force is an affirmative defense. Mont. Code Ann. § 45-3-115.

Montana Code Annotated § 45-3-102 provides:

A person is justified in the use of force or threat to use force against another when and to the extent that the person reasonably believes that the conduct is necessary for self-defense or the defense of another against the other person's imminent use of unlawful force. However, the person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes that the force is necessary to prevent imminent death or serious bodily harm to the person or another or to prevent the commission of a forcible felony.

In other words, justifiable use of force is "where a defendant admits to the act but seeks to justify, excuse, or mitigate it." *State v. Kaarma*, 2017 MT 24, ¶ 20, 386 Mont. 243, 390 P.3d 609. "The defense is not available to someone who is the initial aggressor and provokes the use of force, unless the force being responded to is so great that the person reasonably believes that the person is in imminent danger of death or serious bodily harm." *Marquez*, ¶ 16 (internal quotations and citation omitted).

A defendant bears "the initial burden of offering evidence of justifiable use of force." *State v. R.S.A.*, 2015 MT 202, ¶ 32, 380 Mont. 118, 357 P.3d 899 (internal quotations and citation omitted). "If the defendant offers no evidence, then he fails to satisfy his initial burden and the defense fails." *State v. Daniels*,

2011 MT 278, ¶ 15, 362 Mont. 426, 265 P.3d 623. To establish justifiable use of force, a defendant must show that: “(1) he was not the aggressor; (2) he reasonably believed he was in imminent danger of unlawful harm; and (3) he used reasonable force necessary to defend himself.” *State v. Polak*, 2018 MT 174, ¶ 26, 392 Mont. 90, 422 P.3d 112 (citations omitted). After a criminal defendant offers evidence of justifiable use of force, the burden transfers to the State to prove, beyond a reasonable doubt, that the defendant’s actions were not justified. *R.S.A.*, ¶ 32 (citing Mont. Code Ann. § 46-16-131).

In support of his argument, Fredericks relies on *Marquez*. *Marquez*, however, supports that the district court did not abuse its discretion, here, when it declined to instruct the jury on justifiable use of force. In *Marquez*, Detention Officer Ryan Juers handcuffed Marquez to transport him out of his cell while staff cleaned up the overflow from the cell’s toilet. *Marquez*, ¶¶ 4-5. Marquez jerked forward and tried to headbutt Officer Juers, who, in turn, pushed Marquez against a wall before taking Marquez out of his cell with one hand on the handcuffs and one in Marquez’s hair. *Id.* ¶ 5. Officer Juers then pushed Marquez down onto a bench, keeping his hand on Marquez’s chest to hold him down. *Id.* ¶ 6. Marquez subsequently kned Officer Juers in the chest. *Id.* ¶ 7.

At his trial, Marquez submitted proposed jury instructions concerning justifiable use of force. *Id.* ¶ 12. The district court refused the instructions, stating

that there would be no evidence to warrant justifiable use of force instructions because Marquez planned to rest after the State's case. *Id.* On appeal, Marquez argued that the "incident was simple enough that the State's case-in-chief provided evidence adequate for his defense, too" because the jury saw the body camera footage of the incidents and he challenged Officer Juers's account on cross-examination. *Marquez*, ¶ 20.

In affirming the district court, this Court explained that Marquez did not "attempt to demonstrate to the jury, or to the judge during the instruction settlement conference, that the evidence showed unlawful force by Officer Juers." *Marquez*. ¶ 21. Nor, as this Court reasoned, did the evidence support that it was "self-evident that Marquez could reasonably think defensive force was necessary in response." *Id.* ¶ 22. Furthermore, the uncontested evidence established that Marquez was the initial aggressor. *Id.* ¶ 23.

Fredericks contends his case is distinguishable from *Marquez* because Fredericks discussed justifiable use of force in his opening statement. (Appellant's Br. at 13.) Fredericks discussing justifiable use of force in his opening statement, however, does not amount to presenting evidence of justifiable use of force to the jury. Fredericks, like Marquez, also did not attempt to demonstrate to the district court during the jury instruction settlement conference that the evidence showed unlawful force by Marion, Fischer, or Trevor. Instead, during the jury instruction

settlement conference, Fredericks focused on Marion being younger than him and the *possibility* that Marion had initially approached Fredericks in an aggressive manner.

Even so, the evidence supported that Fredericks was not entitled to the justifiable use of force jury instructions. Here, the evidence, like in *Marquez*, established that Fredericks was the initial aggressor. Marion was contacted because Fredericks was reportedly belligerent. When Marion approached Fredericks, who appeared to be trying to break into a vehicle, Fredericks shoved Marion. After Marion shoved Fredericks back, Fredericks pulled out a knife. By that point, Trevor and Fischer had shown up and were standing by Marion. Fredericks, however, was not cornered and could have left. Instead, Fredericks lunged at Marion with his knife, prompting Fischer to spray Fredericks with pepper spray. After that Fredericks lunged towards Fischer, and Marion intervened, ultimately resulting in Fredericks stabbing Marion *three times*.

Likewise, based on this evidence presented, like in *Marquez*, it was not self-evident that Fredericks could have reasonably believed that defensive force was necessary. Fredericks's contention on appeal that Marion, Fischer, and Trevor were not wearing work uniforms and that it was the three of them against Fredericks does not alter this conclusion. First, Fischer and Trevor only showed up to help Marion because Fredericks remained belligerent and had shoved Marion.

Even though three of them were there, Fredericks was not cornered and could have left the Bourbon Street Hotel, which Marion was requesting he do from the beginning. Finally, the clothing of Marion, Fischer, and Trevor, here, does not factor into whether Fredericks would be entitled to justifiable use of force jury instructions.

In sum, the district court did not abuse its discretion when it refused Fredericks's proposed jury instructions regarding justifiable use of force. District courts have broad discretion regarding jury instructions; restricted only "by the overriding principle that jury instructions must fully and fairly instruct the jury regarding the applicable law." *State v. King*, 2013 MT 139, ¶ 25, 370 Mont. 277, 304 P.3d 1. District courts must "instruct the jury on theories and issues that are supported by evidence presented at trial." *Id.*

Here, Fredericks did not testify, and defense counsel's cross-examination of the State's witnesses was insufficient to lay the foundation for a justifiable use of force defense. Fredericks was an initial aggressor twice: first when he shoved Marion and again when he lunged at Marion with his knife. Furthermore, the evidence that Fredericks was outnumbered three to one, after Fredericks was behaving belligerent and aggressively, and had a knife in his possession, is not sufficient to establish that *he* reasonably believed that use of force was necessary. Finally, even if Fredericks was not the initial aggressor and could establish that he

believed use of force was necessary, Fredericks did not establish that the force he used was reasonable. Because Fredericks could not establish justifiable use of force, Fredericks cannot establish that the district court abused its discretion when it did not instruct the jury on justifiable use of force. Likewise, Fredericks cannot establish that his substantial rights were prejudiced by the district court not instructing the jury on justifiable use of force.

CONCLUSION

This Court should affirm Fredericks's conviction and sentence.

Respectfully submitted this 21st day of May, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2,579 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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CERTIFICATE OF SERVICE

I, Cori Danielle Losing, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 05-21-2024:

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