

DA 23-0041

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 226

STATE OF MONTANA,

Plaintiff and Appellee,

v.

BENEDICT DALE FREDERICKS,

Defendant and Appellant.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DC-22-98
Honorable Donald L. Harris, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Nathan D. Ellis, Ellis Law, PLLC, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Cori Losing, Assistant
Attorney General, Helena, Montana

Scott Twito, Yellowstone County Attorney, Holley Metzger, Sabrina
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Submitted on Briefs: September 18, 2024

Decided: October 8, 2024

Filed:



Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Benedict Dale Fredericks appeals from the Thirteenth Judicial District Court, Yellowstone County’s November 18, 2022 Judgment. A jury convicted Fredericks of Felony Assault with a Weapon. Fredericks appeals the District Court’s refusal to instruct the jury on the defense of justifiable use of force.

¶2 We restate the issue on appeal as follows:

Whether the District Court abused its discretion when it determined that the defense had not presented sufficient evidence to warrant a justifiable use of force instruction.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Fredericks was arrested following an incident in the parking lot of the Bourbon Street Hotel in Billings at approximately 2:00 p.m. on January 25, 2022.

¶4 Hotel clerk Marion Ackerman (“Marion”) approached Fredericks in the parking lot after he received reports that an individual was trying to “get into” a car that the witnesses believed did not belong to him. Marion told Fredericks that he had to leave the property. In response to Fredericks’s insistence that the car belonged to him, Marion told Fredericks that he could return with proof of ownership and retrieve the car. Fredericks shoved Marion, and Marion shoved him back. There are conflicting accounts as to what happened next, but it is undisputed that during the course of the interaction, Fredericks stabbed Marion three times. It is also undisputed that after Fredericks stabbed Marion, Marion’s brother Trevor Ackerman (“Trevor”), restrained Fredericks on the ground until law enforcement arrived.

¶5 Fredericks was charged with Felony Assault with a Weapon. He pled not guilty, asserting the defense of justifiable use of force. A jury trial was held on September 12 and 13, 2022. In his opening statement at trial, Fredericks argued that he “acted in self-defense” when he stabbed Marion, because “he felt threatened.” Marion, Trevor, and Marion’s relative Kevin Fisher testified at trial for the State. The defense rested without calling any witnesses.

¶6 Marion testified that when he found Fredericks in the parking lot, he told him to leave the property and come back later if the car was his because he thought Fredericks was too intoxicated to drive. Marion testified that Fredericks became belligerent, started yelling, and shoved him. Marion testified that he shoved Fredericks back and Fisher, who had come to investigate the commotion, sprayed Fredericks with mace. Marion testified that Fredericks lunged at Fisher with a knife and Marion picked Fredericks up to subdue him, at which point Fredericks stabbed Marion. Marion clarified on cross-examination that Fredericks was not blocked from escaping during the altercation until he picked Fredericks up.

¶7 Trevor testified that he lived at the Bourbon Street Hotel and came out onto his second-story balcony when he heard yelling in the parking lot below his room. Trevor testified that he went downstairs when Fredericks became belligerent and he observed Fredericks shove Marion, Marion shove Fredericks back, and then Fredericks ran to the doorway of another room. Trevor testified that he and Marion got within two feet of Fredericks in the doorway and that is when Fredericks pulled out a knife. Trevor testified

that Fisher then sprayed Fredericks with mace, and Marion picked Fredericks up, at which time Fredericks stabbed Marion. Trevor testified that after Fredericks stabbed Marion, he brought Fredericks to the ground and restrained him until police arrived.

¶8 Fisher testified that he also lived on the second floor at the Bourbon Street Hotel and came downstairs when he heard the commotion. Fisher testified that when he got downstairs, Marion was holding onto Fredericks, and Fredericks was stabbing Marion. Fisher testified that he pepper-sprayed Fredericks to get him to drop the knife.

¶9 Fredericks submitted jury instructions on justifiable use of force. The State objected to the instructions on the grounds that Fredericks had not presented sufficient evidence to support a justifiable use of force argument. The District Court held that because “there was no testimony presented . . . as to what Mr. Fredericks was thinking,” there was “insufficient evidence to submit [justifiable use of force] instructions to the jury.”

¶10 The jury convicted Fredericks of Felony Assault with a Weapon. The District Court sentenced him to twenty years of incarceration in the Montana State Prison with five years suspended.

STANDARD OF REVIEW

¶11 We review a district court’s decisions regarding jury instructions for an abuse of discretion. *State v. Daniels*, 2011 MT 278, ¶ 38, 362 Mont. 426, 265 P.3d 623. Our review considers “whether the instructions, taken as a whole, fully and fairly instructed the jury on the law applicable to the case.” *State v. Cybulski*, 2009 MT 70, ¶ 34, 349 Mont. 429, 204 P.3d 7. A district court’s mistake regarding jury instructions constitutes reversible

error only if it prejudicially affects the defendant's substantive rights. *State v. Archambault*, 2007 MT 26, ¶ 14, 336 Mont. 6, 152 P.3d 698.

DISCUSSION

¶12 *Whether the District Court abused its discretion when it determined that the defense had not presented sufficient evidence to warrant a justifiable use of force instruction.*

¶13 Justifiable use of force is an affirmative defense pursuant to § 45-3-115, MCA. A “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.” Section 45-3-102, MCA. Justifiable use of force is not available to a person who is the first-aggressor, 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 and that the person has exhausted every reasonable means to escape” or “in good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that the person desires to withdraw and terminate the use of force.” Section 45-3-105(2), MCA.

¶14 When a criminal defendant has offered evidence of justifiable use of force, the effect is to create for the State an additional burden of “proving beyond a reasonable doubt that the defendant's actions were not justified.” Section 46-16-131, MCA. “[T]he duty of the district court is to correctly instruct the jury on [justifiable use of force] if it applies.” *State v. Marquez*, 2021 MT 263, ¶ 17, 406 Mont. 9, 496 P.3d 963 (collecting citations). If

the theory is “supported by evidence presented at trial,” even if conflicting evidence is also presented, then the district court must give the instruction. *Marquez*, ¶ 17 (citation omitted). This is true whether the support comes from direct evidence or from “some logical inference from the evidence presented.” *Marquez*, ¶ 17 (citations omitted).

¶15 The District Court erred when it denied Fredericks’s justifiable use of force instruction on the basis that he had not presented any evidence about his state of mind. Although it was Fredericks’s burden to present evidence that he “reasonably believed” that his use of a knife was necessary to prevent imminent harm to his person, the “reasonable belief” standard is an objective one that may be discerned from the totality of the circumstances surrounding an incident. *State v. Courville*, 2002 MT 330, ¶ 39, 313 Mont. 218, 61 P.3d 749 (citing *State v. Harkins*, 85 Mont. 585, 601, 281 P. 551, 557 (1929)).

¶16 Nevertheless, “[w]e will affirm the district court when it reaches the right result, even if it reaches the right result for the wrong reason.” *State v. Wienke*, 2022 MT 116, ¶ 22, 409 Mont. 52, 511 P.3d 990 (citation omitted). It is uncontradicted in the record that Marion told Fredericks to leave the property several times, and that Fredericks was the first to initiate physical contact when he shoved Marion, provoking Marion to shove him back. We are hard-pressed to interpret a shove as “force . . . so great that [Fredericks] reasonably believe[d] that [he was] in imminent danger of death or serious bodily harm.” Section 45-3-105(2)(a), MCA. But even if we were to accept that there was evidence in the record to satisfy that threshold criterion, there would still have to be some evidence in the record that indicated Fredericks had exhausted every reasonable means to escape the danger other

than the use of force that was likely to cause death or serious bodily harm, or that in good faith he had withdrawn from the physical contact and indicated clearly that he desired to withdraw and terminate the use of force. Section 45-3-105(2)(a)-(b), MCA. Fredericks argues that the testimony at trial demonstrated that he was cornered and unable to escape when he drew his knife. But the uncontradicted testimony of both Marion and Trevor is that after Fredericks initiated the altercation by shoving Marion, and Marion shoved him back, Fredericks had the time, space and opportunity to leave the property—just as Marion had already repeatedly instructed him to do. But instead of escaping the situation by simply leaving the property, Fredericks moved to one of the hotel room doorways, effectively cornering himself. Then having placed himself in that situation, instead of clearly indicating an intent to withdraw and terminate the altercation, Fredericks escalated it by producing a knife, prompting Fisher to pepper-spray him to get him to drop the knife.

¶17 Although the District Court incorrectly denied Fredericks’s justifiable use of force instruction on the basis that he had not presented any evidence about his state of mind, the District Court correctly refused the instruction because the record did not support such an instruction. The record establishes that Fredericks initiated the altercation by shoving Marion. After Marion shoved Fredericks back, Fredericks neither took the opportunity to escape the situation, nor did he clearly indicate his intent to withdraw and terminate the altercation; instead, he escalated it.

CONCLUSION

¶18 The District Court properly refused Fredericks's proposed justifiable use of force jury instruction. The District Court's November 18, 2022 Judgment is affirmed.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ LAURIE McKINNON

/S/ BETH BAKER

/S/ INGRID GUSTAFSON

/S/ JIM RICE