

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0444**

The State of Minnesota,
Respondent,

vs.

Shawn Elson Randall,
Appellant

**Filed February 26, 2018
Affirmed
Worke, Judge**

Carlton County District Court
File No. 09-CR-16-1233

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

Thomas Pertler, Carlton County Attorney, Michael J. Boese, Assistant County Attorney,
Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi Proulx, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Rodenberg,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his third-degree assault conviction, arguing that the district
court committed reversible error by instructing the jury on a correctional officer's

“authorized use of force,” and denying appellant’s motion for a mistrial after a witness testified on a matter ruled inadmissible. We affirm.

FACTS

On June 21, 2016, Correctional Officer (CO) Johnson was monitoring cameras in the control center of the jail. CO Johnson viewed appellant Shawn Elson Randall’s mother end a visit with Randall and deposit money as she exited. CO Johnson discovered that Randall’s mother deposited the money in another inmate’s account, which is in violation of a circumvention policy.¹ CO Johnson provided this information to his supervisor, D.K.

Randall was in the shower when D.K. initiated discussion about the rule violation. Randall became “agitated and started swearing and kind of yelling.” Randall threatened to “f---ing kick [D.K.’s] ass and f---ing kill [him].” Randall emerged from the shower and reached for D.K., and D.K. grabbed Randall’s arm. Randall struggled and D.K. deployed his chemical agent. Randall hit D.K. in the face at least once causing a bone fracture.

Jail administrator, Paul Coughlin, immediately responded to the cell block and attempted to talk to Randall. Randall was “irate, screaming, hollering, talking about being maced [and] yelling.” Randall was transferred to an isolation cell.

Sergeant Rotta of the Carlton County Sheriff’s Office arrived at the jail shortly after the assault. Sergeant Rotta took a statement from L.C., an inmate in the cell block during the incident. L.C. stated that Randall became angry after D.K. told him that his mother

¹ Inmates receive a handbook that warns of sanctions if money is deposited into another inmate’s account. Evidence from Randall’s trial indicated that inmates will attempt avoiding paying fees by utilizing deposits into another inmate’s account.

should not put money in L.C.'s account. L.C. stated that he heard D.K. discuss the issue with Randall and observed Randall strike D.K. and D.K. spray Randall with mace.

On June 22, Sergeant Rotta received a message from the jail that Randall wanted to speak with someone. Randall reported to Sergeant Rotta that D.K. "groped" his penis when he was in the shower. Sergeant Rotta attempted a follow-up question, but Randall terminated the interview. Once he had the information of an alleged assault by a staff member, Sergeant Rotta contacted the Pine County Sheriff's Office to eliminate the possibility of a conflict of interest.

The same day, Pine County Investigator Layon reviewed reports and video of the incident. The video showed D.K. enter an area where he is unobservable and return to view approximately 6-7 seconds later with Randall engaged in a fight. Investigator Layon interviewed Randall who reported that D.K. reached in the shower and "groped [his] penis and then maced [him]." Randall, again, refused to further discuss the matter.

Randall was charged with third- and fourth-degree assault. At Randall's trial, the jury heard testimony from D.K., CO Johnson, Coughlin, Sergeant Rotta, Investigator Layon, and L.C. The jury found Randall guilty as charged, and the district court sentenced him to 30 months in prison. This appeal followed.

D E C I S I O N

Jury instructions

Randall first challenges the district court's jury instructions. This court reviews "a district court's jury instructions for an abuse of discretion," and recognizes that the district court has "considerable latitude in selecting jury instructions." *State v. Peltier*, 874 N.W.2d

792, 797 (Minn. 2016). This court reviews the jury instructions in their entirety to determine if they “fairly and adequately explain the law.” *Id.*; *State v. Kuhnau*, 622 N.W.2d 552, 555-56 (Minn. 2001). An instruction is erroneous if it materially misstates the law, or confuses or misleads the jury on fundamental points of law. *State v. Larson*, 787 N.W.2d 592, 601 (Minn. 2010); *State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002). Even if a jury instruction is erroneous, it does not merit a new trial if the error was “harmless beyond a reasonable doubt.” *State v. Mahkuk*, 736 N.W.2d 675, 683 (Minn. 2007). “An error in jury instructions is not harmless and a new trial should be granted if it cannot be said beyond a reasonable doubt that the error had no significant impact on the verdict.” *State v. Pendleton*, 567 N.W.2d 265, 270 (Minn. 1997).

Randall requested a self-defense jury instruction. Although concluding that it was a “close question,” the district court gave the jury a self-defense instruction. The district court instructed the jury that self-defense means that Randall used force against D.K. to resist an assault. The district court instructed the jury that Randall was not guilty of a crime if he acted in self-defense and that the state had the burden of proving that Randall did not act in self-defense.

The district court also instructed the jury on authorized use of force, stating:

If any inmate . . . assaults any [CO] . . . the [CO] may use force in defense of the assault. If any inmate . . . resists the lawful authority of any [CO], [or] refuses to obey the [CO]’s reasonable demands . . . the [CO] may enforce obedience and discipline . . . by the use of force. If any inmate resisting lawful authority is wounded . . . by the use of force by the [CO] . . . that conduct is authorized under Minnesota Statute.

See Minn. Stat. § 243.52 (2014). Randall objected to this instruction, and now argues that the district court erred in instructing the jury on “authorized use of force” because the instruction was irrelevant, confusing, and allowed the jury to convict him even if the state failed to disprove self-defense.

Randall concedes that D.K. was “authorized to use force” to enforce discipline according to law, but claims that the district court “failed to clarify whether this ‘presumption’ was rebutted if [Randall] acted in self-defense because D.K.’s conduct was excessive or unreasonable.” Randall asserts that the jury was forced to presume that if D.K.’s use of force was authorized, Randall’s self-defense claim could not be considered.

Here, D.K. testified that he raised the money issue with Randall and Randall “verbally threaten[ed]” him. D.K. testified that Randall came out of the shower with his arm extended, “reaching and grabbing for” him, and yelling that he was going to “f---ing kill” D.K. D.K. testified that he grabbed Randall’s arm to control his reach.

Based on D.K.’s testimony, he made the first physical contact by grabbing Randall’s extended arm. The jury instruction on “authorized use of force” explained that this use of force was authorized if the jury believed that D.K. was defending against Randall or enforcing obedience. *See id.*

Because there was evidence that Randall accused D.K. of groping him, the district court instructed the jury on self-defense. A defendant has the burden of producing evidence to support his claim of self-defense. *State v. Penkaty*, 708 N.W.2d 185, 207 (Minn. 2006). If the defendant meets this burden, the burden shifts to the state to disprove one or more of the elements of self-defense beyond a reasonable doubt. *Id.*; see *State v. Columbus*, 258

N.W.2d 122, 123 (Minn. 1977) (stating that the burden of proof is on the state to convince the jury beyond a reasonable doubt that a defendant did not act in self-defense). Randall asserts that the “presumption of ‘authorized use of force’ in the jury instruction effectively obliterated [his] self-defense claim and/or removed the state’s burden to prove that [he] did not act in self-defense.” But the state presented evidence to disprove Randall’s self-defense claim.

L.C. reported that Randall was angry, but he did not state that Randall said anything about D.K. groping him. Other inmates in the cell block declined to make a statement. D.K. testified that he never groped Randall. Coughlin testified that immediately after the incident Randall was very agitated about being maced, but never complained that D.K. groped him. Sergeant Rotta similarly testified that shortly after the incident, Randall was agitated and shouting but never alleged that D.K. groped him.

It was not until the next day that Randall alleged that D.K. groped him. Sergeant Rotta testified that other than Randall’s statement, there was no evidence of a sexual assault. Investigator Layon testified that Randall’s report was “very vague” and stated that after watching the video, he was left with the impression “that [D.K.] was viciously attacked by . . . Randall while performing the duties of his job.” And D.K. testified that Randall later apologized to him for what transpired.

The jury was to determine whether (1) D.K. discussed the rule violation with Randall; Randall became upset, verbally threatened D.K., and emerged from the shower with his arm extended toward D.K.; D.K. grabbed Randall’s arm, which was an authorized use of force; and Randall struck D.K. in the face, or (2) D.K. groped Randall in the shower,

which was not an authorized use of force; and Randall acted in self-defense when he struck D.K. in the face. The jury instructions on authorized use of force and self-defense accurately described the law; thus, the district court's jury instructions were appropriate.

Mistrial

Randall moved for a mistrial following the direct examination of D.K. The district court denied the motion. Randall argues that the district court committed reversible error when it denied his motion. This court applies an abuse-of-discretion standard of review to a district court's denial of a motion for a mistrial. *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006).

A district court should grant a motion for a mistrial if there was an error or defect in trial procedure that would deny a defendant a fair trial. *Id.* "A mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different if the event that prompted the motion had not occurred." *Id.* (quotation omitted). When conducting the likelihood-of-prejudice analysis, this court considers both the event that prompted the mistrial motion in the context of the case and the presumably mitigating effect of the district court's curative jury instructions. *See State v. Budreau*, 641 N.W.2d 919, 926 (Minn. 2002) (presuming that jurors follow curative instructions); *State v. McNeil*, 658 N.W.2d 228, 232 (Minn. App. 2003) (considering whether impermissible testimony substantially affected the jury's decision).

Here, the district court ruled that it would not permit evidence regarding Randall's history of incarceration. The supreme court has determined that "references to *prior* incarceration of a defendant can be unfairly prejudicial." *Manthey*, 711 N.W.2d at 506.

Randall claims that D.K. twice referenced Randall's history of incarceration. Randall claims that the first reference occurred when the prosecutor asked D.K. if he knew Randall and D.K. answered, "Yeah. I've dealt with him throughout the years in the jail." Randall objected and the district court instructed the jury to disregard the answer. While this statement likely indicated that D.K. dealt with Randall in the jail while Randall was incarcerated, D.K. did not state that Randall was incarcerated when he dealt with him throughout the years in the jail. Randall could have been a visitor to the jail. Randall could have been brought to the jail, booked, and released. Randall concedes that his "criminal history was not specifically delineated." And the district court immediately corrected the reference by instructing the jury to disregard the statement. *See Budreau*, 641 N.W.2d at 926 (stating presumption that jurors follow the district court's instructions). The district court also twice asked Randall's attorney if he wished to have an additional curative instruction, which Randall's attorney declined.

Randall claims that the second reference occurred when D.K. testified that he wanted to discuss the money issue with Randall, intending to "tell him that it was an incident where we've discussed it before that he can't do that." The district court overruled Randall's objection to this testimony. The state followed up by asking D.K., "So, as you're aware, Mr. Randall had been previously specifically told putting money on other people's books is a rule violation?" D.K. agreed that Randall knew that this was a violation. The district court stated that this statement was not problematic because the state was allowed to elicit testimony regarding Randall's knowledge of the rule. Also, the jury was aware that Randall was incarcerated during the incident. D.K.'s statement that "we've discussed

it before” does not necessarily refer to a prior incarceration because the issue could have been discussed during Randall’s current incarceration. *See Manthey*, 711 N.W.2d at 506 (stating that “references to *prior* incarceration of a defendant can be unfairly prejudicial”). Because there is no reasonable probability that the result of the trial would have been different without these statements, the district court did not abuse its discretion by denying Randall’s motion for a mistrial.

Affirmed.