STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0879

State of Minnesota,
Respondent,

vs.

Curt Matthew Craven,
Appellant.

Filed April 16, 2018
Affirmed
Schellhas, Judge

Douglas County District Court
File No. 21-CR-16-1860

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

Thomas A. Jacobson, Alexandria City Attorney, Gregory F. Donahue, Assistant City Attorney, Alexandria, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Jesson, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges his misdemeanor assault conviction, arguing that he is entitled to a new trial because the district court erred by instructing the jury that he had a duty to retreat. We affirm.

FACTS

Appellant Curt Craven and J.P. were inmates at the Douglas County Jail. The jail had "two separate tiers," and a common area or "main day room" in the middle of the unit with a couch, television, chairs, and tables. Craven resided in the upper tier of the jail, and J.P. resided in the lower tier.

While Craven was in the common area and J.P. was locked in his lower-tier cell, J.P. called Craven derogatory names such as "chomo," which is prison slang for "child molester." J.P. also threatened to kill Craven. Correctional Officer (CO) Theodore Hellerman heard the commotion and removed Craven from the area. Craven then returned to his cell "for a lockdown" and decided to confront J.P. physically. According to Craven, he "planned" to assault J.P. because when "somebody threatens your life in [jail], that's all you have . . . and you don't know if they're going to take it seriously or not, so I just acted upon it before he could act upon it to me."

Later that night, Craven saw J.P. watching television in the common area and called to him. Although CO Hellerman told Craven to stop, Craven walked over to J.P. and began hitting J.P. in the head with a closed fist. J.P. did not fight back and instead curled into a

ball. Craven hit J.P. approximately a dozen times before CO Hellerman deployed a Taser on Craven to end the assault.

Respondent State of Minnesota cited Craven for misdemeanor assault. The district court conducted a jury trial on the charge and instructed the jury on self-defense. At the state's request and over Craven's objection, the court instructed the jury on the duty to retreat. The jury found Craven guilty of the charged offense and the court sentenced Craven to a stayed 60-day sentence. This appeal follows.

D E C I S I O N

Craven argues that the district court erred by instructing the jury on the duty to retreat. Whether the duty to retreat applies in a particular case is a question of law that we review de novo. *State v. Devens*, 852 N.W.2d 255, 257 (Minn. 2014).

A district court has "considerable latitude" in the selection of language for jury instructions. *State v. Gatson*, 801 N.W.2d 134, 147 (Minn. 2011) (quotation omitted). Jury instructions must "fairly and adequately explain the law of the case." *State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002). A jury instruction is in error if it "materially misstates the law." *Devens*, 852 N.W.2d at 257.

The right of self-defense under Minnesota law provides, in part, that reasonable force may be used upon another without the other's consent "when used by any person in resisting or aiding another to resist an offense against the person." Minn. Stat. § 609.06, subd. 1(3) (2016). The Minnesota Supreme Court has interpreted section 609.06, subdivision 1(3), to include the following four elements:

> (1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he or she was in imminent danger of . . . bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger.

Devens, 852 N.W.2d at 258 (quoting *State v. Basting*, 572 N.W.2d 281, 285−86 (Minn. 1997)). If a defendant meets the burden of going forward with evidence to support his self-defense claim, the state has the burden to disprove, beyond a reasonable doubt, one or more of the four elements. *Id.*

But evidence of the fourth element is not required when a defendant asserts that he or she acted in self-defense in his own home. *Glowacki*, 630 N.W.2d at 402. This exception to the duty to retreat, also known as the castle doctrine, is based on the principle that a person's home is a person's place of greatest safety, and the law therefore does not expect or require a person to retreat from his home. *Devens*, 852 N.W.2d at 258. In contrast, if a person is outside of his home and can safely retreat, the person's use of force is unreasonable as a matter of law. *Id.*

Craven asserts that because he was in jail, which "involves a controlled environment," whether he had access to his own room or the common room "was a function of the jail's rules and how they are applied in any given situation." Craven argues that the jail therefore was his home because he had no "'safe[] place' to go when threatened with bodily harm." He contends that because his "ability to seek refuge in [his] personal space is outside of [his] physical control, it was inappropriate to instruct the jury that [he] had a 'duty to retreat.'" We disagree.

In *Devens*, the defendant claimed self-defense regarding an incident that occurred in the shared hallway of his apartment complex. *Id.* The supreme court declined to extend the castle doctrine to the hallway and held that Devens had a duty to retreat into his apartment unit if reasonably possible before using physical force in self-defense. *Id.* at 259−60. Our supreme court reasoned that the duty to retreat "presumes there is somewhere safer to go—home." *Id.* at 258. While giving some consideration to the role of "exclusive possession and control" in determining the bounds of "home," the supreme court emphasized that the castle doctrine is founded on the principle that the home is a person's "sanctuary," "safest place," and "critical for the protection of the family." *Id.* at 258−59 (quotation omitted). The supreme court then cited approvingly to New York's limitation of the castle doctrine to "a house, an apartment or part of a structure where [one] lives and where others are ordinarily excluded—the antithesis of which is routine access to or use of an area by strangers." *Id.* at 259 (quoting *People v. Hernandez*, 774 N.E.2d 198, 203 (N.Y. 2002)).

Here, we acknowledge that a jail is a controlled environment. But the common area where the assault occurred is more akin to the apartment hallway in *Devens* than a "home." The common area is a place where inmates congregate to watch television and interact with one another. In contrast, Craven's cell is similar to the apartment in *Devens* that the supreme court concluded was Devens' "safest place"; it was Craven's living space where he slept and where others were ordinarily excluded. Because Craven's cell was his "safest place" to retreat, the castle doctrine did not apply, and the district court properly gave a duty-to-retreat jury instruction.

Even if the district court erred by giving the duty-to-retreat jury instruction, the error was harmless beyond a reasonable doubt. *See State v. Koppi*, 798 N.W.2d 358, 365 (Minn. 2011) (stating that a defendant is not entitled to a new trial if the erroneous jury instruction was harmless beyond a reasonable doubt). The record reflects that when Craven returned from his jail program, he saw J.P. sitting in the common area watching television with his back towards Craven. Despite CO Hellerman's warning to Craven to stop, Craven walked over to J.P. and repeatedly hit him in the head with a closed fist. The evidence shows that Craven was the aggressor and easily disproves the first self-defense element: "the absence of aggression or provocation on the part of the defendant." *Devens*, 852 N.W.2d at 258 (quotation omitted). The law is well settled that the state "need only disprove beyond a reasonable doubt at least one of the elements of self-defense." *State v. Radke*, 821 N.W.2d 316, 324 (Minn. 2012). Because the evidence that disproves the first self-defense element is overwhelming, any error in giving the duty-to-retreat jury instruction is harmless beyond a reasonable doubt.

Affirmed.