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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1096**

State of Minnesota,
Respondent,

vs.

John Lewis-Williams,
Appellant.

**Filed May 20, 2019
Reversed and remanded
Reilly, Judge**

Ramsey County District Court
File No. 62-CR-17-9223

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Lyndsey Olson, Saint Paul City Attorney, Steven E. Heng, Assistant City Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant argues that he is entitled to a new trial because the district court misstated the law when it gave the self-defense instructions to the jury. Because we determine that

the district court erred, and that the error is not harmless beyond a reasonable doubt, we reverse and remand.

FACTS

Respondent State of Minnesota charged appellant John Lewis-Williams with one count of misdemeanor domestic assault (harm) in violation of Minnesota Statutes section 609.2242, subdivision 1(2) (2016), in response to D.B.'s report that, on November 2, 2017, her boyfriend, Lewis-Williams, bit her after she refused to let him read her journal.¹ Before trial, Lewis-Williams filed a notice of his intent to assert self-defense. A jury trial was held on April 5 through 9, 2018. The state called four witnesses. Lewis-Williams testified in his defense.

According to Lewis-Williams, on November 2, he asked D.B. to give him their shared journal so he could read what D.B. wrote about their relationship issues. D.B. attempted to hand Lewis-Williams the journal, but when he reached for it, she pulled it back causing him to fall on top of her. At that point, D.B. grabbed Lewis-Williams and put him in a "half-nelson." Lewis-Williams testified that he was scared, he felt like he was in danger, and he felt like he could not breathe. Lewis-Williams bit D.B. so that she would let him go.

¹ Approximately two months later, the state charged two additional counts: misdemeanor domestic assault (fear) and disorderly conduct in violation of Minnesota Statutes sections 609.2242, subdivision 1(1), 609.72, subdivision 1(3) (2016).

Because the district court determined that Lewis-Williams had met his burden of production, the district court read a self-defense instruction to the jury before their deliberations. Ultimately, the jury found Lewis-Williams guilty of domestic assault.

This appeal follows.

DECISION

Lewis-Williams argues that he is entitled to a new trial because the district court erred in its jury instruction and that error is not harmless beyond a reasonable doubt. The state concedes that an error occurred and that it is unable to show that the error was harmless beyond a reasonable doubt. Even with the state's concession, this court must decide cases in accordance with the law. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990).

This court reviews a district court's jury instructions for an abuse of discretion. *State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016). Upon review, we consider whether the instructions, when taken as a whole, fairly and adequately explain the law. *State v. Pollard*, 900 N.W.2d 175, 178 (Minn. App. 2017). An instruction must not materially misstate the law, or confuse or mislead the jury on fundamental points of law. *Id.* Further, "if the court erred in its instructions, we review the error to determine whether it was harmless." *State v. Larson*, 787 N.W.2d 592, 601 (Minn. 2010). An erroneous jury instruction does not merit a new trial if the error was "harmless beyond a reasonable doubt." *Pollard*, 900 N.W.2d at 181 (quoting *State v. Mahkuk*, 736 N.W.2d 675, 683 (Minn. 2007)).

Minnesota law distinguishes between two different forms of self-defense. Minnesota Statutes section 609.06 provides 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) (2018). The elements of self-defense under section 609.06, subdivision 1(3), are

- (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.

State v. Devens, 852 N.W.2d 255, 258 (Minn. 2014). A claim of self-defense arising under section 609.06, subdivision 1(3), is reflected in the jury instruction in CRIMJIG 7.06, entitled "Self-Defense—Generally." 10 *Minnesota Practice*, CRIMJIG 7.06 (6th ed. 2018).

Alternatively, Minnesota statutes section 609.065 provides that a person may intentionally take a life when it is "necessary in resisting or preventing an offense which the actor reasonably believes exposes the actor or another to great bodily harm or death." Minn. Stat. § 609.065 (2018). The use of deadly force in self-defense is justified under sections 609.06 and 609.065, if the following factors are satisfied:

- (1) The killing must have been done in the belief that it was necessary to avert death or grievous bodily harm.
- (2) The judgment of the defendant as to the gravity of the peril to which he was exposed must have been reasonable under the circumstances.
- (3) The defendant's election to kill must have been such as a reasonable man would have made in light of the danger to be apprehended.²

² If the events occur outside of the defendant's home, there is also a "duty to retreat and avoid danger if reasonably possible." *Edwards*, 717 N.W.2d at 413.

State v. Edwards, 717 N.W.2d 405, 413 (Minn. 2006). A claim arising under this statutory section corresponds with the jury instruction in CRIMJIG 7.05, entitled “Self-Defense—Justifiable Taking of Life.” 10 *Minnesota Practice*, CRIMJIG 7.05 (6th ed. 2018).

At trial, the district court determined that Lewis-Williams had met his burden of production and was entitled to a self-defense instruction. Because deadly force is not at issue in this case, the district court read instructions that mirrored those provided in CRIMJIG 7.06. However, the district court concluded—over Lewis-Williams’s objection—that the law required proof that Lewis-Williams feared “great bodily harm” and read the following instruction:

The four elements of self-defense are:
One, an absence of aggression or provocation.
Two, an actual and honest belief that imminent death or **great bodily harm** would result.
Three, a reasonable basis existed for this belief.
Four, an absence of reasonable means to retreat or otherwise avoid the physical conflict.
The State, rather, can demonstrate that the defendant did not act in self-defense by negating any one of the four elements by proof beyond a reasonable doubt.

(emphasis added). Lewis-Williams argues that the instruction materially misstates the law by indicating that his use of force could only be justified if he reasonably feared great bodily harm, rather than simply bodily harm.

This court has addressed a similar issue in *Pollard*, 900 N.W.2d at 177. Pollard was charged with intentional second-degree murder and second-degree felony murder, but

claimed that the resulting death was accidental rather than intentional.³ *Id.* The district court read CRIMJIG 7.06, instructing the jury that appellant had to have acted “in the belief that it was necessary to avert death or great bodily harm.” *Id.* at 178. This court explained that the justifiable-taking-of-life instruction was inappropriate—and misstated the law—because it required the jury to find a greater fear-of-harm requirement than that requirement under the law. *Id.* at 180. Though the facts in *Pollard* are distinguishable, the underlying principle remains persuasive. Accordingly, we determine that the jury instruction in this case was erroneous.

We next turn to the question of whether the jury instructions were harmless beyond a reasonable doubt. Here, as the state concedes, it is possible that the jury may have reached a different verdict if the jury had been properly instructed on self-defense. We note that the definitions for bodily harm and great bodily harm differ significantly. Minnesota law defines “bodily harm” as “physical pain or injury, illness, or any impairment of physical condition.” Minn. Stat. § 609.02, subd. 7 (2018). Whereas “great bodily harm” is “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” *Id.*, subd. 8 (2018).

³ The jury instructions note that when a death is accidental the more general CRIMJIG 7.06 should be used rather than CRIMJIG 7.05. The Minnesota Supreme Court has repeatedly stated that it is error to provide the justifiable-taking-of-life instruction, instead of the general self-defense instruction, when the defendant asserts self-defense but claims that the death was not the intended result. *See e.g. State v. Carridine*, 812 N.W.2d 130, 143-44 (Minn. 2012) (concluding that the justifiable-taking-of-life instruction was given in error where the defendant's defense was that the death was unintended).

Because the error in the jury instructions went directly to the fear-of-harm requirement for Lewis-Williams's defense, it is possible on these facts that the jury convicted Lewis-Williams even if it believed his version of events. *See State v. Huber*, 877 N.W.2d 519, 527 (Minn. 2016) (providing that an error in jury instructions affected appellant's substantial rights where the jury "could have believed [appellant's] version of events and yet still convicted him because of these errors"). More specifically, the jury could have believed that Lewis-Williams bit D.B. because he could not breathe—constituting physical pain or an impairment of physical condition—but still convicted Lewis-Williams because it found that he did not have a sufficient basis to fear "great bodily harm." Because the error in this case prevented the jury from fully considering Lewis-Williams's defense that he bit D.B. because he feared bodily harm, we cannot conclude that the erroneous jury instruction is harmless beyond a reasonable doubt.⁴

Reversed and remanded.

⁴ Lewis-Williams also raises additional arguments regarding the admissibility of two witnesses' trial testimony. We decline to address these arguments for three reasons. First, because we reverse and remand based on the district court's erroneous jury instructions, we need not reach the question of whether the district court erred in its evidentiary rulings. Second, we note that when the evidence was admitted at trial, the defense did not object on hearsay grounds. The supreme court has previously held that given "[t]he number and variety of exceptions to the hearsay exclusion ... objections to such testimony [are] particularly important to the creation of a record of the [district] court's decision-making process in either admitting or excluding a given statement." *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). Third, the admissibility of the relationship evidence may be relitigated by the parties on remand. Therefore an opinion issued by this court regarding the admissibility of the relationship evidence would be advisory in nature. *See State v. Her*, 781 N.W.2d 869, 876 (Minn. 2010) (noting that appellate courts avoid advisory opinions).