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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1872**

State of Minnesota,
Respondent,

vs.

Jacob Colt Johnson,
Appellant.

**Filed December 23, 2024
Affirmed in part, reversed in part, and remanded
Frisch, Judge**

Cook County District Court
File No. 16-CR-21-180

Keith Ellison, Attorney General, Thomas R. Ragatz, Assistant Attorney General, St. Paul, Minnesota; and

Molly Hicken, Cook County Attorney, Grand Marais, Minnesota (for respondent)

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

Considered and decided by Frisch, Presiding Judge; Smith, Tracy M., Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

In this direct appeal, appellant seeks reversal of his second-degree murder conviction, arguing that the state offered insufficient evidence to prove that he did not kill the victim in self-defense or defense of others. Alternatively, appellant argues that he is

entitled to a new trial because the district court abused its discretion by excluding testimony that the victim used methamphetamine on the night he was killed and expert testimony on the cognitive and behavioral effects of methamphetamine. Finally, appellant argues, and the state concedes, that his conviction for a lesser-included offense must be vacated. We affirm the second-degree murder conviction because the evidence is sufficient to show that the state disproved that appellant acted in self-defense or defense of others and that any improper exclusion of testimony was harmless, but we reverse and remand to vacate appellant's conviction for a lesser-included offense.

FACTS

Respondent State of Minnesota charged appellant Jacob Colt Johnson with second-degree intentional murder pursuant to Minn. Stat. § 609.19, subd. 1(1) (2020). The state later added a count of second-degree felony murder pursuant to Minn. Stat. § 609.19, subd. 2(1) (2020). The following facts were elicited at Johnson's jury trial.

On June 19, 2021, Johnson, R.B., and M.B. drove to the Twin Cities from the Duluth area. Johnson and M.B. had previously been in a romantic relationship for 12 years and have a child together. Johnson and R.B. were childhood friends. The group arrived at a rental property in Minneapolis. Johnson showered, leaving R.B. and M.B. alone in the living room. While M.B. called her child, R.B. stood next to her and told her he was going to "torture you and her both." M.B. relayed this statement to Johnson, but Johnson was unconcerned and stated that R.B. was "just tripping." M.B. testified that she believed that both Johnson and R.B. were using drugs that night.

The group returned to the car and drove to pick up M.P. Johnson and R.B. began “bickering” about drugs. After picking up M.P., the group stopped at a gas station then resumed driving. Johnson and R.B. continued arguing. Johnson pulled into a parking lot and told R.B. to get out of the car, but R.B. refused. While the group was in the parking lot, R.B. stated he was “waiting on somebody” and that he would kill Johnson and M.B. After about 20 minutes in the parking lot, Johnson, R.B., and M.P. got back in the car, and the group left with M.B. driving, Johnson in the front passenger seat, and R.B. sitting behind the driver’s seat.

While M.B. was driving, R.B. had a knife which he was waving near M.B.’s neck and Johnson. R.B. told Johnson that he was “going to kill the only thing [Johnson] ever loved.” The conflict continued while M.B. continued driving. At some point, Johnson told R.B. to put the knife down. Johnson then shot R.B. four times through the car seat, paused, and shot R.B. three more times without the seat between him and R.B. R.B. sustained seven total gunshot wounds to his body, and the medical examiner determined that these wounds caused R.B.’s death. M.B. and M.P. ran from the scene.

After Johnson shot R.B., he drove to R.W.’s home with R.B.’s body in the car. When R.W. saw R.B.’s body in the back of the car, he asked if Johnson was “all right” and Johnson responded: “I’m okay with it. He was going to kill every one of us.” R.W. advised Johnson to go to the police, but Johnson refused. Later that day, R.W. and Johnson brought Johnson’s car and R.B.’s vehicle to a secluded location. Johnson used a saw to dismember R.B.’s body. While Johnson dismembered R.B.’s body, R.W. burned things that Johnson handed to him. Johnson put the pieces of R.B.’s body into buckets and then

poured concrete into the buckets. Johnson and R.W. discussed “what else needed to be done to make sure there was no evidence,” and Johnson brought up giving M.P. a lethal dose of drugs. R.W. later sank the buckets containing R.B.’s body and the saws in a lake. Johnson gave another witness a backpack after the shooting which was eventually given to R.W. When R.W. looked in the backpack, he discovered a gun which he dismantled and threw in Lake Superior.

In his defense at trial, Johnson offered the testimony of his and R.B.’s childhood friend, S.V. S.V. testified that Johnson called him twice the night that R.B. was shot. During the first call, Johnson seemed “normal.” When Johnson called S.V. a few hours later, S.V. spoke to Johnson on speakerphone in the car. Johnson seemed “panicked” and told S.V. that R.B. was trying to kill and torture him. S.V. heard R.B., M.B., M.P., and Johnson in the background “screaming and crying.” S.V. testified that R.B. sounded angry and that S.V. told R.B. he (R.B.) was “tripping” and should let M.B. and M.P. out of the car. At one point, R.B. said, “Don’t reach for that. You know I’ll let this motherf--ker go.” S.V. heard gunshots, and the phone call disconnected. Just before the gunshots, S.V. heard screaming and someone say, “Stop, please, no, no, please, stop.”

The jury found Johnson guilty of second-degree intentional murder and second-degree unintentional murder. The jury also made findings to support an upward sentencing departure—that R.B. was dismembered and that Johnson participated in the dismemberment, and that R.B.’s body was concealed and Johnson participated in the concealment. The district court sentenced Johnson to 480 months’ imprisonment.

Johnson appeals.

DECISION

Johnson challenges his conviction on three grounds, arguing that (1) the state's evidence was insufficient to prove that he did not kill the victim in self-defense or defense of others; (2) the district court abused its discretion by excluding evidence regarding the victim's methamphetamine use and about the cognitive and behavioral effects of methamphetamine; and (3) the district court erroneously convicted him of a lesser-included offense. We address each argument in turn.

I. The state's evidence is sufficient to disprove beyond a reasonable doubt that Johnson acted in self-defense.

Johnson asserts that his conviction must be reversed because the state failed to disprove that he acted in self-defense or in defense of others when he shot R.B. We disagree.

The elements of self-defense include: “(1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that [they were] 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) (quotation omitted). And a self-defense or defense-of-others claim also requires that “[t]he degree of force used in self-defense must not exceed that which appears to be necessary to a reasonable person under similar circumstances.” *State v. Baker*, ___ N.W.3d ___, ___, 2024 WL 4758352, at *5 (Minn. Nov. 13, 2024) (quotation omitted). A defense-of-others claim modifies the duty-to-retreat element of a self-defense claim so that “a defendant must subjectively believe that the

person in peril has no reasonable possibility of safe retreat, and that belief must be objectively reasonable based on the information available to the defendant at the time that they use force to defend the person in peril.” *State v. Valdez*, 12 N.W.3d 191, 199 (Minn. 2024). When a defendant meets their burden to support a self-defense or defense-of-others claim, “the State may disprove the claim by disproving any of the four elements or by disproving that the degree of force used was reasonable.” *Baker*, 2024 WL 4758352, at *5.

Viewing the evidence in the light most favorable to the verdict, we conclude that the state disproved beyond a reasonable doubt that Johnson used a reasonable amount of force when he shot and killed R.B. *See State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016); *State v. McKissic*, 415 N.W.2d 341, 344 (Minn. App. 1987) (reviewing an argument that the state failed to disprove appellant was acting in self-defense for sufficiency of the evidence).

The parties dispute the standard of review to determine the sufficiency of the state’s reasonable-use-of-force evidence. But we need not resolve this issue because we conclude that Johnson’s argument fails under the more burdensome circumstantial-evidence test. In applying that test, we use a “heightened two-step standard,” first identifying the circumstances proved by the state and second considering whether those circumstances “are consistent with guilt and inconsistent with any rational hypothesis other than guilt.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted).

The circumstances proved relevant to the reasonableness of Johnson’s use of force include: (1) that he shot R.B. seven total times; (2) that he first shot R.B. four times through

a car seat; (3) that he paused between the fourth and fifth shot; (4) that he moved the position of his gun and shot R.B. three additional times without obstruction; and (5) that he shot R.B. from the front seat while R.B. was in the back seat. Johnson does not challenge these circumstances proved but contends that this use of force was necessary to prevent harm to himself or the other passengers in the car. But these circumstances proved are consistent with the reasonable conclusion that Johnson used an unreasonable amount of force when he shot and killed R.B. *State v. Buchanan*, 431 N.W.2d 542, 548 (Minn. 1988) (holding that a jury could have reasonably concluded that the defendant would not have had a reasonable belief of peril when the defendant inflicted a “mortal wound,” the victim lay weaponless on the ground, and the defendant paused for at least 30 seconds before shooting the victim again); *State v. Sanford*, 450 N.W.2d 580, 585 (Minn. App. 1990) (concluding that a jury could reasonably conclude that the state disproved the second and third self-defense elements when the defendant stabbed the victim six times and then shot him), *rev. granted* (Minn. Feb. 28, 1990) *and ord. granting rev. vacated* (Minn. Mar. 22, 1990). And Johnson has not put forth any hypothesis—rational or not—other than guilt, or identified other circumstances proved that demonstrate that shooting R.B. seven times at close range, with a pause between shots four and five when Johnson repositioned the gun, was a reasonable use of force when R.B. was only armed with a knife. *See Loving*, 891 N.W.2d at 643.

Thus, we conclude that the state disproved beyond a reasonable doubt that Johnson responded to R.B.’s threats with a reasonable amount of force, and therefore that the

evidence is sufficient to disprove beyond a reasonable doubt that Johnson acted in self-defense or defense of others.¹

II. Any abuse of discretion by the district court in excluding testimony was harmless.

Johnson next argues that the district court abused its discretion in excluding testimony from (1) a lay witness that R.B. used methamphetamine on the night Johnson shot him and (2) an expert witness about the general effects of methamphetamine. We review a district court's evidentiary rulings, including the admissibility of expert testimony, for an abuse of discretion. *State v. Thao*, 875 N.W.2d 834, 840 (Minn. 2016); *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014); *see also State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017) ("We review a district court's evidentiary rulings for abuse of discretion, even when, as here, the defendant claims that the exclusion of evidence deprived him of his constitutional right to a meaningful opportunity to present a complete defense.").

A. Lay Witness Testimony About Methamphetamine Use

During trial, Johnson sought to elicit testimony from the state's witness, K.M., regarding R.B.'s methamphetamine use on the day Johnson shot him. In an offer of proof, K.M. testified that Johnson and R.B. stopped at her home on the night of the incident and that she and R.B. consumed methamphetamine together. K.M., a methamphetamine user,

¹ Because we conclude that the state disproved that Johnson used reasonable force, we decline to reach the other elements of his self-defense and defense-of-others claims. *See State v. Radke*, 821 N.W.2d 316, 324 (Minn. 2012) (noting that the state only needs to disprove one element of self-defense).

also agreed that when people use methamphetamine, their anger and paranoia can be heightened.

The district court precluded Johnson from questioning K.M. on these two topics in front of the jury because that testimony constituted impermissible character evidence and because there were witnesses in the car at the time Johnson shot R.B. who could testify about R.B.'s behaviors. In excluding K.M.'s testimony about the general effects of methamphetamine, the district court stated that the testimony "probably would have come in" if it were about alcohol because "people have a broad understanding of how alcohol impacts people," but that the "impact of methamphetamine is far different." We assume without deciding that the district court abused its discretion in excluding this testimony but conclude that any abuse of discretion was harmless.

Johnson argues that this testimony was relevant to the jury's determination because it would have corroborated other evidence showing that R.B. was behaving in an erratic and threatening manner and illuminated the reasonableness of his apprehension of danger in the car. Assuming that the exclusion of this evidence prevented Johnson from presenting a complete defense, we will sustain his conviction "only if the exclusion of evidence was not harmless beyond a reasonable doubt." *Zumberge*, 888 N.W.2d at 694. And "[a]n error in excluding [defense] evidence is harmless only if the reviewing court is satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, a reasonable jury would have reached the same verdict." *State v. Olsen*, 824 N.W.2d 334, 340 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Feb. 27, 2013).

We conclude that the district court's exclusion of this evidence is harmless for three reasons. First, the evidence of R.B.'s methamphetamine use was presented to the jury, including testimony from the medical examiner that R.B. had methamphetamine in his blood when he died. Second, the jury heard direct evidence about R.B.'s behavior on the night of the incident from a witness who was in the vehicle leading up to and when Johnson shot him. The information about methamphetamine use might have been helpful circumstantial evidence of R.B.'s behavior, but it was not the jury's only means to understand the conflict in the car that led Johnson to shoot R.B. And the state did not argue at trial that R.B. was not acting erratically or that he did not threaten Johnson and the others in the car. Third, the evidence that Johnson used an unreasonable amount of force is unaffected by the evidence Johnson sought to elicit from K.M. Because the state need disprove only one element of self-defense and the evidence is sufficient to show that Johnson used an unreasonable amount of force, we conclude that the exclusion of K.M.'s testimony was harmless.

B. Expert Witness Testimony About Methamphetamine Use

Johnson also argues that the district court abused its discretion in excluding expert testimony about the general effects of methamphetamine use. The district court excluded this testimony on similar grounds discussed above. An expert witness may testify about their specialized knowledge if such specialized knowledge “will assist the trier of fact to understand the evidence or to determine a fact in issue.” Minn. R. Evid. 702. All expert testimony “must comply with Minn. R. Evid. 402 and 702; that is, it must be relevant,

helpful to the trier of fact, and given by a witness qualified as an expert.” *State v. MacLennan*, 702 N.W.2d 219, 230 (Minn. 2005).

We conclude that the district court did not abuse its discretion in excluding the expert-witness testimony because the testimony would not have helped the jury assess Johnson’s self-defense claim. Again, the jury had an opportunity to hear direct evidence of R.B.’s behavior in the car before Johnson shot him and did not need to make inferences about his behavior based on his earlier drug use. And as with K.M.’s testimony, the expert testimony was not sufficiently connected to Johnson’s use of force to alter the jury’s conclusion that he used an unreasonable amount of force when he shot R.B.² Thus, we conclude that the district court did not abuse its discretion in excluding Johnson’s expert witness.

² Johnson relies upon several Minnesota and foreign authorities that are unavailing. These cases allow for expert testimony about the effects of methamphetamine when that testimony is relevant to assessing a voluntary intoxication defense, a defendant’s intent, or witness credibility, but do not support a conclusion that such testimony would have helped the jury in this case. *See State v. Reese*, 692 N.W.2d 736, 740-42 (Minn. 2005) (recognizing that expert testimony about the effects of drug use can aid the jury in assessing a witness’s credibility, but nonetheless concluding that the district court acted within its discretion in precluding an expert from testifying to past general effects); *State v. Voorhees*, 596 N.W.2d 241, 249-51 (Minn. 1999) (concluding that expert testimony about the effects of multiple drugs on a person was relevant and helpful to the trier of fact to assess whether the defendant was involuntarily intoxicated); *see also People v. Cox*, 221 Cal. App. 3d 980, 990-91 (Cal. Ct. App. 1990) (concluding that expert testimony about the effects of methamphetamine may have been useful to a jury in assessing a voluntary intoxication defense); *State v. Sloan*, 453 P.3d 401, 415 (N.M. 2019) (noting that expert testimony about the “physiological and cognitive effects of methamphetamine” was possibly relevant to the defendant’s ability to form the requisite intent for a crime).

III. We reverse Johnson’s conviction for a lesser-included offense.

Finally, we address Johnson’s argument that, under Minn. Stat. § 609.04, subd. 1 (2020), his second-degree felony murder conviction must be vacated because it is a lesser-included offense of second-degree intentional murder. Under Minn. Stat. § 609.04, subd. 1, a person “may be convicted of either the crime charged or an included offense, but not both.” “Second-degree felony murder is a lesser-included offense of second-degree intentional murder.” *State v. Lory*, 559 N.W.2d 425, 426, 428-29 (Minn. App. 1997), *rev. denied* (Minn. Apr. 15, 1997). Because the district court should not have entered a conviction on the second-degree felony-murder charge, we reverse and remand to the district court to vacate the second-degree felony-murder conviction, leaving the finding of guilt in place.

Affirmed in part, reversed in part, and remanded.