STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1136

State of Minnesota,
Respondent,

vs.

Tatianna Charlene Schmid,
Appellant.

Filed July 1, 2024
Reversed and remanded
Jesson, Judge[*]

Blue Earth County District Court
File No. 07-CR-21-3814

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

Mitchell S. Sell, Anneliese McCahery, Mankato City Attorneys, Eckberg Lammers, Stillwater, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Bratvold, Judge; and Jesson, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Tatianna Charlene Schmid appeals her conviction of misdemeanor fifth-degree assault in violation of Minn. Stat. § 609.224, subd. 1(2) (2020). At trial, Schmid testified that she only participated in the underlying altercation after an unprovoked attack. She requested a self-defense instruction. While the state did not object to the instruction, the district court denied the request. On appeal, Schmid argues that she is entitled to a new trial because the district court abused its discretion by denying her request for a self-defense jury instruction. We conclude that Schmid met her burden of production and therefore was entitled to such an instruction. Because this error was not harmless, we reverse and remand for a new trial.

FACTS

On October 13, 2021, Schmid and E.B. got into a physical altercation in a parking lot outside an apartment complex. E.B. called the police and reported that Schmid had started the fight. Schmid was subsequently charged with one count of misdemeanor fifth-degree assault. *See* Minn. Stat. § 609.224, subd. 1(2) (providing that a person is guilty of misdemeanor assault if they "intentionally inflict[] or attempt[] to inflict bodily harm upon another"). Prior to trial, Schmid filed a notice of her intention to assert self-defense. A one-day jury trial was then held at which respondent State of Minnesota and Schmid presented two different accounts of what occurred.

The state, through the testimony of E.B., E.B.'s mother, and the police officer who responded to the scene, presented the following version of events.

On the day of the incident, E.B. drove to her mother's apartment to drop off various items she bought at the store. As she was making her way into the building, she saw Schmid walking with a friend. Schmid asked E.B., "What's up?" in a tone of voice that "wasn't . . . very nice." E.B. interpreted Schmid's comment to mean "I want to fight you." Although E.B. had not met Schmid prior to that day, she recognized Schmid from social media. The pair had previously been friends on snapchat, but their virtual friendship ended after Schmid sent E.B. "nasty" messages when she saw a picture of E.B. with the father of her child.

E.B. continued to her mother's apartment where she spent about 20 minutes before returning to her car. While sitting in the car, E.B. saw Schmid and her friend exit the apartment building and walk towards her. As the pair walked by, Schmid threw something at E.B.'s car. E.B. called her mother and got out to check her car for damage. After she checked her car, E.B. approached Schmid and asked, "why she would . . . throw an object at [her] car." Instead of responding, Schmid "swung at" her. E.B. tried to step away, but Schmid's friend punched her. As E.B. "fought back," Schmid pulled E.B.'s hair and kicked her until she fell to the ground. Schmid and her friend continued to attack E.B. as she lay on the ground and only stopped when E.B.'s mother appeared.

E.B.'s mother had remained on the phone with E.B. and heard the entire altercation. After hearing E.B. scream and say, "Mamma and Mom," she ran out to the parking lot. It was there that she saw E.B. "on the floor, [being] beaten up by two girls." While E.B.'s mother did not see who started the fight, she did see one of the women "holding [E.B.'s]

hair and kicking and punching" her. E.B.'s mother later identified one of the women as Schmid.

Once E.B.'s mother appeared, Schmid and her friend left the scene, walked to their car, which was parked on the other side of the lot, and drove away. At her mother's insistence, E.B. called 911 and reported the incident. E.B. told the 911 dispatcher that she had been "assaulted" by her mother's neighbors and had so much "hair pulled out" that it created a bald spot the size of a quarter on her head. A police officer was dispatched to the scene. As he pulled up to the apartment, he saw a car containing two women drive past him in the opposite direction. The officer later identified one of the women as Schmid.

When the officer arrived on scene, "[E.B.] was crying . . . [and] she had lots of hair in her hand." She told the officer that "she had come to see her mother, had . . . ran into [Schmid]" and got into "a dispute over some communication [about] boyfriends." E.B. said that "[Schmid] and another female assaulted her." The officer noted that E.B. was "distraught," and along with the hair that had been pulled out of her head, also had "superficial scratches on her face."

Schmid then testified in her own defense. Her version of events follows.

On the day of the incident, Schmid went to the apartment complex that both the father of her child and her friend lived in because the father of her child agreed to babysit while Schmid and her friend went out for the night. After dropping off her child, Schmid and her friend left the building and walked past E.B., who was sitting in her car. As they walked by, E.B. said, "what's up" to them in a "hostile" manner. Schmid—who claims she had never met E.B. prior to that day and did not recall being friends with her on social

media—did not "understand what [E.B.'s] issue was." The trio "exchanged a few words" before Schmid and her friend turned around to walk away. It was at this point that E.B. "got out of her car and punched [Schmid] in the back of [her] head." Schmid, who was dizzy from the punch, turned around to face E.B. a couple seconds later. E.B. attacked her again, so Schmid pulled E.B.'s hair to "protect [her]self and get [E.B.] off of [her]." Schmid only let go of E.B.'s hair when E.B. stopped hitting her.

After E.B.'s mother came out, Schmid tried to explain that she did not start the fight. The mother did not believe her. Schmid and her friend then walked to their car and drove off. She chose not to call the police because it "was [her] only night out," and she "just wanted to proceed with [her] evening."

Once both Schmid and the state were done presenting evidence, Schmid moved for a self-defense jury instruction to be given. The state did not object to Schmid's motion, stating that when "the defendant testifies [that they acted in self-defense] it is a relative[ly] low burden to get the [jury] instruction." The district court, however, denied the request, and the jury subsequently found Schmid guilty of misdemeanor fifth-degree assault.

This appeal follows.

DECISION

Under Minnesota law, a person who "reasonably believes that force is necessary" may act in self-defense if they only use a level of force that is reasonably necessary to prevent bodily harm. *State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014) (citing Minn. Stat. § 609.06, subd. 1(3) (2020)). But when a defendant wants to argue self-defense, they have the burden of producing evidence in support of that claim. *State v. Basting,* 572

N.W.2d 281, 286 (Minn.1997). If a defendant meets this burden of production and presents enough evidence to "make the defense one of the issues of the case," they are entitled to a self-defense jury instruction. *State v. Charlton*, 338 N.W.2d 26, 29 (Minn. 1983).

Once a defendant meets their burden of production, the state then has the burden to prove beyond a reasonable doubt the absence of at least one of the elements of self-defense. *Basting*, 572 N.W.2d at 285. Those elements 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.

Id.; *see also Devens*, 852 N.W.2d at 258 (quoting this aspect of *Basting*). Any doubts that arise regarding the validity of a self-defense claim should be resolved in favor of the defendant and in favor of providing a self-defense jury instruction. *State v. Johnson*, 719 N.W.2d 619, 631 (Minn. 2006).

Schmid argues on appeal that the district court abused its discretion by denying her the opportunity to instruct the jury on self-defense. We give district courts considerable latitude in crafting jury instructions and in determining the appropriateness of giving a specific instruction. *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002). Given this broad discretion, appellate courts will not reverse a defendant's conviction due to an improper jury instruction unless the district court abused its discretion. *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). A district court abuses its discretion if it denies a defendant's request for a jury instruction on their theory of the case

if they have presented sufficient evidence to support it. *Johnson*, 719 N.W.2d at 631. However, an erroneous jury instruction does not automatically require a new trial. *State v. Hall*, 722 N.W.2d 472, 477 (Minn. 2006). If we can conclude beyond a reasonable doubt that an error in the jury instructions "had no significant impact on the verdict rendered," we will consider the error harmless and will affirm. *Id.*

I. The district court abused its discretion by denying Schmid's motion to give a self-defense jury instruction.

Here, the district court determined that Schmid had not met her burden of production. It acknowledged that a fact issue existed as to who the initial aggressor was given the conflicting testimony from E.B. and Schmid. But the court determined that Schmid did not present evidence of "having an actual and honest belief that she had imminent death or great bodily harm from her interaction with [E.B.],"[1] and did not testify that she "had any fear." Additionally, the court noted that there was no evidence presented

[1] We note that the district court improperly relied on the standard for lethal self-defense, which was not at issue here. The use of deadly force in self-defense is justified when:

> (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.

State v. Pollard, 900 N.W.2d 175, 178-79 (Minn. App. 2017) (emphasis added). But the supreme court has explained that "a person may use nonlethal self-defense when he or she is under the 'actual and honest belief that he or she was in *imminent danger of* . . . bodily harm.'" *State v. Lampkin*, 994 N.W.2d 280, 288 (Minn. 2023) (quoting *Devens*, 852 N.W.2d at 258 (emphasis added).

about Schmid's efforts to retreat or disengage from the altercation before using force against E.B.

We disagree with the district court's analysis. To meet her burden of production, Schmid needed only to submit "reasonable evidence that [E.B.] was committing an independent assault on [her] at the time" she grabbed E.B.'s hair. *State v. Graham*, 371 N.W.2d 204, 209 (Minn. 1985) (quotation omitted). In other words, Schmid had to "present a sufficient threshold of evidence to make the defense one of the issues of the case." *Charlton*, 338 N.W.2d at 29. Schmid met this burden.

E.B. and Schmid each testified that the other was the initial aggressor. And Schmid told the jury that she was punched in the back of her head by a person, E.B., who she claimed she had never met before. It is reasonable to infer that someone in this situation would have an actual and honest belief that they were in imminent danger of bodily harm. *See Johnson*, 719 N.W.2d at 630-31 (stating that a defendant's "actual and honest belief that [she] was in imminent danger of . . . bodily harm," is subjective and "depends upon the defendant's state of mind," so they do not need to "testify and provide direct evidence of [her] state of mind"). Finally, according to Schmid, she only engaged with E.B. to "protect [her]self." Schmid's testimony sufficiently made self-defense an issue that should have been presented to the jury. *See Charlton*, 338 N.W.2d at 29.

The state argues that we should affirm Schmid's conviction because "the record is devoid of any evidence suggesting she lacked an ability to retreat." Yet caselaw does not require a defendant asserting self-defense to prove every element to meet their burden of production. *Graham*, 371 N.W.2d at 209. It merely requires that a defendant "submit[]

reasonable evidence that the victim was committing an independent assault on [the] defendant at the time [the] defendant" acted in self-defense. *Id* (quotation omitted). Once a defendant puts the defense at issue, they are entitled to a jury instruction, and *the state* then "bears the burden to disprove, beyond a reasonable doubt, one or more of the four elements" of self-defense. *Devens*, 852 N.W.2d at 258.[2] And we reiterate that if the question as to whether a defendant has met their burden of production, these doubts should be resolved in favor of the defendant and in favor of providing a self-defense jury instruction. *Johnson*, 719 N.W.2d at 631.

Thus, because Schmid produced enough evidence to meet her burden of production, she was entitled to a self-defense jury instruction. The district court abused its discretion by refusing to provide one.

II. The district court's failure to instruct the jury on self-defense was not harmless.

Because we have determined that Schmid was entitled to a self-defense jury instruction, we must now evaluate whether the lack of such an instruction entitles her to a new trial.[3]

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[2] We could not find any Minnesota caselaw in which an appellate court affirmed the denial of a self-defense jury instruction *solely* on the basis that a defendant had not shown that they had no reasonable possibility of retreat. While a factual situation may arise that warrants such a finding, we reiterate that "the law requires . . . a person retreat if reasonably possible before acting in self-defense," *id,* and usually "a reasonableness determination is properly made by the finder of fact—in this case, the jury." *State v. Glowacki*, 630 N.W.2d 392, 403 (Minn. 2001).

[3] We note that, on appeal, the state argued only that Schmid did not meet her burden of production and therefore was not entitled to a self-defense jury instruction. The state did

Arguing self-defense was central to Schmid's trial strategy. Her decision to testify was likely based on the consideration that, to assert such a defense, she needed to tell the jury her version of events and this included an admission that she grabbed E.B.'s hair. Once the district court denied Schmid's request for a self-defense instruction, in its closing argument the state correctly informed the jury that Schmid's own testimony produced evidence that established the elements of assault. As the prosecutor stated, "Schmid admitted to being at the apartment on October 13th and she admitted to pulling [E.B.'s] hair. Those elements have been met."

Without the option to consider self-defense, the jury was forced to either find Schmid guilty or find her not guilty even though she admitted to assaulting E.B. And the supreme court has previously determined that if the district court's jury instructions create a situation in which the jury is given only the options of finding a defendant guilty or of finding them not guilty *despite the fact* that they admitted to conduct that satisfied certain elements of the charged crime, an error in said jury instructions is not harmless. *Cf. State v. Dahlin*, 695 N.W.2d 588, 601 (Minn. 2005) (reversing and remanding for a new trial when a jury was essentially forced "to choose between convicting [the defendant] of premeditated murder and acquitting him of a crime *for which the evidence clearly suggested he was responsible-at least to some degree*" (emphasis added)); *Johnson*, 719 N.W.2d at 632 ("The refusal to provide the heat-of-passion and self-defense instructions provided the jury with no option other than guilt. Without the requested instructions, a jury

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not, however, address the issue of whether the failure to give such an instruction was harmless error, which would entitle Schmid to a new trial on remand.

following the law would have been required to return a guilty verdict even if it believed that [the defendant] was acting in the heat of passion or in self-defense. Therefore, we consider that the errors were prejudicial and [the defendant] is entitled to a new trial.").

Accordingly, because we cannot conclude beyond a reasonable doubt that the lack of a self-defense instruction here "had no significant impact on the verdict rendered," *Hall*, 722 N.W.2d at 477, we reverse Schmid's conviction and remand for a new trial.

Reversed and remanded.