STATE OF MINNESOTA

IN SUPREME COURT

A22-0432

Court of Appeals

Chutich, J.
Dissenting, Thissen, Procaccini, JJ.
Took no part, Hennesy, J.

State of Minnesota,

Respondent,

vs.

Filed: July 31, 2024
Office of Appellate Courts

Earley Romero Blevins,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant State Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. The duty to retreat when reasonably possible—a judicially created element of self-defense—applies to persons who claim they were acting in self-defense when they committed the felony offense of second-degree assault-fear with a device designed as a weapon and capable of producing death or great bodily harm.

2. When viewed in a light most favorable to the verdict, the evidence presented at trial disproves, beyond a reasonable doubt, the defendant's claim that he lacked a reasonable opportunity to retreat.

Affirmed.

O P I N I O N

CHUTICH, Justice.

This case presents a narrow issue of first impression—whether the duty to retreat when reasonably possible, a judicially created element of self-defense long established by our court, applies to a person who claims they were acting in self-defense when they committed the felony offense of second-degree *assault-fear* with a dangerous weapon. For this decision, a dangerous weapon is limited to a "device designed as a weapon and capable of producing death or great bodily harm."[1] Minn. Stat. § 609.02, subd. 6 (2022). Appellant Earley Romero Blevins pulled out a machete on a light rail platform in downtown Minneapolis and brandished it at a woman and two men for nearly 1 minute, with the specific intent to cause them to fear immediate bodily harm. Based on this conduct, the State charged Blevins with two counts of second-degree assault-fear with a dangerous

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[1] The Legislature has recognized two forms of assault: assault-harm and assault-fear. Minn. Stat. § 609.02, subd. 10 (2022). A person commits assault-harm through the "intentional infliction of . . . bodily harm upon another." Minn. Stat. § 609.02, subd. 10(2). Assault-fear, in contrast, "does not require a finding of actual harm to the victim." *State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012) (citation omitted) (internal quotation marks omitted). Instead, a person commits assault-fear by acting with the "*intent to cause fear* in another of immediate bodily harm or death." Minn. Stat. § 609.02, subd. 10(1) (emphasis added). Although assault-harm and assault-fear are distinct offenses, they are equal in severity in the eyes of the law.

weapon, a felony-level offense. Minn. Stat. § 609.222, subd. 1 (2022). The Legislature has deemed the act of committing assault-fear with a dangerous weapon to be harmful, with a maximum punishment of 7 years in prison. *Id.*; *see* Minn. Stat. § 609.02, subd. 2 (2022) (defining " '[f]elony' " as "a crime for which a sentence of imprisonment for more than one year may be imposed"). Even for a person with no criminal history, the presumptive sentence for second-degree assault-fear with a dangerous weapon is a prison term of 21 months. Minn. Sent. Guidelines 2.E cmt. 2.E.01. Blevins waived his right to a jury trial.

At his court trial, Blevins claimed his actions were authorized under Minnesota Statutes section 609.06, subdivision 1(3) (2022), which allows a person to use reasonable force upon or toward another when resisting an offense against the person. In a case that involved a claim of self-defense to a charge of felony second-degree *assault-harm* with a dangerous weapon, we said that the reasonable force authorized under section 609.06, subdivision 1(3) may be used only in "the absence of a reasonable possibility of retreat to avoid the danger." *State v. Basting*, 572 N.W.2d 281, 285–86 (Minn. 1997). After considering the evidence presented at trial, the district court found that Blevins committed the felony offense of second-degree assault-fear with a dangerous weapon. And consistent with *Basting,* the court concluded that Blevins's actions in threatening others with his machete were not authorized under section 609.06, subdivision 1(3), because he had a reasonable opportunity to retreat and failed to do so. The court of appeals affirmed, and we granted Blevins's petition for review.

For the reasons described below, based upon the specific facts presented here—the brandishing of a machete—we now narrowly extend our judicially created self-defense element that imposes a duty to retreat when reasonably possible to persons who committed the felony offense of second-degree assault-fear with a dangerous weapon, specifically, a device designed as a weapon and capable of producing death or great bodily harm. In doing so, we need not, and do not, decide whether this judicially created duty to reasonably retreat applies to other charges of assault-fear.

Accordingly, we hold that a person claiming self-defense has a duty to retreat when reasonably possible before committing the felony offense of second-degree assault-fear with a dangerous weapon, specifically, a device designed as a weapon and capable of producing death or great bodily harm. We also conclude that, when viewed in a light most favorable to the verdict, the direct evidence from the security videos presented at trial disproves beyond a reasonable doubt Blevins's claim that it was not reasonably possible for him to retreat. We therefore affirm the decision of the court of appeals.

FACTS[2]

The State charged Blevins with two counts of felony second-degree assault-fear with a dangerous weapon. Minn. Stat. § 609.222, subd. 1. The Minnesota Legislature has defined a dangerous weapon as:

> [A]ny firearm, whether loaded or unloaded, or *any device designed as a weapon and capable of producing death or great bodily harm*, any combustible or flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce

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[2] Because Blevins does not dispute the district court's findings of fact, the following recitation of facts is drawn from that order.

> death or great bodily harm, or any fire that is used to produce death or great bodily harm.

Minn. Stat. § 609.02, subd. 6 (emphasis added).

The Legislature has also described the "great bodily harm" that limits the types of devices that are considered to be "dangerous weapons." " 'Great bodily harm' means 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.

Blevins waived his right to a jury trial and submitted his case to the district court. The following evidence was presented at trial and included surveillance videos that captured the actions giving rise to the charged counts of second-degree assault-fear.

On June 2, 2021, Blevins was on the light rail platform at the US Bank Stadium Plaza station in downtown Minneapolis. A woman wearing a teal shirt, a man wearing a sweatshirt, and a man wearing a tank top were also on the light rail platform. The woman and the two men knew each other and were loitering on different parts of the platform.

When Blevins walked past the woman, she said something to him, and Blevins responded angrily. While Blevins and the woman continued to argue, a train arrived, and people stepped off the train. As the train sat at the station, the man in the sweatshirt, who was armed with a knife, walked toward Blevins and the woman.

According to Blevins, the man in the sweatshirt told him to come into the platform shelter outside the view of the surveillance camera so that he could slice Blevins's throat. In response to the threat, Blevins pulled a machete out of his waist band. Blevins then

moved toward the woman and the man in the sweatshirt, yelling and holding the machete. The woman and the man in the sweatshirt began backing away from Blevins. As the man in the sweatshirt put his knife away, the man in the tank top aggressively walked up to Blevins.

Although Blevins feared for his safety, he did not try to walk away. Instead, Blevins moved forward toward the woman, pointing the machete at her as he yelled. Blevins also lunged at the man in the tank top, while holding the machete in his hand in an aggressive manner. According to Blevins, he was trying to get the woman and the two men to back off. Blevins yelled and swung the machete at them for approximately 1 minute, causing them to retreat. As they retreated, Blevins took a less aggressive posture, although he continued to yell.

Based on the evidence presented at trial, the district court made the following findings of fact and conclusions of law. Blevins's testimony that the man in the sweatshirt told him to come into the shelter outside the view of the camera so that he could slice Blevins's throat was credible. After the man in the sweatshirt threatened Blevins, Blevins swung the machete at the woman and the two men for approximately 1 minute with a specific intent to cause them to fear immediate bodily harm.[3] Consistent with *Basting*, 572 N.W.2d at 285–86, the district court concluded that Blevins's conduct was not authorized under the self-defense statute, Minnesota Statutes section 609.06, subdivision

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[3] In an assault-fear crime, "[t]he intent of the [defendant], as contrasted with the effect upon the victim, becomes the focal point for inquiry." *Fleck*, 810 N.W.2d at 308 (alteration in original) (citation omitted) (internal quotation marks omitted).

1(3), because Blevins "had a duty to retreat from the confrontation when he had a reasonable opportunity to do so, and did not choose to do so."

Based on its findings of fact and conclusions of law, the district court found Blevins guilty of the two counts of felony second-degree assault-fear with a dangerous weapon. At the sentencing hearing, the court sentenced Blevins to a presumptive 39-month prison sentence.

On appeal, Blevins argued that the record did not support the district court's finding that he had a reasonable opportunity to retreat and failed to do so. In the alternative, Blevins argued that the judicially created duty to retreat when reasonably possible should not apply when a person uses "non-physical" force to resist an offense. After reviewing the record, the court of appeals concluded that the record supported the district court's finding that Blevins had a reasonable opportunity to retreat and failed to do so. *State v. Blevins*, No. A22-0432, 2023 WL 2125770, at *3–5 (Minn. App. Feb. 21, 2023). In dismissing Blevins's alternative argument—that the judicially created duty to retreat when reasonably possible should not apply to his use of non-physical force—the court wrote: "Requiring reasonable retreat will still permit people to reasonably defend themselves but will also serve to end altercations and prevent escalation to the point that someone actually uses physical force and causes bodily harm or death." *Id.* at *4.

We granted Blevins's petition for review and now affirm the decision of the court of appeals.

ANALYSIS

I.

Blevins contends that defendants like himself—who assert self-defense to the felony offense of second-degree assault-fear with a dangerous weapon, specifically a device designed as a weapon and capable of producing death or great bodily harm—should not be subject to the judicially created duty to retreat when reasonably possible.[4] We review de novo the question of whether the judicially created duty to retreat when reasonably possible applies in such a context. *See State v. Devens*, 852 N.W.2d 255, 257 (Minn. 2014).

The self-defense statute, Minnesota Statutes section 609.06, subdivision 1(3), authorizes the use of "reasonable force" against another while "resisting or aiding another to resist an offense against the person." As a threshold matter, we observe that no party has asked us to interpret the word "force," as used in section 609.06, subdivision 1(3). Nor have the parties asked us to decide whether "force" includes acts of felony second-degree assault-fear with a dangerous weapon, which involve *a threat* to inflict bodily harm with a dangerous weapon without any actual infliction of bodily harm. For this reason, we assume *without deciding* that the word "force," as used in section 609.06, subdivision 1(3), includes *threats* of force.

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[4] The State also argues that Blevins's conviction can be affirmed based on evidence that he provoked the attack. We need not consider the State's alternative argument because we conclude that Blevins had a duty to retreat. We also conclude that, when viewed in a light most favorable to the verdict, the evidence presented at trial disproves, beyond a reasonable doubt, the defendant's claim that he lacked a reasonable opportunity to retreat.

Section 609.06, subdivision 1(3), does not include any language regarding the duty to retreat when reasonably possible because the duty is a judicially created element of self-defense. *See State v. Carothers*, 594 N.W.2d 897, 900 (Minn. 1999) (observing that Minnesota has codified the common law of self-defense, but not whether the duty to retreat attaches to the defense, so the duty instead arises from case law). The dissent's contention that our analysis is "divorced from the statutory text" ignores the fact that the duty to retreat when reasonably possible is not grounded in statutory language but instead is judicially created. We have read section 609.06, subdivision 1(3), to include four elements:

> (1) [T]he 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 . . . great 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*.

Basting, 572 N.W.2d at 285–86 (emphasis added).

Because it is a judicially created element, we determine the circumstances under which the duty to retreat when reasonably possible applies. *See State v. Glowacki*, 630 N.W.2d 392, 402 (Minn. 2001) (holding that "[t]here is no duty to retreat from one's own home when acting in self-defense in the home, regardless of whether the aggressor is a co-resident"). Given that the facts of this case involve brandishing a machete in self-defense, our narrow extension of the judicially created duty to retreat when reasonably possible is limited to persons who commit felony second-degree assault-fear with a particular type of dangerous weapon—namely, a device designed as a weapon and capable of producing death or great bodily harm.

The dissent suggests that when a defendant's conduct does not inflict bodily harm, we should collapse the four long-standing elements of self-defense into an amorphous reasonableness determination. We decline to depart from our well-established elements of self-defense. It is critical for the public to clearly understand the parameters of an affirmative defense. To now hold that the judicially created duty to retreat when reasonably possible is not an element of self-defense but is just one consideration in a vague reasonableness determination, would create confusion.

Our judicially created duty to retreat when reasonably possible predates the enactment of section 609.06. In *State v. Shippey*, we stated, "Where the party has not retreated from or attempted to shun the combat, but has as in this case unnecessarily entered into it, his act is not one of self-defen[s]e." 10 Minn. 223, 232 (1865). Almost a century later, the Legislature passed section 609.06,[5] and we interpreted that statute in *State v. Johnson*, 152 N.W.2d 529, 532 (Minn. 1967). In doing so, we acknowledged that section 609.06 "states the present Minnesota law as expressed in *State v. Shippey*." *Id.* Consequently, in *Johnson*, we reiterated that "the legal excuse of self-defense" includes "the duty of the slayer to retreat or avoid the danger *if reasonably possible*." *Id.* (emphasis added). Since we announced this judicially created duty to retreat if reasonably possible and articulated its elements, the Legislature has not seen fit to revise section 609.06, subdivision 1(3), in any substantive manner. Accordingly, our "judicial construction of a statute, so long as it is unreversed, is as much a part thereof as if it had been written into it

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[5] Act of May 17, 1963, ch. 753, art. 1, § 609.06, 1963 Minn. Laws 1185, 1189–90.

originally." *Roos v. City of Mankato*, 271 N.W. 582, 584 (Minn. 1937) (citations omitted) (internal quotation marks omitted).

To date, we have recognized only one exception to the judicially created duty to retreat when reasonably possible before using the force authorized in section 609.06, subdivision 1(3): when a person is in their home. *Glowacki*, 630 N.W.2d at 402 (holding that "a person should not be required to retreat from the home before using reasonable force to defend [themself], regardless of whether the aggressor is also rightfully in the home").

Blevins asks us to carve out a second exception to the judicially created duty to retreat when reasonably possible. He contends that this duty to retreat should not apply to persons who commit second-degree assault-fear by brandishing a device designed as a weapon and capable of producing death or great bodily harm in self-defense. His request is based on the following public policy argument: "Holding [that] an individual has no duty to retreat before using non-physical force, such as threats or brandishing a weapon when reasonable, would strike a balance between the inherent right of self-defense and the policy of preventing bodily harm or death." For the following reasons, Blevins's public policy argument is unpersuasive.

Implicit in Blevins's public policy argument are two assertions. First, people have an inherent right to stand their ground, which he characterizes as "self-defense." Second, the judicially created duty to retreat when reasonably possible serves a narrow public policy interest—to avoid unnecessary bodily harm or death. Both assertions are in direct conflict with well-established law.

As discussed above, we rejected the notion that people have an inherent right to stand their ground more than 150 years ago in *Shippey*, 10 Minn. at 232. Consequently, the legal excuse of self-defense codified in section 609.06, subdivision 1(3), does not include an "inherent right" to stand your ground. It is true that we have acknowledged that the judicially created duty to retreat when reasonably possible does not apply to people who are in their home because requiring retreat under those circumstances would be unreasonable. *Glowacki*, 630 N.W.2d at 401–02.[6] But that exception does not support an assertion that people have an inherent right to stand their ground outside of their home before committing the felony offense of second-degree assault-fear with a dangerous weapon—specifically, a device designed as a weapon and capable of producing death or great bodily harm—when it is reasonably possible for them to retreat.

To be sure, avoiding unnecessary bodily harm or death is part of the public policy interests underlying the judicially created duty to retreat when reasonably possible. *See* 2 Wayne R. LaFave, *Substantive Criminal Law* § 10.4(f) (3d ed. 2018). But we have described the public policy interests underlying the judicially created duty to retreat when reasonably possible more broadly to include avoiding "potentially deadly confrontations." *Devens*, 852 N.W.2d at 259. In *Devens*, we declined to extend the castle doctrine[7] to an

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[6] In *Glowacki*, we held that the judicially created duty to retreat when reasonably possible did not apply to a person who acted in self-defense in their own home because "[r]equiring retreat from the home before acting in self-defense would require one to leave one's safest place." 630 N.W.2d at 401–02.

[7] "[U]nder the so-called 'castle doctrine,' a person need not retreat from his or her home before acting in self-defense." *Devens*, 852 N.W.2d at 258 (citations omitted).

apartment hallway in part because that "might encourage, rather than discourage, unnecessary and potentially deadly confrontations." *Id.* When people commit the felony offense of second-degree assault-fear with a dangerous weapon—specifically, a device designed as a weapon and capable of producing death or great bodily harm—in response to a threat of physical harm, they not only risk escalating the encounter to a potentially deadly confrontation, they engage in conduct that is so detrimental to society that the Legislature has concluded that it is punishable by up to 7 years in prison. Minn. Stat. § 609.222, subd. 1.

As set out above, a dangerous weapon includes "any firearm . . . , or any device designed as a weapon and *capable of producing death or great bodily harm*, . . . or other device or instrumentality that, in the manner it is used or intended to be used, is *calculated or likely to produce death or great bodily harm* . . . ." Minn. Stat. § 609.02, subd. 6 (emphasis added). No party disputes that Blevins's machete was a dangerous weapon.

A machete is commonly understood to be a device designed to be used as a weapon. *Merriam-Webster's Collegiate Dictionary* 744 (11th ed. 2014) (defining "machete" as "a large heavy knife used for cutting sugarcane and underbrush and *as a weapon*") (emphasis added); *The American Heritage Dictionary of the English Language* 1050 (5th ed. 2018) (defining "machete" as "[a] large heavy knife with a broad blade, used *as a weapon* and an implement for cutting vegetation") (emphasis added); *New Oxford American Dictionary* 1047 (3d ed. 2010) (defining "machete" as "a broad, heavy knife used as an implement or *weapon*") (emphasis added); *see also State v. Franklin*, 368 N.W.2d 716, 719 (Iowa 1985) (holding that "[a] machete is a dangerous weapon"); N.D. Cent. Code § 62.1-01-01 (2022)

(defining " '[d]angerous weapon' " as including a "machete"). The dissent's reliance on one dictionary definition from 2002 for the assertion that a machete is not clearly a device designed as a weapon is unpersuasive. Consequently, machetes fall within the statutory definition of a dangerous weapon as a "device designed as a weapon and capable of producing death or great bodily harm." Minn. Stat. § 609.02, subd. 6.

When a machete—a device designed as a weapon and capable of producing death or great bodily harm—is brandished with an intent to cause fear in another of immediate bodily harm or death, that is an action that *escalates* the situation. Certainly, doing so in response to a credible threat of bodily harm *might* escalate the situation to such a dangerous point that the initial aggressor backs down. But when it is reasonably possible to retreat, escalating the situation to such a dangerous point does not serve public policy interests.

Accordingly, Blevins's proposed exception to the duty to retreat—that when a person is faced with bodily harm, they need not retreat when *reasonably* possible but instead can stand their ground and escalate the situation to a more dangerous point by brandishing a device designed as a weapon and capable of producing death or great bodily harm in the uncertain hope that it will cause the initial aggressor to back down—is unsound. In Minnesota, a person does not have an inherent right to stand their ground, and the public policy interests underlying the judicially created duty to retreat when reasonably possible include avoiding *potentially* deadly confrontations.

To be clear, we are not diminishing the role of the fact-finder in determining reasonableness. As the district court did here in Blevins's court trial, the fact-finder must still decide whether a person had a reasonable opportunity to retreat under the

circumstances. If the fact-finder concludes that the person does not have that ability, the fact-finder may then determine whether it was reasonable for the person to intentionally cause another to fear immediate great bodily harm by brandishing the dangerous weapon.

The dissent seems to downplay the seriousness of a charge of second-degree assault-fear with a dangerous weapon, specifically a device designed as a weapon and capable of producing death or great bodily harm, by suggesting that no harm has occurred when one resorts to a "non-violent option[]." The Legislature's criminalization of this conduct as a felony belies that assertion. Even though the crime of second-degree assault-fear requires no *physical* harm to be inflicted upon another, the Legislature has determined that grave injury occurs when a person creates *fear* in another of immediate great bodily harm.

The dissent, citing nonbinding cases from other jurisdictions, also poses an ominous but unlikely hypothetical.[8] It suggests that under our narrow extension of the judicially created duty to retreat *when reasonably possible* before committing the felony offense of second-degree assault-fear with a dangerous weapon (device designed as a weapon), a woman who is threatened by a man at a train station could not pull out a can of pepper spray in self-defense without first retreating if reasonably possible. Because we have never held that pepper spray falls within Minnesota's definition of a dangerous weapon, which is limited by the phrase "great bodily harm," Minn. Stat. § 609.02, subd. 6, meaning

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[8] Although we respond to the dissent's hypothetical, we have previously observed that there is nothing inappropriate about limiting our holding "to the actual facts presented and not a hypothetical illustration that is materially different." *State v. Carufel*, 783 N.W.2d 539, 545 n.3 (Minn. 2010).

"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," Minn. Stat. § 609.02, subd. 8 (emphasis added), the dissent's hypothetical is not realistic. In addition, the nonbinding cases from other jurisdictions that the dissent cites in support of its hypothetical are unpersuasive because those cases do not interpret the language of our statute.[9]

In sum, we narrowly extend the judicially created duty to retreat when reasonably possible to persons who claim they were acting in self-defense when they committed the felony offense of second-degree assault-fear *with a dangerous weapon*, specifically a device designed as a weapon and capable of producing death or great bodily harm. Because this case does not present the issue of whether the judicially created duty to retreat when reasonably possible applies to a person who commits an assault-fear *without a dangerous weapon*, our holding is a narrow one limited to the specific facts of this case. Nothing in our opinion should be read as extending the judicially created duty to retreat when reasonably possible to hypotheticals that do not involve the use of a device designed as a

[9] The dissent's hypothetical is unsound for an additional reason. Although the dissent's hypothetical states that the woman has a reasonable opportunity to retreat, it is not clear that she does. If the frightened woman, who is being approached and threatened by a man who might pursue her if she attempts to flee, does not have a reasonable opportunity to retreat, then the judicially created duty to retreat *when reasonably possible* would not apply. Additionally, note that the elements of second-degree assault-fear require more than a person simply *preparing* to use pepper spray; rather a person must brandish the pepper spray *with an intent to cause another to fear immediate great bodily harm*. *See* Minn. Stat. § 609.02, subd. 10(1).

weapon and capable of producing death or great bodily harm. We leave for another day policy arguments about whether the judicially created duty to retreat when reasonably possible should apply to persons who claim self-defense and are using less serious means than a device designed as a weapon and capable of producing death or great bodily harm.

II.

Having decided that Blevins had a duty to retreat before committing the felony offense of second-degree assault-fear with a machete—a device designed as a weapon and capable of producing death or great bodily harm—we now turn to his argument that the district court erred in finding that he had a reasonable opportunity to retreat and failed to do so. When viewed in a light most favorable to the verdict, the evidence presented at trial disproves beyond a reasonable doubt Blevins's claim that it was not possible for him to retreat because searching for an escape route would have required him to turn away from the people who were threatening him.[10]

When evaluating the sufficiency of the evidence, we use the same standard of review for jury and court trials. *State v. Jones*, 977 N.W.2d 177, 187–88 (Minn. 2022). More specifically, in cases based on *direct evidence*, we "view the evidence in a light most favorable to the verdict and assume the fact-finder disbelieved any testimony conflicting

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[10] Because the use of force authorized under section 609.06, subdivision 1(3), is an affirmative defense, once a defendant meets the burden of going forward with evidence to support the defense, the State bears the burden to *disprove* one or more of the four elements of the defense beyond a reasonable doubt, including the absence of a reasonable opportunity to retreat. *See Basting*, 572 N.W.2d at 286.

with that verdict." *Id.* at 187 (citation omitted) (internal quotation marks omitted).[11] We will not overturn the verdict if the fact-finder, acting with regard for the presumption of innocence and the State's burden of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Here, the State presented surveillance videos to disprove Blevins's claim that it was not reasonably possible for him to retreat. Although we have never expressly considered the issue of whether a video is direct or circumstantial evidence of what it shows, the court of appeals considered the issue in *State v. McCormick*, 835 N.W.2d 498, 507 (Minn. App. 2013), *rev. denied* (Minn. Oct. 15, 2013), and concluded that a video was direct evidence of what it showed. *Id.* Other courts have reached similar conclusions. *See, e.g.*, *Walker v. State*, 877 S.E.2d 197, 201 (Ga. 2022) (concluding that a police officer's body-camera video recording provided direct evidence of the defendant making terroristic threats to shoot and kill the victim); *State v. Kelley*, 148 A.3d 191, 198 (Vt. 2016) (concluding that a 911 recording provided direct evidence that the victim was in an excited condition). Having carefully considered the issue, we conclude that the light rail station videos provide direct evidence of what they show, including Blevins's surroundings and the actions of the woman and the two men.

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[11] In contrast, "when a disputed element of the offense is proven by circumstantial evidence, a heightened two-step analysis standard of review applies." *State v. Jones*, 4 N.W.3d 495, 500 (Minn. 2024).

Assessing the sufficiency of the evidence under the standard applicable to direct evidence here, the surveillance videos clearly show that Blevins had room behind him to retreat and could have walked at an angle, keeping an eye on the woman and the two men, while he retreated. Moreover, at various points the woman and the two men turn their backs to Blevins while he is brandishing his machete, giving Blevins an opportunity to retreat from them. Thus, when viewed in a light most favorable to the verdict, the evidence presented at trial disproves, beyond a reasonable doubt, Blevins's claim that it was not possible for him to retreat.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

HENNESY, J., not having been a member of this court at the time of submission, took no part in the consideration or decision of this case.

DISSENT

THISSEN, Justice (dissenting).

The court holds that a person under attack must always find and exercise a reasonable opportunity to retreat before threatening force with certain weapons (but apparently not others) to deter the attacker. Not only is the court's decision divorced from the statutory text and unprecedented in the United States; it also flies in the face of human nature. In the context of assault-fear charges—cases where a person being attacked does not harm the attacker to defend themself but merely *threatens* harm—the better rule is that a fact-finder may consider whether a reasonable opportunity to retreat existed as part of the broader and more pertinent self-defense determination of whether the defendant's threatened use of force was reasonable. This does not mean that a person who ignores a potential escape option will always prevail on their self-defense claim; it simply leaves the fact-finder to decide whether, under all the circumstances, the defendant was reasonable in acting in self-defense.[1] Although this is a question that a fact-finder is well-equipped to

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[1] A fact-finder could find that, in response to being attacked by three persons, one of whom had a knife and threatened to slice his throat, Blevins's act of waving a machete without harming the attackers was disproportionate to the attack and thus unreasonable. *See State v. Glowacki*, 630 N.W.2d 392, 402 (Minn. 2001) (observing that the key self-defense inquiry is "the reasonableness of the use of force and the level of force under the specific circumstances of each case"). But, as discussed below, the court's rule does not allow a fact-finder to reach that question. The rule today—made explicitly in response to someone waving a machete—imposes an identical duty to retreat on someone before they can make any threat involving a device designed as a weapon and capable of producing death or great bodily harm and without consideration of the type or dangerousness of the weapon or other instrument that the attacker employs.

answer, the court creates an illogical bright-line rule that takes that question away from the fact-finder. As such, I dissent.

I start with the text of the self-defense statute, which provides that "reasonable force may be used" against another "to resist an offense against the person." Minn. Stat. § 609.06, subd. 1(3) (2022).[2] Notably, the statute nowhere imposes a duty to retreat; it merely requires that the use of force be "reasonable." *Id.* The court holds that, as a matter of law, a person who is being attacked must retreat if they can reasonably do so before using even a reasonable *threat* of force with certain weapons in an effort to deescalate the situation or deter the attacker. Instead of creating a new bright-line rule in a new context, we should follow the statutory language to determine whether Blevins's threatened use of force was reasonable. Under this test, the district court and the jury could consider Blevins's ability to retreat as one of the many factors that bears upon the reasonableness of his threatened force.[3] I would reverse Blevins's conviction and remand for a new trial to

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[2] The court and I agree for purposes of this opinion that the threatened use of force—the concept captured in Minnesota's assault-fear definition, Minn. Stat. § 609.02, subd. 10(1) (2022)—is an exercise of force for purposes of section 609.06, subdivision 1(3).

[3] The model jury instructions on self-defense provide factors on the reasonableness of force that address the court's concerns about escalation without imposing a sharp bright-line rule. The relevant jury instruction provides:

> It is lawful for a person, who is resisting an offense against (his) (her) person [or aiding another in resisting an offense against the person] and who has reasonable grounds to believe that bodily injury is about to be inflicted, to defend from an attack. In doing so, the person may use all force and means that the person reasonably believes to be necessary and that would appear to a reasonable person, in similar circumstances, to be necessary to prevent an

determine whether his threatening behavior was reasonable. It is possible that the threatened force was reasonable or unreasonable, but the court's decision today takes that question away from the fact-finder in future cases

Of course, we start with the text of the statute, but we do not always end there. The court emphasizes that the duty to retreat was created by judges. But our judge-created rule imposed a duty to retreat before *harming* someone—or, stated differently, before "unnecessarily enter[ing] into [combat]." *State v. Shippey*, 10 Minn. 223, 232 (1865). The court is eliding the difference between *threatening* someone and actually harming them. The court's rule in this case was not created by earlier judges—it was invented today. And, as a result, the Legislature could not have incorporated the court's new rule when it enacted the statute in 1963.

Today, the court takes the law of self-defense into uncharted waters. This new rule is not only unprecedented in this state—as far as I am aware, *the rule has never been adopted anywhere in the United States*. Until now, the collective wisdom of judges nationwide over hundreds of years has *never* imposed a duty to retreat before making threats to deter an aggressor.

> injury that appears to be imminent. The kind and degree of force a person may lawfully use in defense of self or others is limited by what a reasonable person in the same situation would believe to be necessary. Any use of force beyond that is not reasonable.

10 Minn. Dist. Judges Ass'n, *Minnesota Practice—Jury Instruction Guides, Criminal*, CRIMJIG 6.10 (7th ed. 2023).

There is a critical difference between using threats in self-defense and harming someone in self-defense. Both actions are, by definition, a response to a potentially dangerous situation. The State does not claim on appeal that Blevins was the aggressor; the man who instigated the confrontation by threatening him with a knife was the aggressor. The State also does not dispute that the assailant's conduct—approaching Blevins with a drawn knife and telling him to move out of view of the camera so that he could slice Blevins's throat—created in Blevins an actual, honest, and reasonable fear of imminent death or great bodily harm. And no one claims that Blevins physically harmed his attackers.

Generally, the reasonableness of a self-defense claim should be left to the fact-finder. *See State v. Glowacki*, 630 N.W.2d 392, 403 (Minn. 2001); *see also State v. Stietz*, 895 N.W.2d 796, 802 (Wis. 2017) ("[T]he question of reasonableness . . . when a claim of self-defense is asserted, is a question peculiarly within the province of the jury." (citation omitted) (internal quotation marks omitted)). But many states have a rule that it is per se unreasonable to use deadly force when retreat is an option. This is because, in response to an offense against a person (such as a threat of harm) the law should incentivize people to retreat or to deescalate—rather than escalate—a situation, particularly when death may result. If someone responds to a dangerous situation by resorting to deadly force, they have necessarily escalated the situation. *See Glowacki*, 630 N.W.2d at 403 (concluding that a bright-line rule is appropriate regarding use of deadly force because although the issue is normally for the jury to decide, "when no reasonable mind could draw an [inference that the defendant acted reasonably], the question may be decided as a matter

of law.”). That is why many states impose a duty to retreat before using *deadly* force.[4] *See, e.g.*, Del. Code Ann. tit. 11, § 464(e)(2) (West 2023); Haw. Rev. Stat. Ann. § 703-304(5)(b) (West 2023); Neb. Rev. Stat. Ann. § 28-1409(4)(b) (West 2023); N.J. Stat. Ann. § 2C:3-4, subd. b(2)(b) (West 2023); 18 Pa. Stat. and Cons. Stat. § 505(b)(2)(ii) (West 2023).

Minnesota has a per se rule that it is always unreasonable to harm an attacker using even *non-lethal* force when there is a reasonable opportunity to retreat. In that sense, Minnesota is an outlier.[5] Indeed, the very section of LaFave’s treatise cited by the court proclaims that “[i]t seems everywhere agreed that one who can safely retreat need not do

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[4] By applying a duty to retreat specifically to uses of *deadly* force, states are following the advice of the American Law Institute. *See* Model Penal Code § 3.04 cmt. 4(c) (Am. L. Inst. 1985) (“[T]he *protection of life* has such a high place in a proper scheme of social values that the law should not permit conduct that places life in jeopardy, when the necessity for doing so can be avoided by the sacrifice of the much smaller value that inheres in standing up to an aggression.” (emphasis added)).

[5] It appears that Minnesota is currently the only state that imposes a duty to retreat before using non-lethal force against a threat of deadly force. Iowa used to take that position, *see* Iowa Code § 704.1 (2016). But in 2017, Iowa did away with the duty to retreat altogether—it became a “stand your ground” state. 2017 Iowa Acts ch. 69, § 37; *see also State v. Williams*, 929 N.W.2d 621, 637 (Iowa 2019) (discussing the change). The Massachusetts Appeals Court has stated in dicta that there is a duty to retreat before using non-lethal force, *Commonwealth v. Toon*, 773 N.E.2d 993, 1004 (Mass. App. Ct. 2002), but the highest court of that commonwealth has held the opposite. *Commonwealth v. Baseler*, 645 N.E.2d 1179, 1181 (Mass. 1995) (holding that the district court erred by instructing the jury that the defendant needed to “use all reasonable efforts to avoid combat” to prevail on his self-defense argument based on his use of non-lethal force).

Interestingly, North Carolina recognizes a duty to retreat before using deadly or non-deadly force, but only in response to a threat of non-deadly force; if the person “reasonably believes that such force is necessary to prevent imminent death or great bodily harm,” there is no duty to retreat. N.C. Gen. Stat. Ann. § 14-51.3(a) (West 2023); *see also State v. Everett*, 592 S.E.2d 582, 586 (N.C. Ct. App. 2004).

so before using nondeadly force." 2 Wayne R. LaFave, *Substantive Criminal Law* § 10.4(f) (3d ed. 2018). I do not suggest in this dissent that Minnesota should pull back from its per se rule that a person using force (lethal or non-lethal) to harm an attacker is acting unreasonably if they do not first try to retreat. But I would not expand the scope of this rule to also say that a failure to retreat before using *mere threats of force* with certain weapons is unreasonable.[6] I would leave that reasonableness inquiry to the fact-finder on a case-by-case basis.

When someone responds to an aggressor with threats (assault-fear) but does not harm the aggressor, this might (intentionally or not) escalate the situation in the manner that we were concerned about in our earlier cases—by causing harm. But, as the court admits, it might instead deter an attack or create better opportunities to retreat. Because such situations are fluid, we should not impose a bright-line rule that takes away from the fact-finder the power to decide whether the use of force is reasonable on the assumption that using threats will categorically escalate the situation. This explains why every other state—and Minnesota, for its entire 166-year history—has not recognized a duty to retreat before threatening someone with physical harm.

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[6] The court notes that we have long held that a duty to retreat applies before a defendant may use force under section 609.06, subdivision 1(3), and that the Legislature has not revised section 609.06, subdivision 1(3), in response. But that observation does not inform the issue presented in this case, because—as we all agree—we have never before imposed a duty to retreat in these circumstances, where the defendant merely *threatens* the use of physical force. In other words, the Legislature has never had an opportunity to endorse (explicitly or implicitly) the court's new construction of the statute.

The court admits that reasonable threats can deescalate dangerous situations but maintains that they do so only by "escalating the encounter to a *potentially* deadly confrontation." (Emphasis added.) There are several problems with this line of reasoning. First, it is ironic that the court repeatedly emphasizes that a defendant need only exercise an opportunity to retreat if the opportunity is reasonable in the eyes of the fact-finder but refuses to defer to a fact-finder as to the reasonableness of the type and level of threat used to defend oneself. It is unclear why the court allows the fact-finder to engage in one reasonableness inquiry (the opportunity to retreat) but turns around and refuses to let the fact-finder even *consider* the other (the reasonableness of a threat). Second, it is a gross mischaracterization to use the label "escalating" to describe the actions of someone who—upon reasonably fearing for their life—indicates that they have pepper spray or a pocketknife and tells the assailant to keep their distance. In some circumstances, this might result in escalation, but attempted retreat could have the same effect (e.g., if the attacker gives chase). Third, although courts review the facts with the benefit of hindsight, an individual who reasonably fears great bodily harm or death must make a rapid decision in the heat of the moment. *See Brown v. United States*, 256 U.S. 335, 343 (1921) (Holmes, J.) ("Detached reflection cannot be demanded in the presence of an uplifted knife."). That person should not be punished for exercising reasonable, proportionate non-violent options.[7] They may not know which option is more likely to avoid harm: retreat or threats

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[7] The court correctly observes that an "injury"—in the technical, legal sense—occurs when a person creates fear in another of immediate bodily harm. But the question is not whether an action taken in self-defense is injurious. Self-defense arises only in situations

to deter the attacker. Fourth, faced with a threat of death or great bodily harm, the best option might in fact be a belt-and-suspenders approach: threaten the attacker to gain the possibility of a *safer* retreat and then take advantage of that possibility. Crucially, the court's holding today forecloses that option. The court requires the person to exercise a reasonable opportunity to retreat *before* leveling a reasonable threat at the attacker.

Consider a scenario in which a woman is at a train station and a man approaches and threatens to stab her. Assume that, like Blevins, she has a reasonable opportunity to retreat by walking away. She actually, honestly, and reasonably believes that she is in danger of imminent death or great bodily harm.[8] She has a can of pepper spray in her purse and brandishes it to ward off just such aggression; in response the man is afraid and backs off. She gets on the next train and is later arrested for assaulting the man by causing fear of bodily harm. *See* Minn. Stat. § 609.222, subd. 1 (2022) (defining second-degree assault as assault "with a dangerous weapon"); Minn. Stat. § 609.02, subd. 10(1) (2022) (defining assault as "an act done with intent to cause fear in another of immediate bodily harm or death). Under the court's rule, the woman is not entitled to a self-defense instruction

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where a defendant has engaged in some form of injurious criminal conduct, and self-defense is an express *exception* to the general prohibition of such conduct by the Legislature. Thus, the only question before us is whether the Legislature intended that a defendant—who reasonably believes that they are at imminent risk of death or great bodily harm—must retreat before threatening force in a reasonable manner.

[8] In considering whether an individual may threaten force in self-defense, it is important to keep in mind that the individual can only claim self-defense if the individual actually, honestly, and reasonably feared imminent death or great bodily harm. *State v. Johnson*, 719 N.W.2d 619, 630 (Minn. 2006). Once a person no longer actually, honestly, and reasonably fears such imminent danger, the threat of force must be withdrawn.

because she had a duty to retreat *before* she could pull out the pepper spray. This result flies in the face of human nature and experience; yet it is the precise outcome demanded by the court's holding today.

The court fights this hypothetical, claiming that it is unrealistic. The court points out that we have never decided the issue of whether pepper spray is a dangerous weapon. But it is far from clear that pepper spray is not a dangerous weapon under either the narrow and selective definition of "dangerous weapon" the court employs today or the broader statutory definition of "dangerous weapon" set forth in section 609.02, subdivision 6 (2022).

There are five categories of dangerous weapons under the statute: firearms, flammable liquids, fires, "any device *designed as a weapon* and capable of producing death or great bodily harm," and any "other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm." Minn. Stat. § 609.02, subd. 6 (emphasis added). The court limits its decision today to a subset of dangerous weapons—those designed as weapons and capable of producing death or great bodily harm. But the court's focus on only a subset of dangerous weapons strains logic and creates a confusing standard for future cases. Once the court has crossed the threshold of imposing a duty to retreat before responding to an attack with a reasonable threat of force, there is no principled reason to impose a duty to retreat specifically for items designed as weapons and capable of producing great bodily harm, but not other items that the Legislature has decided are also dangerous weapons. The court simply ignores that difficult question.

Moreover, pepper spray is designed as a weapon. The only question is whether it is "capable of producing . . . great bodily harm," *id.*, which is defined by statute as, among other things, prolonged "impairment of the function of any bodily member or organ." Minn. Stat. § 609.02, subd. 8 (2022). Other states have concluded that pepper spray meets similar definitions for dangerous weapon because of its capacity to blind people for several hours. *See Handy v. State*, 745 A.2d 1107, 1115 (Md. 2000); *State v. Ovechka*, 975 A.2d 1, 6–7 (Conn. 2009); *see also People v. Blake*, 11 Cal. Rptr. 3d 678, 690 (Cal. Ct. App. 2004) (noting that the victims of the pepper spray "suffered substantial, though transitory, respiratory distress, burning sensations and blindness" and that "it takes little imagination to picture the more serious injuries these victims were fortunate to escape, such as burns, chemical pneumonia, cornea damage or serious asthma attacks").[9]

In short, the court affords itself the luxury of avoiding hard questions (whether there is a duty to retreat prior to using threats with other types of dangerous weapons) and abandons district courts to confusion and a choice between a rock and a hard place. Maybe the court's rule is limited as the court states to instruments designed as weapons and capable of inflicting death or great bodily harm. In that case, there is a duty to retreat

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[9] *See also State v. Simmons*, 872 N.W.2d 293, 298 (Neb. Ct. App. 2015) (holding that pepper spray is a "dangerous instrument" for purposes of second-degree assault on an officer); *United States v. Bartolotta*, 153 F.3d 875, 879 (8th Cir. 1998) (holding that mace is a dangerous weapon—defined as " 'an instrument capable of inflicting death or serious bodily injury' "—for purposes of federal sentencing guidelines (quoting U.S. Sent'g Guidelines Manual § 1B1.1 cmt. n.1(d) (U.S. Sent'g Comm'n 1997))). *But see United States v. Harris*, 44 F.3d 1206, 1216 (3d Cir. 1995) (holding that the evidence did not support the district court's finding that a certain type of mace is a dangerous weapon for purposes of federal sentencing guidelines).

before threatening someone with a knife,[10] but not before threatening someone with a baseball bat, toxic chemicals, or a chainsaw—none of which are *designed* as weapons but could in context cause death or great bodily injury.[11] This result makes no sense.

Alternatively, the court's rule will ultimately apply to all statutory categories of dangerous weapon, meaning that the duty to retreat will apply to threats using instruments that are not designed as weapons. That outcome leads to a different set of unreasonable outcomes: for instance, a woman walking down a dark street could not hold a key in her fist in a threatening manner to deter an attacker (she must retreat first if possible). In addition, the boundaries of the definition of dangerous weapon are so hazy and broad that it becomes incredibly difficult to determine when one must retreat before making reasonable threats. Indeed, a person must reasonably retreat before raising a fist as a threat and deterrent because we have said that even a fist can constitute a dangerous weapon. *See State v. Basting*, 572 N.W.2d 281, 284 (Minn. 1997).

In addition, the court's rule will be exceedingly difficult to apply in other ways. Minnesota courts have struggled to determine whether knives are "designed" as weapons, coming to different conclusions depending on the characteristics of the knife. In one case, the court of appeals concluded that the State failed to present sufficient evidence that a

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[10] As discussed below, it is not entirely clear which knives are designed as weapons.

[11] This difficulty with defining " '[d]angerous weapon' " is likely the reason why the Legislature included a catch-all provision in the statute. *See* Minn. Stat. § 609.02, subd. 6; *State v. Abdus-Salam*, 1 N.W.3d 871, 875 (Minn. 2024) ("[A]n everyday object not traditionally considered a weapon may nevertheless become a dangerous weapon if the object is used in a manner calculated or likely to produce death or great bodily harm.").

knife was designed as a weapon because it was "not apparent that [the juvenile offender's] small folding knife was designed as a weapon rather than for its many other uses." *In re Welfare of P.W.F.*, 625 N.W.2d 152, 154–55 (Minn. App. 2001). In another case, the court of appeals came to a different conclusion as to a somewhat longer folding knife. *State v. Walker*, No. A22-1734, 2023 WL 8539594, at *4–5 (Minn. App. Dec. 11, 2023). In this case, the court relies on the fact that a machete is described in some dictionaries as a weapon. But dictionaries do not all agree on this point. *See Webster's Third New International Dictionary* 1353 (2002) (defining "machete" as "a large heavy knife [usually] made with a blade resembling a broadsword often two or three feet in length and used [especially] in So. America and the West Indies for cutting cane and clearing paths"). Moreover, many items (such as axes, knives, and machetes) have uses as a weapon and not as a weapon; the dictionary cannot tell us for what purpose a particular implement was designed.

Relatedly, the court provides no basis for carving out a special rule for *second-degree* assault-fear with certain weapons. Self-defense is a defense that applies to all assault cases. *See* Minn. Stat. § 609.06, subd. 1(3) (authorizing the use of reasonable force when resisting "an offense against the person"). It is certainly possible that a person who is threatened might threaten back without using a dangerous weapon. Once again, the court today crosses an important threshold, holding for the first time that a person who does not retreat when it is reasonable to do so can never claim that it was reasonable to threaten their attacker with certain weapons as deterrence to deescalate a situation, or to provide more space to retreat safely. The court provides no reason—and it is hard to discern one

based on the court's analysis—why the reasoning underlying its new rule would not equally apply to a charge of fifth-degree assault (threat of violence causing fear of any level of bodily harm).[12] *See* Minn. Stat. § 609.224, subd. 1(1) (2022). In other words, because the defense set forth in section 609.06, subdivision 1(3), applies to all assaults, and I cannot perceive how the court can meaningfully distinguish how its new rule would apply to assaults other than second-degree assault-fear, a person facing an attacker must retreat if reasonably possible before taking *any* defensive steps that cause fear of bodily harm in the attacker. Accordingly, the court's repeated insistence that its ruling is "narrow" is cold comfort. The result today will surprise a lot of Minnesotans.

The court claims that Blevins's argument is based on two premises: that individuals have an inherent right to stand their ground and that the duty to retreat is meant to avoid potentially deadly confrontations. Both of these arguments are straw men—Blevins's argument does not rely on either of them.

First, the court tries to cast Blevins's argument—that one does not need to retreat before using threats in self-defense—as transforming Minnesota into a "stand your ground" state. Of course, the full meaning of that term is that, if you are threatened, you are entitled to stand your ground *and use force to harm someone*. The term has never applied to the right to merely use threats—in this State or in any other. Under my proposed approach,

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[12] To the extent the court bases its ruling on the fact that someone could have been injured by Blevins swinging a machete, the court allows bad facts to make bad law. The court's new rule applies equally well to someone who takes less dangerous action, like revealing a knife in a belt or holding pepper spray in a threatening manner. These varied situations are precisely why the reasonableness of a threat should be left to a fact-finder to decide.

the duty to retreat before harming someone still applies. But my approach recognizes that *threatening* an aggressor is one tactic—much like retreating—to *avoid* harm. Moreover, threats are often used in conjunction with retreat.

Second, the court argues that the duty to retreat is undergirded by a broad public policy of avoiding potentially deadly confrontations. While that is a noble goal, it is irrelevant in the context of a self-defense claim. After all, when the man threatened Blevins with a knife and said he would slice his throat, a potentially deadly confrontation had already begun, before Blevins did anything at all to threaten the aggressor. There is nothing that Blevins could have done to avoid the potentially deadly confrontation entirely, because he was responding to a situation three other people had created.

The *actual* public policy underlying the duty to retreat is that, in response to a threat, individuals should be incentivized to avoid harm rather than escalate the situation. Notably, under our law, if someone hurts another in self-defense, they have, by definition, escalated the situation. But threats are more nuanced.[13] They might escalate or deescalate a situation (or create better opportunities to retreat). Indeed, Blevins succeeded in making his original assailant back off—his threat worked as a deterrent.

When one considers the duty to retreat as encouraging people to deescalate dangerous situations, requiring retreat before using force (certainly lethal force) to harm someone is justified. Whether it is reasonable to require in all circumstances that a person

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[13] Under my proposed rule, there is an additional check on the use of force: if a person uses threats in self-defense and someone is harmed in the process, the State can charge assault-harm.

retreat if reasonably possible before using the *threat* of force to deescalate the situation or create better opportunities to escape is a much different question best left to the jury.

Notably, the legal issue before us is not about the level of force or threatened force that Blevins used. But the court's broad holding today would apply equally well to someone who wards off a potential attacker by brandishing a knife, a lawfully possessed firearm, or a can of pepper spray. Not all threats in self-defense are equally likely to escalate (or deescalate) a situation, which is why the question is best left to a fact-finder in considering the reasonableness of the threat.

For the foregoing reasons, I respectfully dissent.

PROCACCINI, Justice (dissenting).

I join in the dissent of Justice Thissen.