STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1674

State of Minnesota,
Respondent,

vs.

Jordyn Lynn Hjeldness,
Appellant.

Filed August 24, 2020
Affirmed
Bratvold, Judge

Wilkin County District Court
File No. 84-CR-19-189

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

Carl Thunem, Wilkin County Attorney, Breckenridge, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Bjorkman, Judge.

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

BRATVOLD, Judge

Appellant challenges her judgments of conviction for fifth-degree assault and disorderly conduct and seeks a new trial. She argues the district court abused its discretion by excluding relevant evidence of her state of mind, specifically, evidence that the victim

had abused her friend, and by refusing to instruct the jury on self-defense. Even if we assume that the district court abused its discretion by excluding relevant evidence, the error was harmless beyond a reasonable doubt because the record contains no evidence on two of the four elements of self-defense. And we conclude that the district court acted well within its discretion in declining to instruct the jury on self-defense. Thus, we affirm.

FACTS

The below summarizes the evidence received during trial. On April 30, 2019, Appellant Jordyn Lynn Hjeldness called her friend, A.N., and they planned to go to a bar in Breckenridge. Around 7:15 p.m. that evening, Hjeldness picked up A.N. from her apartment that she shares with her boyfriend N.Z. and their young child. Hjeldness heard N.Z. and A.N. argue before they left. N.Z. objected to A.N.'s evening plans; he wanted to go to the bar with his friends rather than stay home with their child. Even so, N.Z. stayed home and asked A.N. to bring him some alcohol when she returned. Later, N.Z. testified that he followed A.N. while she was out by using a cell-phone application.

A.N. and Hjeldness drove to a bar one block away. They drank about two to three drinks each. Hjeldness testified that she talked about ending a recent relationship and A.N. talked about her relationship with N.Z. Hjeldness testified that A.N. said N.Z. was abusive and showed Hjeldness bruises on her ear and side. Hjeldness expressed her concern about A.N.'s safety. During her testimony, A.N. denied telling Hjeldness that N.Z. had abused her, although she said she may have told Hjeldness that N.Z. verbally abused her or that they argued.

After about an hour of drinking, they left the bar. Hjeldness drove and they ran some errands; they planned to return to A.N.'s apartment to keep drinking. Hjeldness testified that they made four stops, including one at her apartment to pick up her dog. They also stopped to buy brandy for N.Z., as he had requested. They returned to A.N.'s and N.Z.'s apartment at around 9:30 p.m.

N.Z.'s and A.N.'s testimony about what happened at the apartment varied in some details, but was mostly consistent. They both testified that Hjeldness at first did not come inside the apartment. A.N. testified that she believed Hjeldness had followed her to the front door, but A.N. entered the apartment first, closed the door, and did not let Hjeldness inside. A.N. testified that, after she closed the door, she heard loud banging coming from outside. N.Z. testified that he opened the door and saw Hjeldness banging on a neighbor's door, also located on the first floor of the triplex.

N.Z. told Hjeldness to stop and come inside because he did not want to upset the neighbors. Hjeldness entered the apartment. During their direct testimony, neither A.N. nor N.Z. testified about what happened inside. But when recalled by the defense, they both testified that, after Hjeldness entered the apartment, she drunkenly stumbled, hit her hip against the living room wall, and knocked a one-foot-wide hole into the wall.

N.Z. and A.N. testified that they told Hjeldness to go home. N.Z. and A.N. then went outside to talk while Hjeldness remained inside. N.Z. and A.N. testified that, when Hjeldness came outside moments later, she charged at N.Z. and started "hitting [him]" "on [his] head." A.N. testified that Hjeldness "kept swinging at [N.Z.]" and N.Z. was "ducking

the throws." N.Z. testified that he told Hjeldness to leave and tried to run away from her, but she chased him as they ran around the yard and into the street.

N.Z. testified that, at some point and in front of Hjeldness, he threatened to hurt A.N. if she did not "make" Hjeldness leave. He also agreed that he "probably" raised a fist at A.N. at some point. During her testimony, A.N. denied that N.Z. threatened her, raised his hand, or yelled at her. While Hjeldness was chasing after N.Z., he called the police.

N.Z. and A.N. testified that N.Z. ran to the front stoop of the apartment. Hjeldness then walked up to him, grabbed his face "like she was trying to kiss [him]," and bit N.Z. on his lip. N.Z. and A.N. went inside and locked the door.

When Officer Doehling arrived about ten minutes later, he found Hjeldness, alone, pounding on the apartment door. Doehling described Hjeldness as "frantic and crying," recounting that she "stumble[d]" as she approached him. He also noticed "redness in [her] eyes and the odor of an alcoholic beverage coming from her breath." Doehling testified "it was really hard to make out what [Hjeldness] was saying" because she had "slurred speech." Doehling asked Hjeldness to wait in the back of his squad car while he talked to N.Z. and A.N. and she complied.

Doehling spoke with N.Z. and A.N. in the entryway of their apartment. On direct-examination, Doehling testified that A.N. appeared "shocked" and N.Z. seemed "[s]urprised, a little upset," and "he was bleeding from the mouth." Doehling took a photograph of N.Z.'s lip injury that was received into evidence during trial. Doehling testified N.Z. had told him that they were all intoxicated, Hjeldness had "punched him multiple times in the face" and she had bit him on the lip. Doehling testified that neither

N.Z. nor A.N. reported Hjeldness entering the apartment and damaging their apartment wall, or that Hjeldness chased after N.Z. Doehling testified that N.Z. said something about Hjeldness believing N.Z. was abusive to A.N. But A.N. testified on cross-examination that she told Doehling she had "no idea" why Hjeldness thought N.Z. was abusive towards her. Doehling testified that N.Z. "specifically asked" not to press charges against Hjeldness and "he just want[ed] her to go away until she is sober."

Doehling testified that A.N. had told him that Hjeldness drank alcohol before driving that night, so he asked Hjeldness to perform field sobriety tests, which she failed. Doehling arrested Hjeldness for driving while impaired (DWI) and her breath test showed a 0.20 alcohol concentration.

After being released from custody the next morning, Hjeldness called A.N. and told her she was coming over to pick up her car and her dog. A.N. offered her a ride, but Hjeldness declined and said she would walk. As Hjeldness was walking over, N.Z. pulled up in his car. N.Z. testified that he told Hjeldness, "no hard feelings, get in, let's go get your car," and offered her fast-food for breakfast. Hjeldness testified that when she first saw N.Z. she thought he would run her over. But Hjeldness got into the car and N.Z. drove them back to the apartment.

When they returned to the apartment, Hjeldness's car would not start, so she waited inside the apartment for help to arrive. While Hjeldness waited, A.N. and N.Z. told her about what had happened the night before, including her fall into the living room wall. Hjeldness testified that N.Z. and A.N. were "laughing about the whole situation" but she did not "find that funny." N.Z. testified Hjeldness "apologized for everything."

The state charged Hjeldness with DWI (alcohol concentration of 0.08 within two hours) under Minn. Stat. §§ 169A.20, subd. 1(5), .25, subd. 1(a) (2018) (count one), DWI (operating motor vehicle under the influence of alcohol) under Minn. Stat. §§ 169A.20, subd. 1(1), .26, subd. 1(a) (2018) (count two), fifth-degree assault (infliction of bodily harm) under Minn. Stat. § 609.224, subd. 1(2) (2018) (count three), and disorderly conduct (brawling or fighting) under Minn. Stat. § 609.72, subd. 1(1) (2018) (count four).

Hjeldness pleaded not guilty. Hjeldness and the state filed pretrial motions. Relevant to the issues on appeal, the district court denied Hjeldness's motion to admit domestic-conduct evidence, deferred ruling on the requested jury instruction for self-defense, and granted the state's motion to exclude specific instances of prior domestic abuse by N.Z. but suggested the evidentiary ruling might later be revisited.

A two-day jury trial was held in September 2019. The state presented testimony from five witnesses: N.Z., A.N., Doehling, an officer who tested Hjeldness's breath at the law enforcement center, and a mutual friend who was at the apartment the day after the incident while Hjeldness, N.Z., and A.N. were together. The defense presented testimony by Hjeldness and recalled N.Z. and A.N.

Besides the testimony summarized above, N.Z. testified on cross-examination that, in the past he has become angry with A.N. and "broke stuff" in their home. The district court sustained the state's objection to, and ordered stricken, N.Z.'s testimony that he had threatened A.N. in the past when she did not do what he wanted.

Hjeldness testified that, after she left the bar, she remembers being inside the apartment with N.Z., A.N., and her dog. She stated they were "hanging out," "joking," and

"laughing" while they drank together. Hjeldness also testified that she remembers telling N.Z. that he could not "put [his] hands on" A.N. But, after that, her memory becomes "hazy" from the alcohol and, after drinking brandy at the apartment, she does not remember the fight with N.Z. When asked on cross-examination, "what was the first thing you remember after you blacked out," Hjeldness testified "waking up in jail." Hjeldness also testified she did not remember ever tripping, falling, or causing the hole in the living room wall nor could she remember hearing N.Z. threaten A.N. or see him raise his fist at her.

Hjeldness agreed that she "believe[d]" she bit N.Z.'s lip, but could not remember doing it. But, she agreed she "got into a brawl" with N.Z. that night and admitted that she assaulted him. Hjeldness also testified that "I didn't just attack for no reason." She also testified "I don't know why I bit him, but I know why I was upset with him." The district court sustained the state's objection to this testimony and then sustained the state's objection to Hjeldness's response when defense counsel asked why she was upset with N.Z.

Hjeldness began to testify that A.N. told her in the bar that N.Z. had abused her, and showed her bruises, but the district court sustained objections from the state that the testimony was unfairly prejudicial under Minn. R. Evid. 403. The district court also sustained the state's objection to the response Hjeldness gave when defense counsel asked why she was apprehensive about A.N.'s safety, based on their conversation at the bar on April 30.

After the close of all evidence, the district court denied Hjeldness's request for a self-defense/defense-of-others instruction. The jury acquitted Hjeldness of DWI in counts

one and two, and found her guilty of fifth-degree assault and disorderly conduct. The district court convicted Hjeldness of fifth-degree assault and disorderly conduct, sentenced her to 90 days in jail with two days of custody credit, stayed execution for one year, and placed Hjeldness on supervised probation.

This appeal follows.

D E C I S I O N

I. Even if the district court abused its discretion by excluding evidence of N.Z.'s past abuse of A.N., any error was harmless beyond a reasonable doubt.

In this appeal, Hjeldness argues that the district court violated her due-process right to present a complete defense by (1) prohibiting her from testifying about N.Z.'s abuse of A.N., and (2) prohibiting Hjeldness from cross-examining N.Z. or A.N. about N.Z.'s prior abusive conduct.

Before trial, Hjeldness sought to admit "domestic conduct" evidence about N.Z. and A.N. to prove that Hjeldness had reasonable "grounds for fear in defending" A.N. and that Hjeldness's use of force was justified. The state moved to exclude evidence of specific instances of "prior domestic abuse." The district court denied Hjeldness's motion and granted the state's motion, in part relying on Minn. R. Evid. 403 and 404. But the district court also stated that, depending on the evidence, its ruling "could be revisited" based on Hjeldness's concern that she had the "right to introduce" the "prior conduct" evidence to show "an objective basis for [Hjeldness's] claim of self-defense [and defense] of others."

During trial, the district court sustained the state's repeated objections to any evidence relating to domestic abuse by N.Z. against A.N. as "prejudicial" under Minn. R.

Evid. 403. The court intermittently allowed some testimony about N.Z.'s and A.N.'s relationship, but refused to allow the defense to inquire into any details. The district court repeatedly stated that there was insufficient evidence "to ask [that] line of questioning" and that the evidence was excluded by its pretrial ruling. But the district court also mentioned the evidence might be admissible if offered "properly" and "in the right way." The district court later said the disputed evidence could not carry Hjeldness's burden of production for a self-defense claim. And, for that reason, the evidence of domestic abuse was inadmissible.

"Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). Even when, as here, an appellant claims she was "deprived [of her] constitutional right to a meaningful opportunity to present a complete defense" by the district court's exclusion of evidence, we still review for an abuse of discretion. *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017) (citations omitted). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). "Appellate courts largely defer to the trial court's exercise of discretion in evidentiary matters and will not lightly overturn a trial court's evidentiary ruling." *State v. Kelly*, 435 N.W.2d 807, 813 (Minn. 1989).[1]

[1] We question whether Hjeldness adequately preserved this issue for appeal. Although not discussed by either party, Minn. R. Evid. 103(a) provides that "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected" and appellant establishes that "the substance of the evidence was

On appeal, Hjeldness argues her self-defense theory "was that she knew that [N.Z.] had physically abused [A.N.]." She contends that her knowledge of N.Z.'s prior abuse of A.N., coupled with the evidence that N.Z. yelled and raised his fist at A.N. during the incident, proves why she attacked N.Z. in self-defense and tried to protect A.N. She claims that the evidence of N.Z.'s abuse towards A.N. also shows "why N.Z. and A.N. might make false allegations" about Hjeldness—such as their claim that she "fell" into the apartment wall. Hjeldness contends that, without this evidence, the jury was left to assume she had "no reason to fear for anyone's safety."

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made known to the court by offer or was apparent from the context within which questions were asked." Minn. R. Evid. 103(a); *see Becker v. Mayo Found.*, 737 N.W.2d 200, 215 (Minn. 2007) (stating offer of proof is a prerequisite to appellate review of the exclusion of evidence (citing Minn. R. Evid. 103(a))). Minnesota appellate courts have declined to review error in the exclusion of evidence when an appellant has made an insufficient "offer of proof." *See, e.g.*, *State v. Harris*, 713 N.W.2d 844, 848-49 (Minn. 2006) (discussing appellant's failure to make offer of proof regarding excluded evidence and that the evidence was not apparent from context); *State v. Lee*, 494 N.W.2d 475, 479 (Minn.1992) (stating errors raised on appeal were not properly preserved by offer of proof).

Hjeldness made no offer of proof of the excluded evidence. Neither her trial nor appellate counsel summarized what evidence was excluded and should have been received. *See Harris*, 713 N.W.2d at 848-49. For example, Hjeldness's brief on appeal refers to "specific occasions when Hjeldness feared N.Z.," but nothing in the record establishes what the specific instances were. As discussed above, defense counsel made many attempts to introduce evidence of the April 30 bar conversation between Hjeldness and A.N. Thus, at best, the record suggests that Hjeldness sought to introduce testimony of the April 30 bar conversation and evidence that N.Z. was *generally* abusive to A.N. But—apart from Hjeldness's statements that A.N. told her that N.Z. has abused her and displayed bruises—the substance of the bar conversation is not apparent from the context within which defense counsel's questions were asked. Because the state does not challenge whether Hjeldness properly preserved this issue under Minn. R. Evid. 103(a), and because we determine that any error in the exclusion of this evidence was harmless, we do not determine whether this issue was adequately preserved.

The state argues that the district court properly excluded evidence of specific instances of N.Z.'s violent conduct because such evidence is only admissible after a defendant has made a threshold showing that she can meet her burden of production for a self-defense/defense-of-others claim. The state argues that "permit[ting] a defendant to offer evidence of prior acts of violence by a victim in the absence of sufficient proffered evidence to warrant a self-defense instruction to the jury is to invite pretextual claims of self-defense in order to introduce otherwise inadmissible character evidence."

Reasonable force or self-defense is authorized in some cases, including when used by any person resisting an offense or aiding another to resist an offense. *See* Minn. Stat. § 609.06, subd. 1(3) (2018). It is true that "[t]he defendant has the burden of going forward with evidence to support a claim of self-defense" in order to receive a self-defense jury instruction. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006) (quotation omitted). A defendant meets that burden by making a prima facie showing of the four self-defense elements: (1) absence of aggression or provocation from the defendant, (2) the defendant's actual and honest belief of imminent danger of death or great bodily harm, (3) reasonable grounds for that belief, and (4) absence of a reasonable possibility of retreat to avoid the danger. *Id.*

A prima facie showing of these elements, however, is not a prerequisite to the admission of evidence of the defendant's apprehensive state of mind or that the victim was the aggressor. *See, e.g.*, *State v. Graham*, 371 N.W.2d 204, 209 (Minn. 1985) ("If the defendant does not go forward with such evidence, there is no right to *the self-defense instruction*." (emphasis added)). It is merely a burden of production to "com[e] forward

with evidence in support" of the self-defense claim. *Loving v. State*, 891 N.W.2d 638, 647 (Minn. 2017); *see also State v. Charlton*, 338 N.W.2d 26, 29 (Minn. 1983) (stating that a "lesser burden rests on a defendant pleading self-defense" and it is "one of production, which requires the defendant to come forward and present a sufficient threshold of evidence to make the defense one of the issues of the case"). Once the defendant meets that burden, the state then bears the burden of proving beyond a reasonable doubt that a defendant did not act in self-defense. *Loving*, 891 N.W.2d at 646-47 (explaining that "before the burden shifted to the State" to rebut beyond a reasonable doubt, the defendant "first had to satisfy a burden of production").[2]

Hjeldness sought to introduce evidence of recent abuse by N.Z. against A.N. to explain why she attacked N.Z. that night. This type of evidence may be admissible to establish self-defense, for example, as circumstantial proof of a defendant's apprehensive state of mind provided that the defendant knew about the prior act of violence. *State v. Matthews*, 221 N.W.2d 563, 564 (Minn. 1974). "Evidence of specific acts of violence is admissible 'where commonsense indicates that these acts could legitimately affect

[2] The state points to *State v. Nystrom* in support of its argument that caselaw required Hjeldness to first make a prima facie showing of a self-defense claim before evidence of past abuse between N.Z. and A.N. was admissible. 596 N.W.2d 256, 260 (Minn. 1999). In *Nystrom*, the supreme court determined that the district court properly excluded expert testimony that the murder occurred in a "high crime" area, which the defense intended to offer to prove that "it was reasonable for a young person living in north Minneapolis to so fear for his life that he would make a preemptive strike and kill any person who caused him such fear." *Id.* The supreme court reasoned that the expert opinion was inadmissible because it concerned objective circumstances and not the defendant's own subjective belief that he was in danger—and thus the expert opinion was not evidence of the *defendant's reasonable fear*. *Id.* Thus, *Nystrom* rejected the evidence as irrelevant and did not establish a "threshold requirement" for the admissibility of all self-defense evidence.

a defendant's apprehensions.'" *Zumberge*, 888 N.W.2d at 694 (quoting *Matthews*, 221 N.W.2d at 564).

During her own testimony and through cross-examination of other witnesses, Hjeldness tried to introduce evidence of a specific conversation that she and A.N. had while at the bar, which Hjeldness testified involved A.N. describing N.Z. as abusive and showing Hjeldness her bruises. This may be circumstantial evidence that, because of N.Z., Hjeldness reasonably feared for her own safety and that of A.N. *See Zumberge*, 888 N.W.2d at 694. Accordingly, the excluded evidence applies to the second element of Hjeldness's self-defense/defense-of-others claim.

It is thus troubling that the jury received only a fragmented understanding of Hjeldness's state of mind on the evening of the assault. It is unclear how the district court expected Hjeldness to present sufficient evidence to meet the burden of production for her self-defense claim. The district court also excluded the evidence as more prejudicial than probative under Minn. R. Evid. 403, and never articulated why.

But even if the district court abused its discretion in excluding probative evidence of Hjeldness's state of mind, the district court's decision is harmless beyond a reasonable doubt. No record evidence supported elements one and four of Hjeldness's self-defense claim. *See Johnson*, 719 N.W.2d at 629 (stating defendant must show she was not the aggressor for element one and fulfilled her duty to retreat for element four). Even if the district court had received evidence of domestic abuse between N.Z. and A.N., that evidence only goes to the second element of self-defense—that Hjeldness reasonably

feared for her safety and A.N.'s safety. No evidence shows that N.Z. was the first aggressor or that Hjeldness fulfilled her duty to retreat.

Hjeldness argued to the district court, and argues on appeal, that the hole in the apartment wall is circumstantial evidence that N.Z. pushed her and therefore he was the aggressor. This theory, however, rests on pure speculation. Hjeldness testified that she was unable to recall *any* details about her fight with N.Z. and did not recall falling into or hitting the wall. Thus, the *only* evidence about who was the aggressor came from N.Z. and A.N. Although Hjeldness argued they had reason to deny or make false claims about what happened to hide the domestic abuse, N.Z.'s and A.N.'s testimony was consistent about at least three things: Hjeldness fell into the wall by herself, she was the aggressor, and she did not retreat.

"Even if an objection was made and a district court abused its discretion, we reverse only if the exclusion of evidence was not harmless beyond a reasonable doubt." *Zumberge*, 888 N.W.2d at 694. Here, we conclude that a reasonable jury would have reached the same verdict, beyond a reasonable doubt, even with the excluded evidence of domestic abuse because Hjeldness still would not be entitled to a self-defense instruction. *See State v. Olsen*, 824 N.W.2d 334, 340 (Minn. App. 2012) (holding exclusion of evidence warrants reversal only if admission of evidence would have led to a different verdict beyond a reasonable doubt), *review denied* (Minn. Feb. 27, 2013); *see, e.g.*, *Nystrom*, 596 N.W.2d at 261 (holding excluded evidence was inconsequential because the defendant lacked evidence of other elements of self-defense). For that reason, even if we assume that the

district court abused its discretion by excluding evidence of domestic abuse between N.Z. and A.N., any error was harmless beyond a reasonable doubt.

II. The district court did not abuse its discretion by refusing to instruct the jury on self-defense.

Hjeldness also argues she was deprived of a fair trial because the district court abused its discretion by refusing to instruct the jury on her self-defense claim.[3] On appeal, she contends that the evidence "reasonably supported" the standard self-defense instruction, as provided in 10 *Minnesota Practice*, CRIMJIG 7.06 (2018). The state disagrees and argues the district court properly declined to instruct the jury on self-defense because Hjeldness failed to satisfy her burden of production.

We apply an abuse of discretion standard to a district court's decision to decline a requested jury instruction. *State v. Guzman*, 892 N.W.2d 801, 816 (Minn. 2017). "It is an abuse of the district court's discretion to refuse to give an instruction on the defendant's theory of the case if there is evidence to support it." *Johnson*, 719 N.W.2d at 629 (quotation omitted).

The district court determined that Hjeldness produced insufficient evidence to submit her self-defense claim to the jury. In making its ruling just before closing

[3] During trial, Hjeldness requested that the district court instruct the jury on self-defense *and* defense of others, and she notes in her appellate brief that she sought both instructions during trial. But Hjeldness claims error and seeks reversal based on the district court's failure to give an instruction on self-defense and never quotes the instruction that she seeks, were we to find error and remand. We therefore consider whether the district court erred in refusing to instruct on self-defense and do not specifically discuss the defense-of-others instruction, although we acknowledge that the two instructions are similar and closely related.

arguments, the district court emphasized that Hjeldness had testified that she remembered "having fun and laughing and having a good time" until *she confronted N.Z.* by telling him he cannot keep hurting A.N. The district court also found that there was no evidence that Hjeldness faced any "imminent harm" or "risk of bodily harm either to herself or someone else." And thus the district court rejected the defense theory that the hole in the apartment wall was circumstantial evidence that N.Z. was the aggressor, noting also that Hjeldness testified she could not recall most of the evening.

The district court did not abuse its discretion. We agree that Hjeldness did not produce enough evidence to submit her self-defense claim to the jury. As discussed above, no evidence supported Hjeldness's claim on two of the four elements of self-defense *even if* the district court had received the domestic abuse evidence. A self-defense instruction "is needed only if appellant sufficiently raises the defense by creating or raising a reasonable doubt that [her] use of force was justified." *State v. Stephani*, 369 N.W.2d 540, 546-47 (Minn. App. 1985) (affirming refusal to give self-defense instruction because appellant could not meet burden of production), *review denied* (Minn. Aug. 20, 1985); *see also Graham*, 371 N.W.2d at 209 (concluding defense failed to meet its burden and the district court properly refused to give self-defense instruction).

Hjeldness's argument that *State v. Baird* is analogous lacks merit. 654 N.W.2d 105 (Minn. 2002). In *Baird*, the supreme court determined that the prejudicial effect of an erroneous self-defense instruction warranted remand for a new trial. *Id.* at 107. But *Baird* is distinguishable for two reasons. First, *Baird* reviewed an unobjected-to self-defense instruction for plain error that contained a material misstatement of the law on the duty to

retreat. *Id.* at 113. In contrast, Hjeldness asserts error because the district court gave no self-defense instruction, so we apply harmless error review. *See State v. Lee*, 683 N.W.2d 309, 316 (Minn. 2004) (stating omission of jury instruction is subject to harmless error review). Second, the appellant in *Baird* received a self-defense instruction, although an erroneous one, based on a record that satisfied his burden of production. *Id.* at 108-09. Hjeldness, however, did not meet her burden of production.

Based on the record before us, we conclude that the district court acted within its discretion when it refused to instruct the jury on self-defense.

Affirmed.