STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1576

State of Minnesota,
Respondent,

vs.

Raymond Valerian Jacobson, Jr.,
Appellant.

Filed September 17, 2018
Reversed
Stauber, Judge[*]

Clay County District Court
File No. 14-CR-16-3692

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Pamela Lee Foss, Assistant County Attorney, Moorhead, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Florey, Judge; and Stauber, Judge.

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

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

STAUBER, Judge

On appeal, appellant argues that the district court erred by instructing the jury that appellant had a duty to retreat to be entitled to a self-defense claim although he was in his home. We reverse.

FACTS

In early morning hours of October 20, 2016, appellant Raymond Valerian Jacobson, Jr., fought with his live-in fiancé, J.N, which resulted in a serious injury to the back of J.N.'s head and appellant's arrest. Respondent State of Minnesota charged appellant with one count of second-degree assault with a dangerous weapon resulting in substantial bodily harm, Minn. Stat. § 609.222, subd. 2 (2016), one count of third-degree assault resulting in substantial bodily harm, Minn. Stat. § 609.223, subd. 1 (2016), and one count of domestic assault, Minn. Stat. § 609.2242, subd. 2 (2016).

At a three-day jury trial in May 2017, both J.N. and appellant testified as to what happened on the morning of the offense. J.N. testified that while appellant went out to visit his friend, he took his medication that helped him sleep and went to bed. The next thing he remembered was waking up at the end of the bed and he was bleeding from the back of his head. After calling out to appellant to no avail, J.N. went to get help from his neighbors, but collapsed in the hallway. Appellant then came out from their apartment and started talking to J.N. J.N. grabbed a nearby fire extinguisher and sprayed it at appellant because appellant looked angry and J.N. "didn't want anybody near [him]." Appellant went back inside the apartment and locked the door. An upstairs neighbor who heard the commotion

called 911, and law enforcement officers soon arrived. The officers sent J.N. to a hospital. The officers then knocked on the door of appellant's apartment. When nobody answered, the officers forced the door open and detained appellant.

Appellant presented a different version of the story, asserting that he and J.N. had already had an argument before he left to visit his friend, and that the argument escalated when he came back. Appellant alleged that J.N. threw things at him and started hitting him. When appellant shoved J.N. out of the apartment, J.N. came back inside with a fire extinguisher and sprayed it at appellant. J.N. also had a knife in his hands. When appellant saw the knife, he grabbed a vase "in anger and fear and frustration" and hit J.N. with it to "save [him]self from him."

As appellant asserted self-defense at the trial, the district court gave the following jury instruction:

> It is lawful for a person who is resisting an assault against his person and who has reasonable grounds to believe that bodily injury is about to be inflicted upon the person, to defend from an attack. In doing so, the person may use all force and means that the person reasonably believes to be necessary.
>
> . . . .
>
> The legal excuse of self defense is available only to those who act honestly and in good faith. This includes the duty to retreat or avoid the danger if reasonably possible.
>
> The defendant is not guilty of a crime if he acted in self defense.

At the end of the trial, the jury found appellant guilty of all three charges. The district court sentenced appellant to an executed prison term of 30 months for the second-degree assault conviction. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred by instructing the jury that appellant had a duty to retreat. We agree.

On appeal, we generally do not consider an alleged error in jury instructions unless an appellant objected to the instruction at trial. *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). However, even in the absence of an objection, as here, we have the discretion to consider the error if it is a plain error affecting the appellant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). In order for us to review an unobjected-to error, appellant must show that there was (1) an error; (2) that is plain; and (3) that affects substantial rights. *Id.* Under this three-prong plain-error test, an "error" is a "deviation from a legal rule unless the rule has been waived." *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014) (quotation omitted). Such error is plain if it is "clear" or "obvious," which is usually "shown if the error contravenes caselaw, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted).

As the state concedes, the self-defense instruction here was an error that is plain. Generally, when acting in self-defense, the law mandates a duty to retreat if reasonably possible. *State v. Carothers*, 594 N.W.2d 897, 899 (Minn. 1999). However, "[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." *State v. Glowacki*, 630 N.W.2d 392, 402 (Minn. 2001). In *State v. Baird*, the supreme court held that a self-defense jury instruction that contained duty-to-retreat language was an error that was plain because defendant was at his home. 654 N.W. 2d 105, 113 (Minn. 2002). Therefore, the district court's jury instruction that contained duty-to-retreat language clearly contravened an established rule and caselaw.

An error affects appellant's substantial rights "if the error was prejudicial and affected the outcome of the case." *Griller*, 583 N.W.2d at 741. The error was prejudicial if there is a "reasonable likelihood that the giving of the instruction in question would have had a significant effect on the verdict of the jury." *Id.* (quotation omitted).

The state argues that the erroneous jury instruction did not affect appellant's substantial rights, because appellant used excessive force in "anger and frustration" and thus, even a properly instructed jury could not have found that appellant acted in self-defense. This argument is unsubstantiated. In *Baird*, the appellant hit his co-resident who was trying to stab him with a screwdriver at their home after the screwdriver had been removed from the co-resident's hand. 654 N.W.2d at 114. The state put forth the same argument as here, but the supreme court ruled that the erroneous instruction affected the appellant's substantial rights because "it is simply impossible to determine whether the jury rejected [the appellant]'s version of the facts or whether it accepted his version but concluded that he was guilty nevertheless because he failed to retreat." *Id.*

Here, as in *Baird*, it is impossible to decide whether the jury rejected appellant's version of the facts because the force was excessive or because he failed to retreat, due to

the erroneous instruction. If the jury had known that appellant did not have a duty to retreat, "it is possible that it would have decided that the [appellant]'s actions were reasonable and taken in self-defense." *Baird*, 654 N.W.2d at 114. Therefore, the error was prejudicial.

Even if all three prongs of the plain-error test are met, this court must consider whether a new trial is necessary to ensure fairness and the integrity of judicial proceedings. *Griller*, 583 N.W.2d at 740. We have held that "[t]he fairness and integrity of the judicial proceedings are called into question . . . when the jury may not have considered a disputed element of the crime" because of the erroneous instructions. *State v. Watkins*, 820 N.W.2d 264, 269 (Minn. App. 2012) (quotation omitted), *aff'd. on other grounds* 840 N.W.2d 21 (Minn. Dec. 04, 2013). Because it is possible that the district court's erroneous instruction prevented the jury from properly considering the elements of self-defense and weighing the evidence, reversal of appellant's convictions is necessary to ensure the fairness and integrity of the judicial proceedings.[1]

Reversed.

[1] Appellant also argues that the district court erred by telling appellant that he would have to represent himself if he was unhappy with his court-appointed counsel. Because we reverse on the other ground, we need not address this argument.