STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0611

State of Minnesota,
Respondent,

vs.

Stephanie Louise Clark,
Appellant.

Filed March 27, 2023
Reversed
Klaphake, Judge[*]

Hennepin County District Court
File No. 27-CR-20-6206

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

Mary F. Moriarty, Hennepin County Attorney, Peter R. Marker, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Caitlinrose H. Fisher, Matthew D. Forsgren, Forsgren Fisher McCalmont DeMarea Tysver LLP, Minneapolis, Minnesota; and

Eric E. Doolittle, Appelman Law Firm, LLC, St. Louis Park, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Larson, Judge; and Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant argues that her conviction for second-degree murder must be reversed because (1) the district court's supplemental jury instructions materially misstated the law of self-defense; (2) the district court abused its discretion in the admission of witness testimony; and (3) the district court abused its discretion by preventing appellant from presenting testimony relevant to her departure request at sentencing. We determine the district court materially misstated the law of self-defense by defining "imminent" as "immediately" and by failing to tailor the instruction to the unique circumstances of the case, and we therefore reverse on this basis. Based on this determination, we do not reach the remaining issues.

FACTS

In 2020, appellant Stephanie Louise Clark was in a romantic relationship with D.B. Clark, her five-year-old son, and D.B. lived in Clark's home. D.B. became abusive toward Clark approximately a month and a half after he moved into her home. This abuse became progressively worse over time and, by January 2020, occurred nearly every day. D.B. prevented Clark from socializing with her friends or family members and did not permit her to leave the home without his permission. D.B. also yelled at, pushed, kicked, and slapped Clark. When D.B. became angry with Clark, he forced her to kneel in a "kneeling spot" in front of a door and hit her in the head if she did not comply. On at least one occasion, D.B. held a loaded firearm to Clark's head. D.B. kept several firearms around the home and frequently paced around the home with a firearm.

On March 5, 2020, D.B. and Clark got into an argument. D.B. forced Clark to kneel in her "kneeling spot" and punched her with a closed fist. D.B.'s violence continued to escalate that evening as he held a loaded firearm to Clark's head. Clark later left the home to pick up her son. After Clark returned home, D.B. continued hitting her, punched her with a closed fist, and hit her in the face with a basketball. D.B. threatened Clark by saying, "Wait for tonight. Wait for [your son] to go to bed. I'm going to break your ribs." Clark was afraid D.B. "was gonna beat [her] to death." Clark testified, "I remember feeling terrified. I remember feeling like I wasn't gonna wake up. I remember being scared for my son." Clark picked up a nearby firearm and shot D.B. D.B. went into the bedroom, where Clark picked up a second gun and shot him again. D.B. died of multiple gunshot wounds.

On March 6, 2020, respondent State of Minnesota charged Clark with second-degree intentional murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2020). Following trial, the jury found Clark guilty of the offense and the district court imposed a 306-month prison sentence. Clark now appeals.

DECISION

I. The district court erred in its jury instructions because it materially misstated the law of self-defense and failed to tailor the instructions to the unique facts of the case.

Clark challenges the district court's definition of "imminent" in response to the jury's question to define the term as found in the jury instruction describing Minnesota's self-defense law. *See* Minn. Stat. § 609.19 (2020) (setting forth Minnesota's law regarding murder in the second degree). A district court has "considerable latitude in selecting jury

instructions, including the specific language of those instructions." *State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016). However, "jury instructions must fairly and adequately explain the law of the case." *Id.* A district court errs in instructing the jury when its instructions "confuse, mislead, or materially misstate the law." *State v. Vang*, 774 N.W.2d 566, 581 (Minn. 2009). An appellate court reviews jury instructions as a whole to determine whether they accurately reflect the law. *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011). We review jury instructions for an abuse of discretion, and a court abuses its discretion when its instructions erroneously state the law. *See id.* at 364 (holding that district court abused its discretion in instructing the jury by an instruction that was an erroneous statement of the law). In response to a question from the jury, the district court may "give additional instructions." Minn. R. Crim. P. 26.03, subd. 20(3).

Clark argued at trial that she acted in self-defense when she shot D.B. because she feared he would kill her or hurt her son. An individual "may act in self-defense if . . . she reasonably believes that force is necessary and uses only the level of force reasonably necessary to prevent the bodily harm feared." *State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014). A defendant bears the burden of producing evidence to support a self-defense claim. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). If the defendant meets that burden, the state must disprove one or more of the self-defense elements beyond a reasonable doubt. *Id.*

Minnesota law permits the use of reasonable force against another "when used by any person in resisting or aiding another to resist an offense against the person." Minn. Stat. § 609.06, subd. 1(3) (2020). Further, deadly force may be used "when necessary in

resisting or preventing an offense which the actor reasonably believes exposes the actor or another to great bodily harm or death." Minn. Stat. § 609.065 (2020). The Minnesota Supreme Court has articulated the following four-part test when interpreting § 609.065:

> (1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he or she was in *imminent* danger of death or 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.

Johnson, 719 N.W.2d at 629 (quotation omitted) (emphasis added). This form of self-defense is referred to as the justifiable taking of life.

In its final instructions, the district court instructed the jury on the law of self-defense, which was consistent with the jury instructions guide. The district court stated:

> The defendant asserts the defense of the justifiable taking of life. No crime is committed when a person intentionally takes the life of another if the person's action was taken in resisting or preventing an offense of a physical nature the person reasonably believed exposed her to death or great bodily harm.
>
> . . . .
>
> The defendant may use all force and means she reasonably believes necessary and that would appear to a reasonable person in similar circumstances to be necessary to prevent death or great bodily harm that appears to be imminent. The kind of degree of force a person may lawfully use in self-defense is limited by what a reasonable person in the same situation would believe to be necessary. Any use of force beyond that is unreasonable.

During deliberations the jury sent a note to the district court asking, "What is the [legal] definition [of the term] imminent?" After conferring with counsel, and over Clark's objection, the district court instructed the jury that: "To fear imminent great bodily harm

or death means that the person must fear that such harm will occur immediately." The district court agreed with the state's recommendation and based its reasoning on the model jury instructions for criminal-sexual-conduct offenses, which provides that "'[t]o fear imminent great bodily harm' means that the person must fear that such harm will occur immediately." 10 *Minnesota Practice*, CRIM.JIG, 12.03 (2022). The district court also relied on *State v. Boyce*, which described the difference between heat-of-passion manslaughter and self-defense. 170 N.W.2d 104, 112-13 (Minn. 1969). After providing its instruction on the definition of the term "imminent," the district court excused the jury to continue deliberating. Shortly thereafter, the jury found Clark guilty of second-degree murder.

We are persuaded that the district court materially misstated the law because it incorrectly instructed the jury that "imminent" means that "such harm will occur immediately." There is no legal basis for this erroneous instruction. "[W]hen instructing on self-defense, courts must use analytic precision." *State v. Hare*, 575 N.W.2d 828, 833 (Minn. 1998) (quotation omitted). Caselaw does not define the term "imminent" in the context of the law of self-defense as it is raised in this context. The district court relied on *Boyce*, which states that

> the justification or excuse which exonerates a defendant from all criminal responsibility depends, not on the state of his emotions at the time of the killing, but rather on the quality of his judgment with respect to the danger to be apprehended from others and the alternative methods by which the danger could have been avoided. Acts sufficient to incite a passion in a person having ordinary control over his emotions would not necessarily cause such a man to consider himself in danger of

> death or grievous bodily harm or cause a reasonable person to think it necessary to kill in order to preserve himself.

170 N.W.2d at 112-13.

Upon review, we determine that the district court misread *Boyce*. The district court's jury instruction seemingly conflated the elements of heat-of-passion manslaughter with the justifiable-taking-of-life defense. The district court's supplemental instruction relied on the definition of heat of passion and the emotion that is required to reduce a murder to manslaughter, as opposed to whether an actor reasonably believes that deadly force is necessary.

The Minnesota Supreme Court instructs that a district court must consider the individual facts of each case to determine whether the situation is one in which "the ordinary reasonable person would consider killing necessary to avert the danger of death or grievous bodily harm." *Id.* at 113. This analysis "turns on the character of the danger to be apprehended and the available alternatives rather than on the defendant's emotional reaction to the situation." *Id.* As stated, the district court's instruction focused on Clark's emotional reaction and relied on the heat-of-passion discussion in *Boyce*, rather than on the justifiable-taking-of-life analysis. The correct analysis includes a temporal component guided by the unique facts of each case.

As discussed above, the facts of the case are tragic. The district court should have followed the supreme court's admonition to tailor the jury instructions to these facts—particularly in light of D.B.'s escalating and violent abuse against Clark—rather than

making a blanket statement that "imminent" meant "immediate." The law requires a more nuanced instruction, based on the unique facts of each case.

The Minnesota Supreme Court has not defined the term "imminent" in the law of self-defense. And it is for the supreme court—rather than the district court or this court on appeal—to define this term. We find decisions from other states persuasive. However, and we may "look outside Minnesota when our own jurisprudence is undefined." *State v. Willis*, 898 N.W.2d 642, 646 n.4 (Minn. 2017) (quotation omitted). We are impressed by the Kansas Supreme Court's recognition of the unique nature of domestic abuse as it relates to a claim of self-defense. *State v. Hundley* involved a situation where a wife killed her abusive husband. 693 P.2d 475, 476 (Kan. 1985). The Kansas Supreme Court determined that the use of the term "immediate" instead of "imminent" in the jury instructions was reversible error. *Id.* at 478. The court explained that the use of the word "immediate" "places undue emphasis on the immediate action of the deceased, and obliterates the nature of the buildup of terror and fear which had been systematically created over a long period of time." *Id.* at 479; *see also State v. Janes*, 850 P.2d 495, 506 (Wash. 1993) (explaining that "imminent" has less to do with proximity in time than "immediate").

We find the analysis presented in these cases to be persuasive. Our own law is undefined as to the precise definition of "imminent" and, in the absence of a defined term, the district court should have tailored its instructions to the particular facts of this case. *See Boyce*, 170 N.W.2d at 112-13. "[T]he elements of self-defense are by nature very specific to the person apprehending fear and the very particular circumstances causing fear." *State v. Bjork*, 610 N.W.2d 632, 636-37 (Minn. 2000) (citing *State v. Nystrom*, 596

N.W.2d 256, 260 (Minn. 1999)). Instead, the district court engrafted a requirement onto the term "imminent" that does not exist in our caselaw. Given D.B.'s violent actions against Clark, the jury could have found that Clark was in imminent danger of great bodily harm, even if such danger was not immediate. By instructing the jury that "imminent" means "immediate," the district court telegraphed to the jury that holding a loaded gun to a person's head and threatening harm does not qualify as an imminent threat. We therefore conclude that the district court misstated the law by making a blunt instruction to the jury that "imminent" means "immediate."

II. The district court's error was not harmless beyond a reasonable doubt.

A district court abuses its discretion when its instructions to the jury erroneously state the law. *Koppi*, 798 N.W.2d at 362. For the reasons discussed above, we determine that the district court misstated the law. We further determine that the error was not harmless. *See State v. Larson*, 787 N.W.2d 592, 601 (Minn. 2010) ("If the court erred in its instructions, we review the error to determine whether it was harmless."). An erroneous jury instruction "does not merit a new trial if the error was harmless beyond a reasonable doubt." *State v. Pollard*, 900 N.W.2d 175, 181 (Minn. App. 2017) (quotation omitted).

Clark asserts that the district court's misstatement of the law significantly prejudiced her and prevented the jury from weighing D.B.'s significant history of domestic abuse. Clark argues that the jury, if properly instructed on the definition of the term "imminent," could have found that she acted in self-defense and that her conduct was reasonable. We agree that a more nuanced definition is appropriate and will turn on the unique facts of each case. A defendant who asserts a self-defense claim must also show that the use of force

was reasonable. *State v. Glowacki*, 630 N.W.2d 392, 399 (Minn. 2001) ("To find that a defendant acted in self-defense, a jury must . . . find that the defendant reasonably believed that force was necessary."). Additionally, the degree of force used in self-defense must not exceed what is deemed necessary to a reasonable person in similar circumstances. *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997). It is the duty of the fact-finder to make this reasonableness determination. *Glowacki*, 630 N.W.2d at 403.

Here, Clark testified about D.B.'s violent behavior. The jury, if properly instructed, may have determined that Clark's use of force was reasonable in light of these circumstances. However, the district court's supplemental instruction, which was given at a critical stage of the jury deliberations, placed a thumb on the scale for the prosecution. We therefore determine that the district court's supplemental jury instruction was both erroneous and was not harmless beyond a reasonable doubt. Accordingly, we reverse Clark's conviction.[1]

Reversed.

[1] Clark raises two additional arguments on appeal. First, Clark claims the district court abused its discretion by permitting a witness to testify about Clark's firearm training. Second, Clark contends the district court erred at sentencing by preventing her from introducing testimony to support her request for a downward departure. Based on our decision that Clark is entitled to reversal, we need not reach these arguments.