

IN THE COURT OF APPEALS OF IOWA

No. 2-889 / 11-1803
Filed January 9, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LEWIS BURNICE DIXON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Thomas G. Reidel
(motion) and Mark D. Cleve (trial), Judges.

Defendant appeals his conviction for domestic abuse assault causing
bodily injury. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney
General, Michael J. Walton, County Attorney, and Kelly Cunningham, Assistant
County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

EISENHAUER, C.J.

Lewis Dixon appeals his conviction for domestic abuse assault causing bodily injury, third offense. He argues the court erred in instructing the jury. We reverse and remand for a new trial.

I. Background Facts and Proceedings.

Dixon and his girlfriend, Nicole Dozier, were arguing, and an altercation occurred at his residence. Police officers observed swelling on Nicole's forehead. At trial, Dixon and Nicole gave conflicting accounts of the events. Nicole testified Dixon "grabbed me below my arm and I turned around and slapped him [on the shoulder] and next thing I know he punches me in the head."

In contrast, Dixon testified Nicole was intoxicated and hit him five times in the face after he woke her up to eat supper. Dixon then grabbed Nicole's shoulders to get her to stop hitting him, but he let her go when she asked to be released. Nicole went to another room and Dixon followed and stood in front of her. When Nicole hit him in the face again, he responded by hitting her forehead. "It was accidental, but just a quick reaction, and that's how she got hit from me from that incident alone." Dixon also testified he had a prior history of domestic misdemeanors to which he had pled guilty, but his actions with Nicole were "purely accidental and yet was self-defense." He explained:

Q. And why do you believe it was self-defense? A. I was preventing a situation from happening and I just accidentally reacted the way I did, but at the same time I was trying to prevent that from going any further—any further than--

Q. What were you reacting to? A. I was reacting from her slapping me or hitting me any more—any other times after that.

Dixon objected to the portion of Jury Instruction 20 at issue in this appeal. The jury convicted Dixon of domestic abuse assault causing bodily injury, third offense and he appeals.

II. Scope and Standards of Review.

We review for correction of errors at law. *State v. McCall*, 754 N.W.2d 868, 871 (Iowa Ct. App. 2008). We consider whether the instructions “correctly state the law and are supported by substantial evidence.” *Id.* Error in giving jury instructions does not merit reversal unless it results in prejudice to the defendant. *State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996). In criminal cases, the instructions must explain “technical terms or legal terms of art.” *Id.* We review the instructions together, not piecemeal or in isolation. *State v. Bennett*, 503 N.W.2d 42, 45 (Iowa Ct. App. 1993).

III. Merits.

The marshaling instruction and the “reasonable force” instruction stated the State had the burden of proving Dixon “was not acting with justification.” Justification was further explained in Instruction No. 17:

A person is justified in using reasonable force if he reasonably believes the force is necessary to defend himself from any imminent use of unlawful force.

If the State has proved any one of the following elements, the defendant was not justified:

. . . .

2. An alternative course of action was available to the defendant.

The italicized language in the following instruction is challenged by Dixon.

INSTRUCTION NO. 20

Concerning element number 2 of Instruction No. 17, if a defendant is confronted with the use of unlawful force against him, he is required to avoid the confrontation by seeking an alternative

course of action before he is justified in repelling the force used against him. *However, there is an exception.*

If the defendant was in his own home which he was legally occupying and the alternative course of action was such that he reasonably believed he had to retreat or leave his position to avoid the confrontation, then he was not required to do so and he could repel force with reasonable force.

If the alternative course of action involved a risk to his life or safety, and he reasonably believed that, then he was not required to take or use the alternative course of action to avoid the confrontation, and he could repel the force with reasonable force.

Dixon argues his testimony supported the second paragraph's exception, but no trial evidence or testimony supported instructing the jury on the third paragraph's exception. He further argues,

By including both exceptions in the instruction, the jury was lead to believe that both exceptions must be met in order for the defendant to be justified in his actions. [This is especially true] when the first paragraph speaks of 'an exception' which is then followed by two exceptions rather than one.

Dixon asserts Instruction No. 20 does not make it clear there are two exceptions to the rule of seeking an alternative course of action.

We note the first paragraph of Instruction No. 20 details a defendant's duty to retreat when confronted with the use of unlawful force while the second and third paragraphs provide exceptions to the duty to retreat. The second paragraph's exception involves confrontations occurring in a defendant's home while the third paragraph's exception involves situations where the alternative course of action could reasonably result in risk to a defendant's life or safety. Instruction No. 20 is consistent with the model instruction on alternative course of action—exceptions. See Iowa Crim. Jury Instr. No. 400.10. However, the comment to the model instruction references the two separate exception paragraphs and states, "Note: Use the alternative(s) supported by the evidence."

We agree with Dixon that, given the introductory wording of “an exception,” it could reasonably appear to the jury that paragraphs two and three of Instruction No. 20 contain one overall exception. We further agree the record does not support instructing the jury on the third paragraph’s exception involving situations where the alternative course of action could reasonably result in risk to a defendant’s life or safety. See *Bennett*, 503 N.W.2d at 45 (“Jury instructions are designed to explain the applicable law to the jurors so the law may be applied to the facts proven at trial.”). Although the State had the burden of proving the exception(s) did not apply to Dixon, we conclude Dixon has been prejudiced because the challenged instruction added an extra condition that had to be met in order to fall within “an exception.” Accordingly, we reverse and remand for a new trial consistent with this opinion.¹

REVERSED AND REMANDED.

¹ Dixon also argues the court abused its discretion in granting the State’s motion for continuance. Because we remand for a new trial, we need not address this issue.