

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

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STATE OF NEW MEXICO,

Plaintiff-Appellee,



Mark Reynolds

v.

No. A-1-CA-41985

STEPHEN JAMES GRIFFIN,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Bruce Fox, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Meryl E. Swanson, Assistant Solicitor General

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for Appellee

Bennett J. Baur, Chief Public Defender

Bianca Ybarra, Assistant Appellate Defender

Santa Fe, NM

for Appellant

MEMORANDUM OPINION

HANISEE, Judge.

{1} Defendant Stephen James Griffin appeals his conviction of aggravated assault with a deadly weapon, *see* NMSA 1978, §§ 30-3-2(A) (1963), 31-18-16 (2022), arguing that the district court committed reversible error by denying his request for a jury instruction on defense of property. *See* UJI 14-5180 NMRA. Defendant

1 contends that he used his gun only to fire a single shot into the air in order to scare
2 away a dog that was attacking his dog, thereby defending his property. Defendant
3 argues that he was therefore entitled to a defense of property instruction and that he
4 presented evidence supporting each element of the requested instruction. Because
5 we find no evidence that the victims—at whom witnesses testified the gun was
6 pointed—engaged in conduct that would cause a reasonable person in Defendant’s
7 position to believe they needed to be stopped, we affirm the district court’s denial of
8 Defendant’s requested jury instruction.

9 **DISCUSSION**

10 {2} Defendant was charged for aggravated assault against two victims because he
11 allegedly pointed a firearm in their direction at some point after his dog was attacked
12 by their dog. At trial, Defendant proposed a defense of property jury instruction,
13 which the district court denied. *See* UJI 14-5180. Defendant therefore preserved the
14 issue, and we review for reversible error. *See State v. Montoya*, 2015-NMSC-010,
15 ¶ 25, 345 P.3d 1056.

16 {3} The denial of a jury instruction is reviewed de novo as a mixed question of
17 law and fact. *State v. Swick*, 2012-NMSC-018, ¶ 60, 279 P.3d 747. “When
18 considering a defendant’s requested instructions, we view the evidence in the light
19 most favorable to the giving of the requested instructions.” *Id.* (alteration, internal
20 quotation marks, and citation omitted). A defendant is entitled to jury instructions

1 on their theory of the case if evidence supports each instruction sought. *State v.*
2 *Brown*, 1996-NMSC-073, ¶ 34, 122 N.M. 724, 931 P.2d 69. Importantly, a district
3 court need not accept jury instructions unsupported by evidence. *State v. Nemeth*,
4 2001-NMCA-029, 130 N.M. 261, 23 P.3d 936 (holding that the trial court did not
5 err in refusing to give requested instructions because the “[d]efendant did not present
6 evidence warranting . . . defense of property instructions”), *overruled on other*
7 *grounds by State v. Ryon*, 2005-NMSC-005, 137 N.M. 174, 108 P.3d 1032.

8 {4} Because a defendant is entitled to evidence-supported jury instructions on his
9 theory of the case, we examine the evidence of Defendant’s theory of the case and
10 not the State’s in our analysis. Under this theory, Defendant heard his dog Daisy
11 yelping outside his apartment. He rushed outside to find a much-larger dog (Juzo)
12 attacking Daisy, so, to scare away the attacking dog, Defendant exited his apartment
13 and fired his gun. Because, in Defendant’s view, he was defending his property
14 (Daisy) by firing his gun, he requested the following defense of property jury
15 instruction:

16 The defendant acted in defense of property if

17 1. The _____ was property [of the defendant] [in the
18 defendant’s lawful possession];

19 2. It appeared to the defendant that _____ (*name of*
20 *victim*) was about to _____ (*describe act*) and that it was necessary
21 to _____ (*describe defendant’s action*) in order to stop (*name of*
22 *victim*);

1 3. The defendant used an amount of force that the defendant
2 believed was reasonable and necessary to defend the property;

3 4. A reasonable person in the same circumstances as the
4 defendant would have acted as the defendant did.

5 UJI 14-5180.

6 {5} On appeal, Defendant argues that all four elements of the requested jury
7 instruction were supported by evidence. Focusing on the second element, Defendant
8 points to the victims’ testimony (1) that they trained Juzo to protect them if a dog
9 entered the space between a leashed Juzo and his owners; and (2) that they were
10 aware of Juzo’s mixed breed between Rottweiler and Blue Heeler, both of which are
11 “known to be protective of their owners.” Defendant contends that this testimony
12 “supports the sentiment” that the victims knew of Juzo’s aggressive nature and
13 “trained [Juzo] to react if a dog crossed [the] line”—qualifying them as victims for
14 purposes of the second element. Defendant contends that the victims’ testimony
15 contradicted the district court’s finding that no evidence supported the requested jury
16 instruction.

17 {6} Although our review of the district court’s rejection of Defendant’s requested
18 jury instructions is de novo, we include its reasoning in our explanation. Neither the
19 State nor the district court took issue with the first, third, or fourth elements of the
20 instruction. It was the second element that dissuaded the district court because, in
21 the court’s view, no evidence was presented in support thereof. The court reasoned

1 that the second element of the requested instruction required the *victims*—Juzo’s
2 owners—to be doing some act that necessitated Defendant’s defense of Daisy and
3 that there was no evidence presented of such an act. The district court explained that
4 there was no evidence that the victims were even aware of Juzo’s aggressive nature,
5 that they encouraged that behavior, or that Juzo had bitten people (or, impliedly,
6 other dogs) in the past. The district court disagreed with Defendant that the victims’
7 testimony that they had trained Juzo to “defend [them]” if another dog came within
8 a certain “zone” was evidence that the victims had committed any kind of act that
9 necessitated Defendant’s response. The district court concluded that the presented
10 evidence simply showed “two dogs fighting” rather than a dog acting vicariously on
11 behalf of its owners.

12 {7} We agree. With no case law indicating otherwise, the “victim[s]”
13 contemplated by the requested jury instruction are human victims, and it is therefore
14 their act and not a dog’s that must be supported by evidence in order to warrant a
15 defense of property instruction. To further indicate that this case revolves around
16 human and not canine victims (and therefore that a human act and not a canine act
17 must be inserted in the jury instruction as the act instigating a defensive response),
18 we point out that Defendant was charged with two counts of aggravated assault with
19 a deadly weapon against two human victims and that the jury was instructed that

1 they must find beyond a reasonable doubt that the assault was against two human
2 victims.

3 {8} Thus, in order to warrant the requested jury instruction, Defendant must have
4 presented evidence that at least one of the victims took some action that led to
5 Defendant's defensive response. In our view, training a dog to defend its owner is
6 not the same as encouraging or even allowing a dog to attack an animal or humans.
7 The latter but not the former could be considered evidence of an act by a victim that
8 instigated Defendant's response. But there is no evidence of the latter. On the
9 contrary, the owners testified that they "acted instantly," that they did not stand there
10 and "watch it happen" but tried to intervene. Undisputed evidence showed that the
11 victims' dog was on a leash, but that Defendant's was not, and that the victims
12 accompanied Juzo, but that Defendant did not accompany Daisy until after the attack
13 began. No reasonable jury could find from the evidence presented that the victims'
14 actions of walking their leashed and trained dog and intervening when their dog
15 attacked a barking and approaching dog were actions warranting a defensive
16 response. Therefore, including such a jury instruction, which was unsupported by
17 evidence, would likely only confuse the jury and lead to reversible error. *See State*
18 *v. Parish*, 1994-NMSC-073, ¶ 4, 118 N.M. 39, 878 P.2d 988 ("Reversible error
19 arises if . . . a reasonable juror would have been confused or misdirected.").

1 {9} We therefore agree with the district court that no evidence was presented that
2 the victims acted in any way to instigate a defensive response from Defendant and
3 that the jury instruction was therefore not supported by evidence.

4 **CONCLUSION**

5 {10} We affirm Defendant's convictions.

6 {11} **IT IS SO ORDERED.**

7 
8 **J. MILES HANISEE, Judge**

9 **WE CONCUR:**

10 
11 **SHAMMARA H. HENDERSON, Judge**

12 
13 **GERALD E. BACA, Judge**