STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0821

State of Minnesota,
Respondent,

vs.

Thomas Raymond Struzyk,
Appellant.

Filed March 17, 2014
Affirmed
Worke, Judge

Benton County District Court
File No. 05-CR-12-1497

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

Philip Miller, Benton County Attorney, Karl L. Schmidt, Assistant County Attorney, Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Kirk, Judge.

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

WORKE, Judge

Appellant challenges his conviction for felony fourth-degree assault, arguing that the district court abused its discretion by refusing to give his requested jury instruction. We affirm.

FACTS

Appellant Thomas R. Struzyk was convicted after a jury trial of fourth-degree assault in violation of Minn. Stat. § 609.2231, subd. 1 (2012) (transfer of bodily fluids to a peace officer). On August 22, 2012, Benton County deputy sheriff Brad Kadlec was asked to arrest Struzyk on a warrant. Kadlec was admitted into Struzyk's residence by Struzyk's mother, who told her son that a deputy was at the door with an arrest warrant. Struzyk was asleep in a room immediately adjacent to the front door. Kadlec heard Struzyk tell his mother that he would not talk to a deputy. Kadlec could see into Struzyk's bedroom; he stepped to the door of the bedroom and told Struzyk that he had a warrant for his arrest. Despite Kadlec's repeated requests, Struzyk emphatically refused to go with him.

Because of Struzyk's attitude, Kadlec decided to call for assistance. As he stepped back to call, he noticed a gun case in Struzyk's bedroom. Struzyk slammed the bedroom door, but Kadlec opened it because he was concerned about the gun. Kadlec testified that Struzyk assumed a threatening fighting stance and began to advance toward him. Kadlec pulled out his Taser and ordered Struzyk to calm down. As Struzyk continued to advance, saying, "F--cking tase me," Kadlec fired his Taser, striking Struzyk in the chest and abdomen. Struzyk, although affected by the electrical charge, removed one of the probes, leaving a small, bleeding wound.

At this point, Struzyk agreed to go with Kadlec, who refrained from handcuffing Struzyk while he dressed and used the bathroom. After using the bathroom, Struzyk wiped his finger across the small wound and smeared the blood on Kadlec's shirt, saying,

"This is for you." A picture taken shortly afterward shows a faint smear of blood on Kadlec's uniform shirt.

Struzyk testified that he did not threaten Kadlec, either verbally or physically. He denied wiping his finger on Kadlec's shirt. He stated that he removed the Taser probe from his chest and tossed it to Kadlec; he opined that this was the source of any blood on Kadlec.

Struzyk requested a jury instruction that included language that the act of throwing or transferring bodily fluid is an assault if the manner in which it was thrown at or transferred to the officer met the definition of "physical assault." The district court refused to give this instruction, instead using the standard jury instruction. The jury subsequently convicted Struzyk of fourth-degree assault. This appeal followed.

D E C I S I O N

We review a district court's decision regarding whether to give a requested jury instruction for an abuse of discretion. *State v. Koppi*, 798 N.W.2d 358, 361 (Minn. 2011). A jury instruction, viewed in its entirety, "must fairly and adequately explain the law of the case." *Id.* at 362. A district court abuses its discretion if its jury instruction misstates the applicable law. *Id.*

Minn. Stat. § 609.2231, subd. 1, provides that a person is guilty of fourth-degree assault "[i]f the assault inflicts demonstrable bodily harm or the person intentionally throws or otherwise transfers bodily fluids or feces at or onto the officer . . . ." Struzyk argues that the clear language of this statute requires that the transfer of fluids occur during the course of a physical assault on a peace officer.

In *State v. Kelley*, this court determined that the transfer of bodily fluids onto a peace officer is a felony in and of itself. 734 N.W.2d 689, 694 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). This court concluded that "an intentional throwing or otherwise transferring of bodily fluids or feces at or onto an officer" was a fourth-degree assault without other assaultive behavior. *Id.* at 695. This court reaffirmed this decision in *State v. Cogger*, 802 N.W.2d 407, 410-11 (Minn. App. 2011), *review denied* (Minn. Mar. 28, 2012). In light of these decisions, the district court here did not abuse its discretion by refusing to give Struzyk's requested instruction, which misstates the applicable law.

Struzyk asks us to determine that *Kelley* was wrongly decided. An appellate court is "extremely reluctant to overrule . . . precedent under principles of *stare decisis*. When overruling precedent, [an appellate court] . . . require[s] a compelling reason to do so." *State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005) (quotation and citation omitted). Struzyk has not provided a compelling reason to reject the careful reasoning of *Kelley*.

Affirmed.