

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-220047
	:	TRIAL NO. B-2101596
Plaintiff-Appellee,	:	
	:	
vs.	:	<i>OPINION.</i>
	:	
TIERRA MARIE ROBERTSON,	:	
	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: July 28, 2023

*Melissa A. Powers*, Hamilton County Prosecuting Attorney, and *Keith Sauter*,  
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

*Michele L. Berry*, for Defendant-Appellant.

**BERGERON, Presiding Judge.**

{¶1} Following a heated physical altercation between defendant-appellant Tierra Robertson, her boyfriend, and her boyfriend’s ex-fiancée that ended with shots fired, Ms. Robertson was ultimately found guilty of two counts of felonious assault with specifications. Ms. Robertson does not dispute shooting the victim, but she insisted that she acted in self-defense, resorting to gunfire in an effort to protect herself, her boyfriend, her child, and her home. On appeal, she raises two assignments of error, alleging various errors in the jury instructions and also that her counsel was ineffective for failing to object to the instructions. After reviewing the record and applicable case law, we agree that the trial court erred in failing to issue a so-called “Castle Doctrine” instruction, so we sustain Ms. Robertson’s first assignment of error, reverse the trial court’s judgment, and remand this cause for a new trial.

I.

{¶2} Late in the night on March 23, 2021, Ms. Robertson was at home with her boyfriend Kori Henry and her ten-year-old son. Her son was asleep, but Ms. Robertson’s and Mr. Henry’s efforts to get some rest were interrupted by repeated angry texts from victim Anisha Davis. Ms. Davis, who was Mr. Henry’s ex-fiancée, insisted on coming over to their home *that night* to retrieve her old engagement ring.

{¶3} Ms. Davis, intoxicated, revealed through her texts that she knew Ms. Robertson was home with Mr. Henry. She issued a number of profanity-laced threatening texts to both of them, indicating that she was on her way over and looking for a confrontation. Understandably, this concerned and worried Ms. Robertson.

{¶4} For background, Ms. Robertson had a history of experiencing violence against herself, her son, and other loved ones. Only a few years prior, Ms. Robertson’s

son's father was killed by gunfire. And before moving in with Mr. Henry, Ms. Robertson and her son fled from a domestic violence situation. The protection order against Ms. Robertson's violent ex-boyfriend was still in effect when the incident at hand occurred. To protect herself and her son from future violence, Ms. Robertson obtained a concealed carry permit. Moreover, Ms. Robertson knew Ms. Davis had issued threats and been physically violent towards past girlfriends of Mr. Henry. And Ms. Davis had a history of being physically violent towards Mr. Henry as well.

{¶5} Both Ms. Robertson and Mr. Henry were also recovering from injuries at the time of the incident. Ms. Robertson had recently had surgery on her hand, and Mr. Henry had been stabbed in his side at a bowling alley.

{¶6} Returning to the night in question, Ms. Davis carried out her threat to turn up at the house that night. She showed up around midnight, and her arrival triggered the home's motion-detecting lights. As Mr. Henry opened the front door to investigate, Ms. Davis pushed past him, barging into the home and yelling at him about their failed relationship. After she forced her way into the home, she began assaulting Ms. Robertson. Both parties exchanged blows, and Ms. Davis broke Ms. Robertson's finger. At one point, the women even slammed through an interior wall.

{¶7} In an attempt to stop the altercation, Mr. Henry pulled Ms. Davis away from Ms. Robertson and physically carried her out of the house as she struggled to get back inside. Ms. Robertson followed the pair out of the front door and continued trying to strike Ms. Davis. Upon being set down, Ms. Davis refused to leave and remained in the covered carport attached to the house. She sought to return inside the home to retrieve her wig (which had been lost during the altercation), her cell phone, and the ring. Eventually, Mr. Henry notified Ms. Davis that he no longer had

the ring, but he retrieved the wig and the phone from the home and brought them out to Ms. Davis. Despite having received her possessions, Ms. Davis still refused to leave.

{¶8} Ms. Robertson then returned to the home and called 911. During the 911 call, she stated that she would shoot Ms. Davis if law enforcement did not arrive quickly. As the back and forth between Ms. Davis and Mr. Henry continued under the carport, Ms. Robertson again exited the house—this time, with her firearm. Seeing that Ms. Davis still refused to leave and continued acting aggressively, Ms. Robertson fired multiple rounds. One struck Ms. Davis’s shoulder and a second pierced through her cell phone and hit her abdomen. Ms. Davis yelled out that she had been shot, and Mr. Henry, unable to see any wounds, steered her down the driveway to her car as she continued to loudly issue threats. Ms. Davis then drove off before the police arrived. Her wounds were nonfatal.

{¶9} Once the police made it to the home, Ms. Robertson voluntarily accompanied an officer to the police station where she explained the entire incident. The interviewing officer asked Ms. Robertson why she took matters into her own hands instead of calling 911, and she clarified that she had, in fact, called 911 to notify them of the situation. She also told the officer that the Ring camera installed at her home captured the incident. Mr. Henry subsequently turned over the videos to law enforcement that same night.

{¶10} The officers noted that neither Ms. Robertson nor Mr. Henry showed any signs of consuming alcohol or illegal substances that night, and no signs of alcohol or drug use were discovered at their home.

{¶11} Ms. Robertson was indicted on one count of felonious assault in violation of R.C. 2903.11(A)(1), a felony of the second degree, with firearm

specifications, and one count of felonious assault in violation of R.C. 2903.11(A)(2), also a felony of the second degree, with specifications. After a jury trial, Ms. Robertson was found guilty as charged. At sentencing, the trial court merged the two counts and sentenced her to five years' imprisonment. Ms. Robertson timely appealed.

II.

{¶12} In her first assignment of error, Ms. Robertson maintains that the trial court issued erroneous and incomplete jury instructions. First, she takes issue with the trial court's failure to instruct the jury on the Castle Doctrine presumption that she acted in self-defense.

{¶13} At the outset, the parties disagree about what standard of review governs this issue. The state argues that, since counsel did not object to the instructions when they were given, the issue is waived on appeal. Ms. Robertson, on the other hand, points us towards case law indicating that counsel's request for a Castle Doctrine instruction sufficed to preserve the issue, thus obliging this court to review the matter for an abuse of discretion.

{¶14} Generally, "[t]he giving of jury instructions \* \* \* will not be disturbed upon appeal unless the record reflects that the trial court abused its discretion." *State v. Houston*, 1st Dist. Hamilton No. C-090536, 2010-Ohio-2367, ¶ 20. But when a defendant fails to object to a jury instruction, we review her claim only for plain error. *See State v. Love*, 2017-Ohio-8960, 101 N.E.3d 623, ¶ 20 (1st Dist.) (where defendant "failed to object to the jury instructions and consequently \* \* \* forfeited all but plain error").

{¶15} Our review is somewhat complicated by the fact that neither the jury instructions proposed by trial counsel nor a copy of the jury instructions that were

ultimately issued are in the record. But the transcript includes a reading of the instructions to the jury, and neither party suggests that there is any reason to believe that these instructions differed from the physical copy provided to the jurors. The transcript also includes an in-chambers discussion regarding the instructions. We proceed to review this assignment of error based on the information related to the jury instructions contained in the transcripts.

{¶16} While failure to object to jury instructions typically forfeits all but plain error, *see Love* at ¶ 20, the Ohio Supreme Court recognized: “[I]n a criminal case, where the record affirmatively shows that a trial court has been fully apprised of the correct law governing a material issue in dispute, and the requesting party has been unsuccessful in obtaining the inclusion of that law in the trial court’s charge to the jury, such party does not waive his objections to the court’s charge by failing to formally object thereto.” *State v. Wolons*, 44 Ohio St.3d 64, 67, 541 N.E.2d 443 (1989), citing Crim.R. 30(A).

{¶17} While the proposed jury instructions requested by Ms. Robertson are not in the record, the transcript of the in-chambers discussions regarding the instructions reflects that trial counsel: (1) requested the entirety of R.C. 2901.05(B)—which includes the Castle Doctrine—to be included in the jury instructions; and (2) presented the trial court with a copy of the opinion in *State v. Claren*, 2020-Ohio-615, 152 N.E.3d 449, ¶ 27 (9th Dist.), which explains the need for a Castle Doctrine instruction where the defendant shot an intruder when they were just outside the defendant’s home. The trial court was therefore fully apprised of the correct law (and even initially agreed to give a Castle Doctrine instruction), and while defense counsel advocated for this law to be included in the charge to the jury, ultimately the trial judge

did not issue the instruction. The situation falls within the *Wolons* rule, and we accordingly review this matter for an abuse of discretion.

{¶18} The “Castle Doctrine” creates a presumption that an individual acted in self-defense. *See State v. Jones*, 2022-Ohio-3162, 195 N.E.3d 561, ¶ 18 (2d Dist.). Part of the doctrine is codified in R.C. 2901.05, and creates a rebuttable presumption that a person using deadly force has acted in self-defense “if the person against whom the defensive force is used is in the process of unlawfully and without privilege to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force.” R.C. 2901.05(B)(2). “When the presumption does exist, the prosecution may rebut it by a preponderance of the evidence *and then* prove beyond a reasonable doubt that the defendant did not act in self-defense.” (Emphasis added.) *Jones* at ¶ 18, citing R.C. 2901.05(B)(4); *see* R.C. 2901.05(B)(4) (“The [Castle Doctrine] presumption \* \* \* is a rebuttable presumption and may be rebutted by a preponderance of the evidence, provided that the prosecution’s burden of proof remains beyond a reasonable doubt[.]”).

{¶19} At oral argument, the state agreed that the covered carport attached to the house fell within the legal definition of “residence” in Ohio as contemplated by R.C. 2901.05. But it insists that any error did not rise to the level of plain error. Having determined that an abuse of discretion standard of review applies in this matter, we disagree.

{¶20} The Second District, in *Jones*, addressed a trial court’s failure to instruct on the Castle Doctrine. In *Jones*, the defendant shot and killed the victim from a car following a dispute. *Jones* at ¶ 7. According to the defendant, the victim had threatened to shoot him, at which point the defendant hopped into the passenger seat

of a friend's car and begged him to drive off. *Id.* at ¶ 11. The friend refused to move, and the victim opened the passenger side door and leaned into the car. *Id.* The defendant testified that the victim poked him in the eye and then reached for the firearm in the defendant's pocket. *Id.* The defendant responded by drawing the weapon, pointing it at the victim, and firing multiple times. *Id.* The trial court issued a self-defense instruction, but refused to instruct the jury on the Castle Doctrine with regard to the defendant's occupation of his friend's vehicle. *Id.* at ¶ 12. The trial court based its refusal on the fact that it was unclear whether the defendant was lawfully in his friend's car, and that it was unclear whether the victim was attempting to enter the car. *Id.* at ¶ 20. On appeal, the Second District reversed, holding that a jury reasonably could have found that the defendant lawfully occupied the vehicle and that the victim unlawfully entered the vehicle by leaning in and reaching for his weapon. *Id.* at ¶ 21.

{¶21} In the case at hand, the facts provide an even stronger basis for the giving of a Castle Doctrine instruction. There is no dispute here that Ms. Robertson lawfully occupied the residence or that Ms. Davis unlawfully remained on the premises after trespassing and assaulting her. Ms. Robertson resorted to the use of force when Ms. Davis had unequivocally "unlawfully and without privilege to do so entered[] the residence \* \* \* occupied by the person using the defensive force." R.C. 2901.05(B)(2). The presumption is undeniably applicable, and the jury should have been so instructed.

{¶22} *Jones* goes on to elaborate on the prejudice that arises when a defendant who is entitled to a Castle Doctrine instruction ultimately does not receive that instruction. Finding an abuse of discretion, the court likened the Castle Doctrine presumption of self-defense to the presumption of innocence, in underscoring the



importance of the presumption. *Jones*, 2022-Ohio-3162, 195 N.E.3d 561, at ¶ 33. The court also explained that the Castle Doctrine presumption places an *additional* burden on the state, and therefore, failing to issue the instruction lessens the burden placed on the state by Ohio law. *Id.*

{¶23} Like the court in *Jones*, the trial court in this case instructed that the state bore the burden to prove beyond a reasonable doubt that Ms. Robertson did not act in self-defense, but failed to instruct on the additional Castle Doctrine presumption. As in *Jones*, we conclude that, in this case, the jury was not fully apprised of the burden placed on the state by Ohio law, undermining Ms. Robertson’s right to due process of law. Because the only real issue in this case was whether Ms. Robertson acted in self-defense, it would have been undeniably beneficial to her had the jury been told that she was presumed to have acted in self-defense.

{¶24} Ms. Robertson introduced copious evidence at trial that she held an objectively reasonable belief and a subjective belief that Ms. Davis posed an imminent threat of causing great bodily harm or death to herself, her son, or Mr. Henry—relevant to the second element of self-defense. *See State v. Wilson*, 1st Dist. Hamilton No. C-210535, 2022-Ohio-3801, ¶ 13 (“The state may disprove self-defense by demonstrating that the defendant’s belief was not objectively reasonable or that she did not have an honest subjective belief that she faced imminent death or great bodily harm.”). She lost a close family member to gun violence just a few years prior, she had recently escaped a domestic violence situation, and Ms. Davis sent violent and threatening texts just before her arrival. Plus, she knew Ms. Davis had threatened and physically assaulted Mr. Henry and Mr. Henry’s girlfriends in the past. Ms. Davis barged into their home, drunk, past midnight, and issued various violent threats and refused to

leave even after being asked to do so repeatedly—while Mr. Henry and Ms. Robertson were recovering from injuries. And as emphasized above, Ms. Davis had engaged in a physical altercation with Ms. Robertson and had been hitting and assaulting Mr. Henry just before the shooting.

{¶25} Again, if the trial court had issued the Castle Doctrine instruction, the state would have had to rebut the Castle Doctrine presumption by a preponderance of the evidence, *then* it would have had to prove beyond a reasonable doubt that Ms. Robertson did not act in self-defense. *See* R.C. 2901.05(B)(4); *Jones*, 2022-Ohio-3162, 195 N.E.3d 561, at ¶ 18. So, if the jury had *begun* by presuming that Ms. Robertson acted in self-defense and then weighed the foregoing facts, the jury may well have reached a different outcome and found that the state failed to carry its burden. In the absence of this additional statutory safeguard, Ms. Robertson was clearly prejudiced in a matter critical to the outcome of her trial. Therefore, we conclude that the trial court abused its discretion in failing to instruct the jury on the Castle Doctrine. Ms. Robertson is entitled to a new trial at which the jury is correctly apprised of the applicable law.

{¶26} In light of this conclusion, Ms. Robertson’s remaining arguments under this assignment of error are moot. *See* App.R. 12(A)(1)(c). And her second assignment of error, alleging she was denied her right to the effective assistance of counsel, is also moot. *See id.*

\* \* \*

{¶27} In light of the foregoing analysis, we sustain Ms. Robertson’s first assignment of error, reversing the trial court’s judgment and remanding this cause for

a new trial consistent with this opinion and the law. Her second assignment of error is moot and we do not consider it.

Judgment reversed and cause remanded.

**WINKLER** and **KINSLEY, JJ.**, concur.

Please note:

The court has recorded its entry on the date of the release of this opinion.