

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)
)
 Plaintiff-Appellee,)
)
 v.) S.CT. NO. 18-0677
)
 MIGUEL ANGEL)
 LORENZO BALTAZAR,)
 Defendant-Appellant.)

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE SCOTT D. ROSENBERG, JUDGE

APPELLANT'S REPLY BRIEF

MARK C. SMITH
State Appellate Defender

STEPHAN J. JAPUNTICH
Assistant Appellate Defender
sjapuntich@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEYS FOR DEFENDANT-APPELLANT

CERTIFICATE OF SERVICE

On the 7th day of January, 2019, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Miguel Baltazar, No. 6717106, Iowa State Penitentiary, 2111 330th Avenue, PO Box 316, Fort Madison, IA 52627.

APPELLATE DEFENDER'S OFFICE



STEPHAN J. JAPUNTICH

Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
sjapuntich@spd.state.ia.us
appellatedefender@spd.state.ia.us

SJJ/sm/1/19

TABLE OF CONTENTS

	<u>Page</u>
Certificate of Service.....	2
Table of Authorities	4
Statement of the Issue Presented for Review.....	5
Statement of the Case	6
Argument	
Whether Baltazar had no duty to retreat under the justification statutory scheme introduced in 2017 and the notification requirement contained in the amended justification scheme is not dispositive of the self-defense issue in this case	6
Conclusion.....	12
Attorney's Cost Certificate	13
Certificate of Compliance	14

TABLE OF AUTHORITIES

Cases:

DeVoss v. State, 648 N.W.2d 56 (Iowa 2002)	9
State v. Akins, 423 P.3d.1026 (Idaho 2018)	11
State v. District Court for Webster County, 801 N.W.2d 513 (Iowa 2011)	10
State v. Godbersen, 493 N.W.2d 852 (Iowa 1992)	10
State v. Gough, 187 Iowa 363174 N.W. 279 (Iowa 1919). 8	
State v. Halverson, 857 N.W.2d 632 (Iowa 2015)	6
State v. Lucas, 323 N.W.2d 228 (Iowa 1982).....	6

Statutes:

Iowa Code § 708.8 (2017)	9
--------------------------------	---

Other Authorities:

Paul H. Robinson, 2 Crim. L. Def. § 131. Defensive force defenses-Generally (d)(3) (2018)	8
W. LaFave & A. Scott, Handbook on Criminal Law, .§ 10.4(f) p. 395.....	8

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER BALTAZAR HAD NO DUTY TO RETREAT UNDER THE JUSTIFICATION STATUTORY SCHEME INTRODUCED IN 2017 AND THE NOTIFICATION REQUIREMENT CONTAINED IN THE AMENDED JUSTIFICATION SCHEME IS NOT DISPOSITIVE OF THE SELF-DEFENSE ISSUE IN THIS CASE?

Authorities

State v. Halverson, 857 N.W.2d 632, 634 (Iowa 2015)

State v. Lucas, 323 N.W.2d 228, 232 (Iowa 1982)

Paul H. Robinson, 2 Crim. L. Def. § 131. Defensive force defenses-Generally (d)(3) (2018)

W. LaFave & A. Scott, Handbook on Criminal Law, § 10.4(f) p. 395

State v. Gough, 187 Iowa 363 174 N.W. 279, 281 (Iowa 1919)

Iowa Code § 708.8 (2017)

DeVoss v. State, 648 N.W.2d 56, 62 (Iowa 2002)

State v. Godbersen, 493 N.W.2d 852 (Iowa 1992)

State v. District Court For Webster County, 801 N.W.2d 513 (Iowa 2011)

State v. Akins, 423 P.3d.1026, 1029 (Idaho 2018)

STATEMENT OF THE CASE

COMES NOW Miguel Angel Lorenzo Baltazar, pursuant to Iowa Rule of Appellate Procedure 6.903(4), and hereby submits the following argument in reply to the State's appellate brief filed on December 20, 2018.

ARGUMENT

I. BALTAZAR HAD NO DUTY TO RETREAT UNDER THE JUSTIFICATION STATUTORY SCHEME INTRODUCED IN 2017 AND THE NOTIFICATION REQUIREMENT CONTAINED IN THE AMENDED JUSTIFICATION SCHEME IS NOT DISPOSITIVE OF THE SELF-DEFENSE ISSUE IN THIS CASE.

Standard of Review: A claim of ineffective assistance of counsel is constitutional in nature and, therefore, review is de novo. State v. Halverson, 857 N.W.2d 632, 634 (Iowa 2015).

Preservation of Error: Ineffective assistance of counsel claims are an exception to the error preservation rule. State v. Lucas, 323 N.W.2d 228, 232 (Iowa 1982).

Discussion: The State asserts that Baltazar cannot demonstrate prejudice as Iowa Code § 704.1(3) still imposes a duty to retreat. The State argues that Baltazar still had a duty

duty to retreat because he was engaged in the illegal activity of carrying a weapon without a permit. (State's Brief pp. 24-26).

The implied duty necessarily involves illegal activities germane to the identity of the aggressor. Illegal possession of a weapon is not relevant to the issue of justification. Crimes which are relevant are instigative in nature; aggressively threatening or assaulting a recipient of violence are obvious examples of such behavior.

The State's interpretation of the statute in question would lead to absurd results. For example, what if, in this case, Baltazar had been in possession of a firearm permit, but was double-parked on the street at the time? Would the justification defense have been compromised by virtue of the parking violation?

Baltazar testified that he did not intend hit Mercado, but rather he shot the pistol to scare him (hoping it would halt Mercado's advance toward him). (Transcript Vo. V p. 53 L 1-9). 1-9). He was attempting to use non-deadly force. The

application of Iowa Code § 704.1(3) is not applicable to the facts of the instant case. “...few jurisdictions fail to give some weight to this right to resist before retreat. Professors LaFave and Scott have noted, ‘[i]t seems everywhere agreed that one who can safely retreat need not do so before using non-deadly force.’” Paul H. Robinson, *2 Crim. L. Def. § 131. Defensive force force defenses—Generally (d)(3)* (2018) (quoting W. LaFave & A. Scott, *Handbook on Criminal Law*,. § 10.4(f) p. 395).

Therefore, Baltazar had no duty to retreat.

The rights in question apply to both parties. “Their rights were equal. Neither was required to retreat or flee from a threatened assault. Either might stand his ground and protect himself against the assault, and use such force as to him appeared reasonably necessary to defend his person from the assault.” State v. Gough, 187 Iowa 363174 N.W. 279, 281 (Iowa 1919).

Neither is the State’s assertion consistent with a related statutory provision. Iowa Code §708.8, Going armed with

intent, was amended to include the language “The intent required for a violation of this section shall not be inferred from the mere carrying or concealment of any dangerous weapon itself, including the carrying of a loaded firearm, whether in a vehicle or on or about a person's body.” Iowa Code § 708.8 (2017). Determining intent is paramount to the issue of justification. The legality of the defendant’s possession of the firearm is irrelevant.

The jury was asked, by virtue of instruction number 60, to determine whether Baltazar was in possession of a dangerous weapon, not the legal status thereof. The issue of the legality of Baltazar’s possession of the firearm was not raised or ruled upon below.

The State had the opportunity to object to the use of the outdated justification instructions and to make the argument that it now makes in hindsight on appeal. The State did not object to the erroneous instructions and has waived its right to do so. DeVoss v. State, 648 N.W.2d 56,62 (Iowa 2002).

For all of the same reasons, waiver applies to the State's assertion that Baltazar could not have prevailed under the amended statutory scheme by virtue of his failure to notify law enforcement of his use of deadly force pursuant to Iowa Code § 704.2B(1)(2017). (State's Brief pp. 26-28).

In addition to the fact that this issue was not presented to, and ruled upon, by the district court, the potential constitutional ramifications have not been addressed either. Arguably, Iowa Code § 704.2B(1) compels a violation of a defendant's right against self-incrimination as protected by amendment V to the U.S. Constitution and the due process rights contained in Iowa Const. Art. I § 9.

The Iowa Supreme Court broadly interprets the type of information and the scope of protection afforded by the Fifth Amendment. State v. Godbersen, 493 N.W.2d 852 (Iowa 1992) (drug tax stamp); State v. District Court For Webster County, 801 N.W.2d 513 (Iowa 2011) (in-prison sex offender treatment program).

This issue has yet to be addressed by Iowa Courts, but an example of law similar to Iowa Code § 704.2B(1) being deemed unconstitutional can be found in another jurisdiction. The Idaho legislature enacted a reporting statute imposing a duty on a person to notify the county coroner or law enforcement of a death that would be subject to a coroner's investigation including a death by violence, under suspicious circumstances, or of a stillborn baby. State v. Akins, 423 P.3d.1026, 1029 (Idaho 2018). The Idaho Supreme Court concluded that the statute violated the Fifth Amendment because it was: (1) a statute found amongst the criminal procedure statutes regarding coroner inquests; and (2) compliance with the statute would create a substantial hazard of self-incrimination. State v. Adkins, 423 P.3d at 1035.

Had this issue been raised below, Baltazar would have had an opportunity to object to any adverse inference generated by Iowa Code § 704.2B(1).

Regardless of the potential employment of an instruction based upon Iowa Code § 704.2B(1), the inference would not have been dispositive on the issue of justification.

CONCLUSION

WHEREFORE, Miguel Angel Lorenzo Baltazar incorporates the arguments and authorities contained in his appellate brief and respectfully requests that this matter be reversed and remanded for retrial, or in the alternative, reversed and remanded with instructions to vacate his conviction for the offense of Murder in the First Degree and enter a conviction for the lesser-included offense of Involuntary Manslaughter.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Reply Brief and Argument was \$ 1,50, and that amount has been paid in full by the Office of the Appellate Defender.

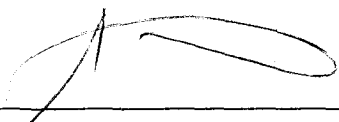
MARK C. SMITH
State Appellate Defender

STEPHAN J. JAPUNTICH
Assistant Appellate Defender

CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR
BRIEFS

This brief complies with the typeface requirements and
type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and
6.903(1)(g)(1) because:

[X] this brief has been prepared in a proportionally
spaced typeface Bookman Old Style, font 14 point and
contains 1,057 words, excluding the parts of the brief
exempted by Iowa R. App. P. 6.903(1)(g)(1).



Dated: 01-03-19

STEPHAN J. JAPUNTICH
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
sjapuntich@spd.state.ia.us
appellatedefender@spd.state.ia.us