

IN THE IOWA SUPREME COURT

SUPREME COURT NO. 17-1701

STATE OF IOWA,

Appellee

vs.

STEVE WILLIAM FORDYCE JR.,

Appellant

APPEAL FROM THE IOWA DISTRICT COURT
OF BLACK HAWK COUNTY
THE HONORABLE DAVID P. ODEKIRK, JUDGE

**APPELLANT'S FINAL REPLY BRIEF
AND
NOTICE OF ORAL ARGUMENT**

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PROOF OF SERVICE

On 10/28/2018, 2018, I, the undersigned, did serve the within Appellant's Proof Reply Brief and Notice of Oral Argument on all other parties to this appeal by e-filing it through the EDMS system and mailing one (1) copy thereof to the Defendant:

Attorney General's Office
Hoover State Office Building
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Steven Fordyce Jr.

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CERTIFICATE OF FILING

I hereby certify that I did file the within Final Reply Brief and Notice of Oral Argument with the Clerk of Supreme Court, Iowa Judicial Branch Building, 1111 E. Court Avenue, Des Moines, Iowa 50319 by e-filing it through the EDMS system on 10/28/2018.

/s/ Christopher Kragnes, Sr.
CHRISTOPHER KRAGNES, SR.

TABLE OF CONTENTS

Proof of Service 2

Certificate of Filing.....2

Table of Contents 3

Table of Authorities..... 4

Statement of the Issue Presented for Review..... 5

Statement of the Case 6

Routing Statement..... 6

Argument 7

Conclusion 9

Notice of Oral Argument 9

Attorney Cost Certificate 9

Certificate of Compliance with Type-Volume Limitations,
Typeface Requirements and Type-Style Limitations.. 11

TABLE OF AUTHORITIES

State v. Hutton, 796 N.W.2d 898, 901 (Iowa 2011)9

Taylor v. State, 352 N.W.2d 683, 687 (Iowa 1984)8

Iowa R.App. P. 14(f)(7)8

Iowa Code Section 7047

I.R.C.P 1.9048

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THE DEFENDANT DID NOT ACT IN SELF-DEFENSE.

Authorities

Taylor v. State, 352 N.W.2d 683, 687 (Iowa 1984)

Iowa R.App. P. 14(f)(7)

Iowa Code Section 704

I.R.C.P 1.904

II. APPELLANT'S DUE PROCESS RIGHTS WERE VIOLATED DUE TO THE LENGTH OF TIME FOR THE COURT TO ENTER A VERDICT.

Authorities

State v. Hutton, 796 N.W.2d 898, 901 (Iowa 2011)

STATEMENT OF THE CASE

Nature of the Case: Appellant incorporates by reference the Nature of the Case in Proof Brief.

Course of Proceedings: Appellant incorporates by reference the Course of Proceedings filed in the Proof Brief.

Facts: Appellant accepts the District Court's Findings of Fact in the Order entered August 29, 2017. (App. p. 15). Additional facts will be discussed as pertinent to Fordyce's arguments.

ROUTING STATEMENT

Because this case involves the application of existing legal principles to the facts herein, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)). However, one issue relating to a matter of law, Iowa Code section 704, as amended, known as the Stand Your Ground law, has not been considered by Iowa Supreme Court and its applicability to cases such as this and is a matter of first impression. This issue also presents a substantial constitutional question as it relates to Stand Your Ground and the applicability of the defense of Justification and changing legal principles. This issue presents a fundamental and urgent issue of broad public importance, such that the Iowa Supreme Court should retain this appeal. Therefore, this case should remain in the Iowa Supreme Court. Iowa R. App. P. 6.1101(2)(a), (c), (d), and (f).

ARGUMENT

I. THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THE DEFENDANT DID NOT ACT IN SELF-DEFENSE.

Standard of review: Appellant incorporates by reference the Standard of Review as pled in Appellants Proof Brief.

Preservation of error: Appellant incorporates by reference the Preservation of Error as stated in Appellants Proof Brief. However, the State has asserted the equal protection argument was not properly preserved. This assertion is quite simply incorrect. Appellee agrees Fordyce has preserved error in his claim of a violation of due process as it relates to the application of Iowa Code 704, known as the Stand Your Ground. Appellee also argues Fordyce has not preserved error as it relates to his claim failure to apply Iowa Code section 704 violates equal protection because it was not addressed in the trial courts ruling. Appellant disagrees with Appellee's argument and statements. The issue of equal protection was well preserved before the trial court.

Appellant filed his Motion to Apply ICS704 As Amended, which specifically states failure to apply this code section, as amended not only violated due process, but also Fordyce's equal protection (App. p. 12). This put the State and the court on notice of this issue. The trial court did address the issues in Fordyce's motion. Prior

to the reading of the verdict, the trial court stated on the record that he had reviewed the Motions and arguments, and denied the Motion for the reasons set forth in the court's order. (Verdict Tr. P. 2). The trial court then, in the Verdict Order specifically stated not applying Iowa Code section 704 as amended would not "result in any violations of Defendant's rights pursuant to the Constitutions of the United States or the State of Iowa". (Order 8/29/17, App. p. 9). Because the trial court did, in fact, address all constitutional violations in the August 29, 2017 order, the issue of due process AND equal protection was preserved for this Court to review. Thus, error was preserved and the Appellee reliance on I.R.C.P 1.904 is without merit. *I.R.C.P 1.904.*

A. There is insufficient evidence presented showing Defense of Self or Others was not Justified.

Appellant incorporates by reference his previous argument, however desires to point out one issue. The Appellee places a heavy reliance on the testimony of Samantha Harrington. This Court only needs to review the district court ruling to see the district court did not find Ms. Harrington credible in numerous instances. It is well settled this Court will give weight to the lower court's findings concerning witness credibility. *Iowa R.App. P. 14(f)(7); Taylor v. State*, 352 N.W.2d 683, 687 (Iowa 1984). As the trial court has already determined Ms. Harrington lacks credibility this Court should give weight to that determination.

B. The Trial Court Erred and violated Defendant's Due Process and Equal Protection Under the Law in Not Applying Iowa Code section 704, as amended.

Appellant incorporates by reference the previous argument from his Proof Brief.

II. APPELLANT'S DUE PROCESS RIGHTS WERE VIOLATED DUE TO THE LENGTH OF TIME FOR THE COURT TO ENTER A VERDICT.

Standard of Review: A claim that a defendant's due process rights were violated is reviewed de novo. *State v. Hutton*, 796 N.W.2d 898, 901 (Iowa 2011).

Preservation of Error: Fordyce preserved this error by filing a Motion for New Trial and Judgment Notwithstanding the Verdict. (App. p. 33).

Merits:

Appellant incorporates by reference his previous argument as set forth in his Proof Brief.

CONCLUSION

For all of the reasons stated above, Appellant Steven Fordyce Jr. respectfully requests that this Court reverse the finding of guilty to Voluntary Manslaughter and remand for implementation of a not guilty verdict consistent with self-defense findings.

NOTICE OF ORAL ARGUMENT

Notice is hereby given that upon submission of this cause, counsel for appellant hereby desires to be heard in oral argument.

ATTORNEY COST CERTIFICATE

I hereby certify that the cost of printing the foregoing Appellant's Proof Brief and Conditional Notice of Oral Argument was the sum of \$ 0.00.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS.

1. This Proof Brief complies with the type-volume limitation of Ia. R. App. P. 6.903(1)(g)(1) because the Proof Reply Brief contains 1,875 words.
2. This Proof Reply Brief complies with the typeface requirements of Ia. R. App. P. 6.903(1)(e) and the type-style requirements of Ia. R. App. P. 6.903(1)(f) because this Proof Brief has been prepared in a proportionally spaced typeface using Time New Roman in 14 point font.

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