

IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-1891

STATE OF IOWA,
Plaintiff-Appellee,

vs.
LASONDRA A. JOHNSON,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE JOEL A. DALRYMPLE, JUDGE

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Jury Instruction Numbers 55 and 58 Properly Instructed on the Issue of Justification.

Authorities

State v. Davis, 988 N.W.2d 458 (Iowa Ct. App. 2022)

State v. Ellison, 985 N.W.2d 473 (Iowa 2023)

State v. Harrison, 914 N.W.2d 178 (Iowa 2018)

State v. Koat, No. 09-1883, 2010 WL 4867371
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State v. Kuhse, 937 N.W.2d 622 (Iowa 2020)

II. The District Court Did Not Err in Imposing Restitution in the Amount of \$150,000 Pursuant to Iowa Code Section 910.3B(1).

Authorities

Apprendi v. New Jersey, 530 U.S. 466 (2000)

State v. Davidson, 973 N.W.2d 276 (Iowa 2022)

State v. Hagen, 840 N.W.2d 140 (Iowa 2013)

State v. Patterson, 984 N.W.2d 449 (Iowa 2023)

State v. Richardson, 890 N.W.2d 609 (Iowa 2017)

U.S. Const. Amend V, VI, VIII, XIV

Iowa Const. Art. I, § 9, 10, and 17

Iowa Code § 910.3B (2021)

III. The District Court Acted within Its Proper Discretion in Imposing a Prison Sentence.

Authorities

State v. Bonin, No. 19-1291, 2020 WL 3571861
(Iowa Ct. App. July 1, 2020)

State v. Bradley, No. 21-1149, 2022 WL 1488545
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State v. Zaruba, 306 N.W.2d 772 (Iowa 1981)
Iowa Code § 902.6 (2021)

ROUTING STATEMENT

This case can be decided based on existing legal principles. Therefore, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

This is a direct appeal by the defendant Lasondra Johnson from her conviction for assault causing serious injury, in violation of Iowa Code section 708.2(4) (2019).

Course of Proceedings and Facts

The State accepts the defendant's statement of the course of proceedings below and the defendant's statement of the facts as adequate and essentially correct. Iowa R. App. P. 6.903(3).

ARGUMENT

I. Jury Instruction Numbers 55 and 58 Properly Instructed on the Issue of Justification.

Preservation of Error

The State does not challenge error preservation. Johnson objected to both challenged instructions, Instruction numbers 55 and

58,¹ in the district court. *See*, Tr. VI, p. 145, line 23 – p. 146, line 11; p. 148, line 23 - p. 149, line 25.

Standard of Review

The Court reviews a challenge to the jury instructions for correction of errors at law. *State v. Harrison*, 914 N.W.2d 178, 188 (Iowa 2018). The Court does not consider an erroneous jury instruction in isolation; instead, it looks at the jury instructions as a whole. *Id.*

Merits

Lasondra Johnson alleges that the district court failed to properly instruct her jury on the issue of justification. She contends that portions of jury instruction numbers 55 and 58 improperly instructed the jury on the impact of a finding that Johnson was engaged in the crime of assault at the time she used force. Johnson does not argue that the instructions misstated the law. Instead, she argues that the challenged portions of the instructions were not supported by the evidence. Her challenge to the instructions should

¹ At the time that Johnson objected to this instruction, it was numbered Instruction Number 57. *See*, Tr. VI, p. 145, line 20 – p. 146, line 19. That instruction was re-numbered as Instruction Number 58 prior to submission of the instructions to the jury. *See*, Tr. VI, p. 157, lines 7-14.

be rejected as there is sufficient evidence in the record to support submission to the jury of the challenged portions of the instructions.

Johnson challenges jury instruction numbers 55 and 58. Both instructions address the issue of justification. First, she challenges paragraph 3 of Instruction Number 55. That instruction provides as follows.

If any of the following is true, the defendant's use of force was not justified:

1. The defendant did not have a reasonable belief that it was necessary to use force to prevent an injury or loss.
2. The defendant used unreasonable force under the circumstances.
3. *The defendant was engaged in the illegal activity of Assault as defined in instruction 48 in the place where she used force, she made no effort to retreat, and retreat was a reasonable alternative to using force.*

If the State has proved any of these beyond a reasonable doubt, the defendant's use of force was not justified.

Jury Instr. No. 55 (emphasis added); App. 19.

Johnson also challenges the final paragraph of Instruction Number 58. That instruction provides as follows.

If you find that the defendant knew, or had reason to believe, Jada Young-Mills was unlawfully entering defendant's occupied vehicle by force at the time she used deadly force, you must presume the defendant reasonably believed that deadly force was necessary to avoid injury or risk to her life or safety.

Yet, if you find the defendant was engaged in the crime of Assault as defined in instruction 48 was also true at the time the defendant used deadly force, you need not presume that the defendant reasonably believed deadly force was necessary to avoid injury or risk to her life or safety.

Jury Inst. No. 58 (emphasis added); App. 20.

Johnson alleges that the district court erred in instructing on the effect of a finding that Johnson was engaged in assault at the time she used force. She contends that there were no facts in the record to support the inclusion of the “illegal activity of assault” language.

“As with any affirmative defense, the district court must instruct the jury on justification if substantial evidence supports the theory.” *State v. Kuhse*, 937 N.W.2d 622, 628 (Iowa 2020) (quotation and citation omitted). Conversely, “even instructions that correctly state the law may not be given if they aren't also supported by substantial evidence.” *State v. Ellison*, 985 N.W.2d 473, 478 (Iowa 2023) (internal quotation and citation omitted). Evidence is substantial enough to support a requested instruction when a reasonable mind would accept it as adequate to reach a conclusion.” *State v. Davis*, 988 N.W.2d 458, 466 (Iowa Ct. App. 2022).

Here, there was substantial evidence to support giving the challenged portions of the instructions. The eyewitnesses who

testified at trial witnesses agreed that Lasondra Johnson pushed Jada Mills out of her vehicle and that Johnson and Mills fought. Most of those witnesses testified that the fight was over, Johnson was back in her vehicle, and people were walking away by the time Johnson opened the door of her vehicle and fired one shot. Tr. II, p. 18, line 5 – p. 23, line 1 (Shara Harrington)²; Tr. II, p. 178, line 15 – p. 180, line 5 (Sherry Harrington); Tr. III, p. 70, line 22 – p. 74, line 9 (Gloria Ann Boldon). Another eyewitness, Christopher Harrington, largely agreed with those witnesses but testified that Jada Mills was still yelling at Johnson while Johnson was in her vehicle. Tr. V, p. 111, line 7 – p. 115, line 11 (Christopher Harrington).

However, one witness, M.H., testified that Johnson was still trying to get at Mills to fight her even after Johnson was back in her vehicle. The statement M.H. made to a child protection worker on November 19, 2020 was admitted at trial. In her statement, M.H. stated that she saw Johnson and Jada Mills fighting; they were mostly wrestling rather than punching each other. She stated that Christopher and her grandmother Shara Harrington got them to stop

² Several members of the Harrington family testified at trial. For clarity, the State will generally refer to them by their first names. No disrespect to the witnesses is intended.

fighting. Then, Christopher pushed Johnson into her vehicle through the passenger door and was holding the door shut while Johnson tried to get it open. M.H. stated that Christopher got the door shut, but then Johnson opened the door again. Johnson asked, “where your gun at now bitch,” and fired out the top of the door and hit Jada Mills. Tr. III, p. 24, line 1 – p. 28, line 20; Exh. M at 14:42:00 – 14:44:30; 14:50:48-14:54:00; 14:55:08-14:55:38; App. --. M.H. stated that there was no one on the driver’s side of the vehicle when Christopher was holding Johnson’s passenger door closed. Exh. M at 14:55:00 – 14:55:34. M.H.’s statement would support the conclusion that Johnson was still engaged in an assault when she got her gun and fired. *Cf. State v. Koat*, No. 09-1883, 2010 WL 4867371, *3-4 (Iowa Ct. App. Nov. 24, 2010) (From the testimony presented at trial, a rational trier of fact could have found that Koat started or continued the fight where there was evidence that, after retreating to his home after the initial fight, returned armed to continue the altercation.).

The evidence would support a reasonable conclusion that the Johnson was engaged in one continuous assault beginning when she pushed Mills out of her vehicle and ending when Johnson fired her pistol. The evidence would also support a finding of a series of

separate assaults based upon testimony that others were able to break up the fight and then it would resume. In either event, a reasonable mind could conclude that Johnson was engaged in an assault on Mills when she fired her gun. As shown, at least one witness testified that Johnson was attempting to get out of the vehicle to continue her attack on Mills while Christopher Harrington was holding the door so that she could not get out. That witness testified that Johnson was able to open the door a crack and threatened Mills by pointing her gun and taunting Mills about where her own gun was. Thus, the district court did not err in giving the challenged portions of jury instruction numbers 55 and 58, which informed the jury of how the law of justification would apply if it found that Johnson was engaged in an assault at the time she used deadly force. *See, State v. Ellison*, 985 N.W.2d 473, 479 (Iowa 2023) (“With the open question of whether Ellison was ‘engaged in illegal activity,’ a court’s failure to provide a stand-your-ground instruction to the jury would have left unanswered whether the exception applied and, along with it, whether the State had met its burden to rebut each element of the justification defense. We thus reject Ellison’s argument that the

district court erred by including the stand-your-ground exception in the instructions.).

The district court properly instructed Johnson’s jury on the issue of justification. Her challenge to instruction numbers 55 and 58 should, therefore, be rejected and her conviction for assault causing serious injury should be affirmed.

II. The District Court Did Not Err in Imposing Restitution in the Amount of \$150,000 Pursuant to Iowa Code Section 910.3B(1).

Preservation of Error

The State does not agree that Johnson has preserved her challenge to the district court’s restitution order. The State recognizes that Iowa Code section 910.3(8) provides that “[a] permanent restitution order entered at the time of sentencing is part of the final judgment of sentence as defined in section 814.6 and shall be considered in a properly perfected appeal.” *State v. Patterson*, 984 N.W.2d 449, 454 (Iowa 2023) (quoting Iowa Code § 910.3(8)). The State also agrees that an illegal sentence can be challenged at any time. *See, State v. Richardson*, 890 N.W.2d 609, 615 (Iowa 2017).

Nonetheless, Johnson was required to raise her constitutional challenges to the restitution order in the district court. *State v.*

Hagen, 840 N.W.2d 140, 144 n. 3 (Iowa 2013). On appeal, Johnson alleges that the award of \$150,000 in restitution violates her rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and article I, sections 9 and 10 of the Iowa Constitution. In the trial court, she raised only a claim that the award would violate the excessive fines clause of the Eighth Amendment to the United States Constitution and article I, section 17 of the Iowa Constitution. *See*, Sent. Tr. p. 15, lines 11 – 25. Consequently, her excessive fines claim is the only claim properly before the Court. *Id.*

Standard of Review

The Court reviews restitution orders for correction of error at law. However, the Court reviews de novo when a constitutional claim is at issue. *State v. Davidson*, 973 N.W.2d 276, 280 (Iowa 2022).

Merits

Johnson challenges the district court’s imposition of \$150,000 in restitution under Iowa Code section 910.3B(1), which applies in cases where the defendant is convicted of a felony in which her act or acts “caused the death of another person.” She points out that while she was charged with murder, she was convicted only of assault causing serious bodily injury. She argues that the jury’s verdict for

assault did not include a finding that she caused the victim's death and there was no special finding by the jury that she caused the victim's death and, therefore, the district court's restitution award should be vacated.

Iowa Code section 910.3B(1) provides in pertinent part as follows.

In all criminal cases in which the offender is convicted of a felony in which the act or acts committed by the offender caused the death of another person, in addition to the amount determined to be payable and ordered to be paid to a victim for pecuniary damages, as defined under section 910.1, and determined under section 910.3, the court shall also order the offender to pay at least one hundred fifty thousand dollars in restitution

Iowa Code § 910.3B(1) (2021).

Our Court has held that restitution under section 910.3B is a fine within the meaning of *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000) and a jury “must determine facts that set a fine’s maximum amount.” *State v. Davison*, 973 N.W.2d 276, 286-87 (Iowa 2022). Thus, in *Davison*, our Court found that the jury must find that the defendant caused the death of another person. *Id.* at 288. However, causing the death of another need not be an element of the felony for which the defendant is convicted. *Davison*, at 282-83. The Court found that the necessary finding was

not made in *Davison* and vacated the restitution award. That case is distinguishable from Johnson's case.

While juries convicted both Davison and Johnson of assault causing serious injury, the similarities end there. In *Davison*, the defendant and a companion fired multiple gunshots, hitting the victim seven times. A gunshot to the victim's head would have been "rapidly fatal," but wounds to the victim's lungs and liver also would also resulted in death. *Davison*, 973 N.W2d at 279. The Court found that the jury rationally could have found that Davison committed assault causing serious injury by firing only non-fatal shots (the jury was not instructed on aiding and abetting).

Here, in contrast, the evidence showed that Johnson was the only person who fired a weapon, that she fired only a single shot, and that Jada Mills was killed by the bullet Johnson fired. Mills died of a bullet wound to her chest. Tr. II, p. 106, line 11-16; p. 112, lines 4-12. Ms. Mills did not suffer any other serious injury. In addition, Johnson admitted at trial that she fired the fatal shot but claimed she fired in self-defense. Tr. VI, p. 107, line 12 – p. 108, line 23; p. 113, lines 5-14. Under these circumstances, the jury's verdict finding Johnson guilty of assault causing serious injury was necessarily a finding that she

inflicted the fatal injury, i.e., that her felonious act caused Jada Mills' death. Consequently, the district court did not err in imposing restitution in the amount of \$150,000 under Iowa Code section 910.3B. Johnson is not entitled to relief from the district court's restitution order.

III. The District Court Acted within Its Proper Discretion in Imposing a Prison Sentence.

Preservation of Error

The State does not contest error preservation as Johnson was not required to raise in the district court her challenge to the alleged abuse of the trial court's sentencing discretion. *State v. Cooley*, 587 N.W.2d 752, 754 (Iowa 1999).

Standard of Review

The standard of review is for abuse of discretion. The trial court's discretion in sentencing matters is broad. *State v. Zaruba*, 306 N.W.2d 772, 774 (Iowa 1981); *State v. Messer*, 306 N.W.2d 731, 732 (Iowa 1981).

Merits

Finally, Johnson challenges the district court's decision to impose an indeterminate five-year prison sentence for assault causing serious injury. Johnson contends that the court applied a fixed

sentencing policy to impose a prison sentence in any case where a death occurs. She also asserts that the district court improperly considered a fact that was not proven at trial or admitted to by Johnson, i.e., that Johnson killed another human being. The Court should reject Johnson's challenges to the sentence imposed. She has failed to show that the district court applied a fixed sentencing policy of that it considered any unproven fact.

The court's discretion in sentencing matters is broad. *Zaruba*, 306 N.W.2d at 774; *Messer*, 306 N.W.2d at 732. The trial court, within the limits of applicable statutes, has the discretion to select a sentencing combination that would provide maximum opportunity for the rehabilitation of the defendant and for the protection of the community from further offenses by the defendant and others." *State v. Stanley*, 344 N.W.2d 564, 567 (Iowa Ct. App. 1983) (internal quotation and citation omitted); *accord*, Iowa Code § 902.6 (2021). "[T]he decision of the district court to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of inappropriate matters." *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002) (citation omitted).

The presumption that a sentence is proper may only be rebutted by an affirmative showing of an abuse of discretion. *State v. Sumpter*, 438 N.W.2d 6 (Iowa 1989). The burden to show an abuse of discretion is on the defendant. *Stanley*, 344 N.W.2d at 568. That burden is a heavy one. *Id.*; *Zaruba*, 306 N.W.2d at 774. An abuse of discretion is found only if the trial court's discretion "was exercised only on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Zaruba*, 306 N.W.2d at 774. A district court's "ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law." *State v. Hill*, 878 N.W.2d 269, 272 (Iowa 2016) (quotation omitted).

The Court's "task on appeal is not to second-guess the sentencing court's decision." *State v. Damme*, 944 N.W.2d 98, 106 (Iowa 2020), The Court affords sentencing judges "a significant amount of latitude because of the discretionary nature of judging and the source of respect afforded by the appellate process." *Id.* (internal quotation and citation omitted). "Nevertheless, if a court in determining a sentence uses any improper consideration,

resentencing of the defendant is required ... even if it was merely a secondary consideration.” *Id.*

Johnson first alleges that the district court based its sentencing decision on a fixed policy to impose a prison sentence in any case where a death occurs. Appellant’s Brief at 78. A sentencing court may not apply a fixed sentencing policy. A fixed policy is “a rule based upon one factor to the exclusion of other factors that are required to be considered in sentencing.” *See, State v. Wilson*, No. 20–0965, 2021 WL 2708949, at *2 (Iowa Ct. App. June 30, 2021) (citing *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979)). That does not mean, however, that a sentencing court may not highlight a key factor that drives its sentencing decision and that stands out among the factors that it considered. In fact, because the district court is required to state reasons for the sentence it imposes, the court should identify the particular factors that had the greatest impact on its decision, and it should explain why those specific factors mattered so much. *See, Wilson*, 2021 WL 2708949, at *3 (rejecting Wilson’s claim that the sentencing court applied a fixed sentencing policy where “the court stated its reasonable lack of tolerance for gun violence,” because the court “also went on to address the individualized circumstances of

Wilson’s conduct and why those circumstances are troublesome and weighed in favor of imposing a prison sentence”); *accord State v. Bonin*, 19–1291, 2020 WL 3571861, at *2 (Iowa Ct. App. July 1, 2020); *State v. Horst*, No. 17–1171, 2018 WL 542638, at *2–3 (Iowa Ct. App. Jan. 24, 2018).

In the case at bar, Johnson has not demonstrated that the district court abused its discretion by applying a fixed sentencing policy. The district court explained the reasons for the sentence imposed, as follows.

.... I have considered the arguments of the defense, her request for a deferred judgment. I do not believe given the facts and circumstances of this case, history of this case, that a deferred judgment is warranted.

I have considered all other options including probation. I do not believe probation is appropriate at this time either. The jury reviewed the case. The jury did not find that Ms. Johnson was justified in her behavior, and the jury returned a verdict of this felony offense resulting in the death of another individual.

In sum, a gun was used. In sum, a gun was discharged. And in sum, Ms. Johnson killed another human being with the use of that gun. And it's the Court's opinion, given those short, simple facts, that a prison sentence is appropriate.

The Court will impose an \$850 fine. The fine will not be suspended. The Court will impose a five-year prison term. That term will not be suspended.

Sent. Tr. p. 19, line 18 – p. 20, line 13. The court further explained its reasons for the sentence it imposed, as follows.

In pronouncing judgment and sentence the Court has considered the factors set out in Iowa Code section 907.5 including the nature of the offense, the attending circumstances, your age, your character, and your propensities or chances for reform.

Again, for the reasons already stated upon the record, but in addition, the Court does find the sentence to be appropriate considering the recommendations of counsel, the nature of this offense, your age, your limited prior record, but nonetheless a record, and the sentencing goals and objectives of the Court.

Sent. Tr. p. 22, line 21 – p. 23, line 8.

The record does not establish that the district court applied a fixed policy. Instead, the district court considered that a death occurred, but also considered all of the factors set out in Iowa Code section 907.5. Based upon all those factors, the court determined that, in the spectrum of acts that constitute the crime of assault causing serious injury, Johnson’s act of shooting and killing Jada Mills fell at the most serious end of the spectrum and justified imposition of a prison term. The district court did not state or imply that it would deny a suspended sentence in every case where a death occurs. The court’s sentencing decision was not an abuse of discretion. *Cf. State v. Bradley*, No. 21-1149, 2022 WL 1488545 (Iowa

Ct. App. May 11, 2022) (rejecting Bradley’s claim that the district court applied a fixed policy to deny deferred judgments to defendants “old enough to know better.”); *State v. Mohlis*, No. 19-0965, 2020 WL 1310356 (Iowa Ct. App. Mar. 18, 2020) (finding that the district court did not apply a fixed policy to deny suspended sentences to defendants in embezzlement cases); *State v. Harrington*, No. 21-0895, 2022 WL 3907733, at *2 (Iowa Ct. App. Aug. 31, 2022) (The sentencing court exercised its discretion in denying Harrington a deferred judgment. Although the court gave the most weight to the nature of Harrington's crimes, it was not the only factor it considered in reaching its decision, the court also considered the individual facts before it in crafting a sentence that it believed would achieve the goals of sentencing.); *State v. Horst*, No. 17-1171, 2018 WL 542638, at *3 (Iowa Ct. App. Jan. 24, 2018)(finding the court did not apply a fixed where the sentencing court said: “I’m not very comfortable with the idea of probation because I think it sends the wrong message to the community about this type of crime”); *State v. Horak*, No. 16-1697, 2017 WL 4324791, at *2 (Iowa Ct. App. Sept. 27, 2017) (rejecting challenge to similar statement).

In sentencing Johnson, the district court gave particularized reasons for declining to grant a deferred judgment and, instead, imposing a prison sentence. One of those reasons was tied to Johnson's specific conduct, i.e., she shot another person. However, the court also considered a range of factors in making its sentencing decision. The district court did not apply a fixed policy. To the contrary, the court made an individualized sentencing decision after considering an array of relevant factors with no predetermined rule-based outcome. Thus, the Court should reject Johnson's challenge to her sentence.

Johnson also contends that the district court erroneously considered an improper factor. She alleges that the district court improperly considered that that Johnson was convicted of killing Jada Mills, that she intentionally shot at Ms. Mills, and that she intended to harm or kill her. Appellant's Brief at 81-7. "A district court may not consider an unproven or unprosecuted offense when sentencing a defendant unless (1) the facts before the court show the defendant committed the offense, or (2) the defendant admits it." *State v. Burks*, No. 13-0617, 2014 WL 465794 at *1 (Iowa Ct. App. Feb. 5, 2014) (quoting *State v. Jose*, 636 N.W.2d 38, 41 (Iowa 2001)).

“Where the sentencing court improperly considered an unprosecuted or unproven charge, [the Court] will remand for resentencing.” *Id.* (quoting *State v. Washington*, 832 N.W.2d 650, 659 (Iowa 2013)).

Here, the district court explained that part of the reasoning underlying its sentencing decision was that “a gun was used,” “a gun was discharged,” and “Ms. Johnson killed another human being with the use of that gun.” Those facts are not unproven. Johnson was charged with first degree murder. She did not deny killing Jada Mills, she raised a justification defense. In support of her defense, Johnson admitted that she got into her vehicle, got a firearm out of the glove compartment, and fired it out the door. Tr. VI, p. 106, line 14 – p. 108, line 12; p. 112, line 23 – p. 113, line 4; She also acknowledged that her shot hit and killed Jada Mills. Tr. VI, p. 114, lines 1-6. She testified that she meant only to fire a warning shot. Tr. VI, p. 107, line 12 – p. 108, line 23; p. 113, lines 5-14. Thus, the evidence does prove that Johnson fired her gun and killed Ms. Mills.

In addition, the district court did not consider that Johnson intentionally killed Jada Mills. The district court carefully worded its explanation. The court was aware that the jury had acquitted Johnson of murder and did not consider that Johnson “murdered” Mills. The

court could consider, however, the fact that Johnson admitted firing the shot that killed Mills. The court could also consider that the assault of which Johnson was convicted included firing a gun to scare another person and that the serious injury she caused was the most serious injury possible. The court also could consider that Johnson's act was a serious one which deserved greater punishment than more common acts of assault for the very reason shown by this case. The risk of seriously injuring or killing someone is particularly high when a firearm is used in an assault. The district court did not consider an improper factor.

The Court should reject Johnson's challenge to the five-year prison sentence imposed upon her conviction for assault causing serious injury. She has not shown that the district court abused its discretion by applying a fixed policy to impose a prison sentence when a death occurs. Neither has she shown that the district court considered any fact, allegation, or offense that was not established by the evidence or admitted by the defendant.

CONCLUSION

The Court should affirm the conviction and sentence of Lasondra Johnson for assault causing serious injury and should affirm the district court's award of restitution.

REQUEST FOR NONORAL SUBMISSION

Oral argument is unlikely to assist the Court in deciding the issue raised on appeal. Therefore, the State waives oral argument. However, if appellant is granted oral argument, counsel for appellee desires to be heard in oral argument, as well.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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) or (2) because:

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