

IN THE SUPREME COURT OF IOWA
Supreme Court No. 20-0126

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RYAN WIENEKE,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BENTON COUNTY
THE HONORABLE CHRISTOPHER BRUNS, JUDGE

APPELLEE'S BRIEF

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**STATEMENT OF THE ISSUES PRESENTED FOR
REVIEW**

- I. The district court did not abuse its discretion by making the common-sense observation that knife crime requires offenders to “get up close and personal to someone else in causing harm.”**

Authorities

State v. Formaro, 638 N.W.2d 720 (Iowa 2002)

State v. Sailer, 587 N.W.2d 756 (Iowa 1998)

State v. Wickes, 910 N.W.2d 554 (Iowa 2018)

Iowa R. Crim. P. 2.24(5)(a)

- II. In light of *Damme*, this Court need not address Division II of the defendant’s brief.**

Authorities

State v. Damme, No. 19-1139, 2020 WL 2781465

(Iowa May 29, 2020)

Iowa Code § 814.6

ROUTING STATEMENT

The issue the defendant claims warrants retention (interpreting “good cause” in relation to a guilty-plea sentence) has been decided by the Supreme Court. *See State v. Damme*, No. 19-1139, 2020 WL 2781465, at *6 (Iowa May 29, 2020).

Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The defendant, Ryan Wieneke, appeals his sentence for domestic abuse assault while displaying a dangerous weapon, an aggravated misdemeanor in violation of Iowa Code section 708.2A(1) and 708.2A(2)(c) (2019). The defendant pled guilty in the Benton County District Court, the Hon. Christopher Bruns presiding.

Course of Proceedings

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

Facts

The defendant, a military veteran, “woke up angry” one day in 2019. Minutes, p. 1; Conf. App. 4. He smelled of alcohol when he

returned from a fishing trip and started arguing with his wife, Lydia.

Minutes, p. 1; Conf. App. 4.

The defendant told Lydia to “get the fuck out.” Police Narrative, p. 1; Conf. App. 10. When Lydia left the house with the couple’s daughter, the defendant followed her outside with a knife in his hand. Minutes, p. 1; Conf. App. 4. The knife was black and said “Marine” on it. Minutes, p. 1; Conf. App. 4. According to Lydia, the defendant had multiple knives in the house, but no guns—he couldn’t have guns because another of his ex-girlfriends had taken out an order of protection against him. Police Narrative, p. 1; Conf. App. 10.

Lydia put her daughter in the car seat and locked the doors. Minutes, p. 1; Conf. App. 4.

The defendant caught up with her, told her she “wasn’t going anywhere,” and swung the knife at her in an upward arc. Minutes, p. 1; Conf. App. 4. Lydia felt the knife cut her but did not initially realize that she had a two-inch wound cut into her chest. Minutes, p. 1; Conf. App. 4.

The defendant next went to the driver’s side of the car, stabbed the tire, and said: “You’re not fucking leaving now.” Minutes, p. 1; Conf. App. 4. After this, the defendant went back into the house.

Minutes, p. 1; Conf. App. 4. Lydia left in the defendant's truck and called the defendant's parents, as her son was still in the house.

Minutes, p. 1; Conf. App. 4.

The defendant began texting Lydia, ordering her to bring back their daughter. Minutes, p. 1; Conf. App. 4. The defendant told her to "get the fuck back here." Police Narrative, p. 1; Conf. App. 10.

The defendant also told Lydia that, if she called the police, it would "put [their son] in danger because you know I'd rather die free for a cause than live for nothing[.]" Police Narrative, p. 1; Conf. App. 10. He also told Lydia that she caused the altercation. Police Narrative, p. 1; Conf. App. 10. And he threatened to leave the state or country and surrender his rights to the children. Police Narrative, p. 1; Conf. App. 10.

The defendant's parents arrived at the house and found that it smelled like a fire had been started. Police Narrative, p. 1; Conf. App. 10. The next day, Lydia discovered that the defendant had burned the lease agreement to her car in the kitchen sink. Minutes, p. 1; Conf. App. 4. She also later found knives hidden around the house and "stab marks" in a dry-erase board. Police Narrative, p. 2; Conf. App. 11.

While Lydia reported the incident to police, the defendant continued to text her, saying that he could no longer make sense of “civilian life” and wasn’t going to do it any more. Police Narrative, p. 2; Conf. App. 11. He accused Lydia of “messing with his head.” Police Narrative, p. 2; Conf. App. 11. And he made statements that led Lydia to suspect he would be armed and lying in wait when she returned home. Police Narrative, p. 2; Conf. App. 11.

Lydia and her father-in-law, the defendant’s father, told police they feared the defendant would fight with police when they arrived, because the defendant had previously made comments about “never going to jail or giving up his freedom.” Police Narrative, p. 2; Conf. App. 11.

Police arrested the defendant. Police Narrative, p. 2; Conf. App. 11. The defendant described problems with medication to the police, said that he had PTSD, and claimed to not remember attacking Lydia. Police Narrative, p. 2; Conf. App. 11. Officers at the residence confirmed the puncture marks to Lydia’s tire and observed beer, a BB gun, and a step ladder inside the garage with rope hanging from it. Police Narrative, p. 2; Conf. App. 11.

At the jail, the defendant refused services from crisis counselors. Police Narrative, p. 2; Conf. App. 11. He said he “did not know” what he was going to do when he was released from jail. Police Narrative, p. 2; Conf. App. 11.

About a week after the incident, Lydia discovered a handgun hidden in a cupboard at the house. Police Narrative, p. 2; Conf. App. 11.

ARGUMENT

- I. **The district court did not abuse its discretion by making the common-sense observation that knife crime requires offenders to “get up close and personal to someone else in causing harm.”**

Preservation of Error

Because the defendant asserts the district court abused its discretion at sentencing, the State is unable to challenge error preservation. *See* Iowa R. Crim. P. 2.24(5)(a).

Standard of Review

“[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). To

show an abuse of discretion, a defendant bears the burden to affirmatively show that the district court relied on improper factors. *State v. Sailer*, 587 N.W.2d 756, 762 (Iowa 1998).

Merits

The defendant contends in his brief that the district court “considered impermissible factors” at sentencing. Defendant’s Proof Br. at 19. The gist of the defendant’s complaint is that he thinks the court went outside the record in making the common-sense observation that knife crimes require offenders to “get up close and personal to someone else in causing harm.” Defendant’s Proof Br. at 20–21. This claim is meritless and the defendant cannot carry his burden to affirmatively prove an abuse of discretion.

This is the district court’s lengthy explanation of reasons for sentencing, with the complained-about sentence in bold and underline below:

THE COURT: Okay. In deciding our outcome here I’ve considered the maximum opportunity for rehabilitation of Mr. Wieneke. I’ve considered the need to protect the community from further offenses by him and others. I’ve paid careful attention to the nature of this offense. The record should reflect I’ve reviewed the file, including the minutes of testimony.

I've considered Mr. Wieneke's lack of a previous record. I've considered, to the extent I have it, the information as to his age, education and employment and family circumstances. I have no recommendation from the county attorney. I have no recommendation from the Department of Corrections because this is not a case where a PSI was done. I have the recommendation from the victim -- or the arguments from the victim, to the extent I can consider those. I have the arguments from the defense side. I have the State standing silent.

I do, ma'am [directed at the victim], have your request that I order restitution in this case and I have your victim impact statement.

So, Mr. Wieneke, a couple things strike me about what I've heard today and what I read in the court file. This is a very serious underlying event. This is not an event where somebody in anger pushed another person or did something of that nature. This is an event where someone went to the trouble of finding a knife and carrying a knife.

And it's an event where what's described is you initially cutting your wife with the knife and I'm being asked to chalk that up as an accident by your side here. You didn't accidentally stab the tire of the vehicle, the flattened vehicle.

THE DEFENDANT: Correct, Your Honor. That was intentional.

THE COURT: And this is a very serious underlying assault. **My personal view of people who commit crimes with knives is they are very willing to get up close**

and personal to someone else in causing harm. And you've told me you're a previous member of the Armed Services, so I have to presume that you have some combat training. Is that accurate?

THE DEFENDANT: Yes, Your Honor. I do have more to say, if you don't mind.

THE COURT: You've made your statement, sir.

THE DEFENDANT: All right.

THE COURT: And it concerns me that I have someone who has training from the military who's using a knife. I understand your explanation, but I don't find your explanation to be particularly credible. You're either using that knife in a tremendously careless manner or, more likely, you're using that knife to at least invoke fear in another person. The injury may or may not have been on purpose, but invoking the fear when you committed this crime was something you did on purpose.

I don't find that this is a crime where the need to rehabilitate you is so great that I should give you a deferred judgment. I also don't find this is a crime where it makes sense for me to send you to prison for two years, which is what the victim is asking me to do, because if I send you to prison for two years you're not going to pay child support. You're not going to pay restitution because you won't be able to.

So having considered all the factors I'm required to consider by Iowa law, I sentence you to be confined for an indeterminate term not to exceed two years [with all but six days in jail suspended...]

Sent. tr. p. 15, line 10 — p. 17, line 24.

This was a thoughtful explanation of the district court’s reasons for rejecting a deferred judgment and imposing a six-day jail sentence. The defendant plucks out a single sentence, arguing that the judge was somehow suggesting he was imposing sentence based on his personal experience with knives when he made this statement:

My personal view of people who commit crimes with knives is they are very willing to get up close and personal to someone else in causing harm.

Sent. tr. p. 16, lines 20–22. The judge did not impose sentence based on facts outside the record.

“My personal view” is simply another way of saying “in my opinion”—it’s surplusage at the start of the sentence that carries no real meaning. Moreover, the observation that criminals with knives “are very willing to get up close and personal to someone else in causing harm” is obvious and does not require personal experience with knifing: obviously you need to be close to someone to wound them with a knife, contrasted with a firearm. This was a fair observation regarding the nature of the offense and an appropriate consideration when assessing the defendant’s culpability.

In a sentencing appeal, the defendant “must affirmatively show that the sentencing court relied on improper evidence to overcome th[e] presumption of validity.” *State v. Wickes*, 910 N.W.2d 554, 572 (Iowa 2018). The defendant cannot meet that burden here. The district court should be affirmed.

II. In light of *Damme*, this Court need not address Division II of the defendant’s brief.

This Court need not address Division II of the defendant’s brief (regarding “good cause”) because, after the defendant filed his proof brief, the Supreme Court held that sentencing issues were not barred by the 2019 amendments to section 814.6. *See State v. Damme*, No. 19-1139, 2020 WL 2781465, at *6 (Iowa May 29, 2020). As a result, the State does not contend that section 814.6 bars the sole substantive claim raised by the defendant on appeal.

CONCLUSION

This Court should affirm the defendant’s sentence.

REQUEST FOR NONORAL SUBMISSION

This case should be decided on the briefs.

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:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **2,050** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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