IN THE SUPREME COURT OF IOWA
Supreme Court No. 18-0677

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MIGUEL ANGEL LORENZO BALTAZAR,
Defendant-Appellant.

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

APPELLEE'S BRIEF

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I. Whether the Defendant Fails to Prove Ineffective Assistance When Applying 2017 Amendments to the Self-Defense Statutes Would Not Have Produced a Different Result.

Authorities

Strickland v. Washington, 466 U.S. 668 (1984)
Kidd v. State, 105 So. 3d 1261 (Ala. Crim. App. 2012)
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II. Whether the Defendant Had the Specific Intent to Kill When the Evidence Proved He Hunted Down and Shot the Victim Multiple Times.

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III. Whether the District Court Properly Excluded Videos Depicting Inadmissible Specific-Acts Evidence Offered to Prove the Victim's Character.

Authorities

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7 Laurie Kratky Doré, *Iowa Practice Series: Evidence* § 5.404:3
7 Laurie Kratky Doré, *Iowa Practice Series: Evidence* § 5.1000:0

ROUTING STATEMENT

This case presents narrow—but avoidable—issues of first impression. The defendant argues he was not given the benefit of a 2017 statutory amendment that introduced "stand your ground" in Iowa's self-defense law. As detailed below in Section I(B)(1) of this brief, pp. 22–28, the Court could address several issues of first impression interpreting this novel and evolving topic of broad public importance. *See* Iowa R. App. P. 6.1101(2) (stating the Supreme Court ordinarily retains "cases presenting substantial issues of first impression"). However, the defendant presents his statutory argument as a claim of ineffective assistance, so resolution of his appeal could avoid the statutory-interpretation issues by applying the familiar *Strickland* prejudice standard.

The *Strickland* prejudice standard and the remaining issues presented in this case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Defendant Miguel Angel Lorenzo Baltazar appeals his conviction and sentence following a jury's verdict finding him guilty of first-degree murder.

Course of Proceedings

The State accepts the defendant's statement of the course of proceedings as substantially correct.

Facts

Defendant Baltazar "had some beef" with victim Jeffrey Mercado. Trial Tr. vol. III p. 20, lines 18–20. In late July 2017, Baltazar referred to Mercado as "no good," an "enemy," and a "buster." Trial Tr. vol. III p. 20, lines 5–17. Baltazar asked his friend, Anthony Garcia, to drive him around Oakland Avenue in Des Moines because he knew Mercado liked to hang out in that area. Trial Tr. vol. III p. 20, line 21 – p. 21, line 6. Garcia thought Baltazar wanted to fight Mercado. Trial Tr. vol. III p. 21, lines 7–11.

On July 28, 2017, Baltazar arranged for Garcia to give him a ride from the DMACC campus. Trial Tr. vol. III p. 23, line 2 – p. 24, line 25. Garcia picked him up shortly before 3 p.m. in his ex-girlfriend's "bluish, greenish" Mitsubishi Eclipse. Trial Tr. vol. III p.

22, line 19 – p. 23, line 1, p. 25, lines 2–6. Baltazar asked Garcia to drive to Oakland Avenue to see if Mercado was there. Trial Tr. vol. III p. 25, line 22 – p. 26, line 11. Baltazar said he wanted to find and "beat up" Mercado. Trial Tr. vol. III p. 27, lines 3–18. During the drive, Baltazar pulled out a gun. Trial Tr. vol. III p. 26, line 12 – p. 27, line 2.

Meanwhile, Mercado visited his brother's apartment on Oakland Avenue. Trial Tr. vol. II p. 64, line 25 – p. 68, line 5, p. 75, line 2 – p. 78, line 23. He got some food from the kitchen and took it outside to his girlfriend, Krista Mifflin. Trial Tr. vol. III p. 68, lines 6–23, p. 78, line 24 – p. 79, line 9. Mercado and Mifflin then walked down the street. Trial Tr. vol. IV p. 122, line 20 – p. 123, line 23, State's Ex. 11 (surveillance video).

When Baltazar and Garcia turned onto Oakland Avenue, they spotted Mercado walking on the sidewalk. Trial Tr. vol. III p. 27, line 19 – p. 28, line 15. Baltazar told Garcia to stop a few feet away from Mercado and said, "What's up, Pumba."[1] Trial Tr. vol. III p. 28, line 4 – p. 29, line 2. Mercado looked scared—he just ran away without ever

[1] Mercado was known by the nickname "Pumba" like the character in Disney's *The Lion King*. Trial Tr. vol. II p. 78, lines 3–6.

approaching Baltazar. Trial Tr. vol. III p. 29, lines 3–10, p. 45, lines 3–18.

Baltazar got out of the car with the gun and started shooting directly at Mercado. Trial Tr. vol. III p. 29, line 13 – p. 30, line 11. He fired four or five shots as Mercado was running away. Trial Tr. vol. III p. 30, lines 12–23. Mercado was hit and fell to the ground. Trial Tr. vol. III p. 31, lines 4–8. Baltazar got back in the car and told Garcia to drive away. Trial Tr. vol. III p. 31, lines 9–25. He announced, "Man, I shot the mother-fucker. You saw that mother-fucker fall." Trial Tr. vol. III p. 32, lines 1–4.

Neighbors heard the gunshots and called 911. Trial Tr. vol. II p. 37, line 18 – p. 39, line 2, p. 47, line 10 – p. 48, line 7. They reported the dark-colored "Fast and Furious" style Mitsubishi Eclipse leaving the scene. Trial Tr. vol. II p. 39, line 3 – p. 40, line 20p. 48, line 8 – p. 49, line 7. Mercado was nonresponsive, convulsing, and had blood "coming out of everywhere." Trial Tr. vol. II p. 50, line 12 – p. 51, line 20, p. 72, line 22 – p. 73, line 20, p. 80, line 1 – p. 81, line 4, p. 89, line 11 – p. 90, line 2.

Police spotted the dark-colored Mitsubishi. Trial Tr. vol. II p. 114, line 3 – p. 115, line 8. Baltazar told Garcia to drive when they saw

police behind them. Trial Tr. vol. III p. 33, lines 2–10. The Mitsubishi fled at high speed when officers turned to follow. Trial Tr. vol. III p. 33, lines 11–15, p. 48, line 16 – p. 52, line 3, p. 136, line 9 – p. 137, line 12, State's Ex. 7 (Finley dash cam). Garcia eventually lost control and left the roadway. Trial Tr. vol. III p. 33, line 16 – p. 34, line 7, p. 53, line 24 – p. 55, line 10, p. 137, line 18 – p. 138, line 2. He and Baltazar bailed from the car and ran. Trial Tr. vol. III p. 34, lines 8–20.

Police chased the two men as they ran through backyards. Trial Tr. vol. III p. 138, lines 3–14. Garcia surrendered to officers after a short time. Trial Tr. vol. III p. 35, lines 4–11, p. 55, line 19 – p. 57, line 6, p. 138, lines 12–24. Other officers used a K9 to track Baltazar through a ravine. Trial Tr. vol. II p. 119, line 5 – p. 120, line 23, Trial Tr. vol. III p. 123, line 22 – p. 127, line 19. The dog led them to a drainage culvert, so they waded through three feet of water and into the dark tunnel. Trial Tr. vol. II p. 120, line 24 – p. 121, line 23, Trial Tr. vol. III p. 127, line 20 – p. 128, line 25. They found Baltazar hiding at the end of the 50-yard-long pipe. Trial Tr. vol. II p. 122, lines 2–20, Trial Tr. vol. III p. 128, line 19 – p. 129, line 20, State's Ex. 8 (Becirovic body cam), State's Ex. 9 (Cawthorn body cam).

Mercado was pronounced dead at the hospital. Trial Tr. vol. III p. 85, lines 10–23. He suffered injuries from two gunshots—one in the right side of his back and a second in his right buttocks. Trial Tr. vol. III p. 89, line 4 – p. 90, line 23. The first shot entered his right back, passed through both lungs, tore his ascending aorta, and exited his left chest. Trial Tr. vol. III p. 91, line 24 – p. 100, line 10. The second shot entered his right buttocks and exited by his hip. Trial Tr. vol. III p. 100, line 11 – p. 101, line 21. Both bullets followed back-to-front trajectories through Mercado's body. Trial Tr. vol. III p. 101, line 25 – p. 104, line 15. The cause of death was the gunshot wound to the back, and the manner of death was homicide. Trial Tr. vol. III p. 106, lines 8–19.

Police found a pistol on the ground near the crashed Mitsubishi. Trial Tr. vol. III p. 58, lines 6–20. And they recovered five shell casings from the Oakland Avenue shooting scene. Trial Tr. vol. III p. 6, line 10 – p. 8, line 8. Microscopic comparison proved the Springfield 9 mm pistol fired all five shell casings. Trial Tr. vol. IV p. 44, line 4 – p. 49, line 1, State's Ex. 13 (firearm report); Conf. App. 5. The pistol was semi-automatic, meaning each trigger pull fired one round. Trial Tr. vol. IV p. 51, lines 2–10. It had a normal 7.75-pound

trigger pull, not a "hair trigger." Trial Tr. vol. IV p. 55, line 17 – p. 56, line 21. DNA collected from the pistol was consistent with Baltazar's DNA to a probability of 1-in-24-sextillion unrelated people. Trial Tr. vol. IV p. 70, line 2 – p. 73, line 15, State's Ex. 12 (DNA report); Conf. App. 4.

Baltazar testified at trial. He said he was concerned for his safety because Mercado had threatened him and had assaulted his uncle and cousin. Trial Tr. vol. V p. 41, line 12 – p. 46, line 5. He decided he needed to speak with Mercado because he was "tired of being afraid," so he went to Oakland Avenue to "confront" Mercado. Trial Tr. vol. V p. 46, line 6 – p. 47, line 13. Baltazar pulled out his pistol on the way to Oakland Avenue, told Garcia to stop next to Mercado, and got out holding the pistol to his side claiming he was afraid of getting attacked. Trial Tr. vol. V p. 47, line 16 – p. 49, line 9. Baltazar said Mercado approached him and he panicked, so he pointed the gun at the ground and fired several shots intending to scare Mercado. Trial Tr. vol. V p. 49, line 10 – p. 53, line 9.

However, in recorded phone calls with family and friends, Baltazar never claimed that Mercado "came at me" or that he "had to do it." Trial Tr. vol. V p. 64, line 21 – p. 65, line 1. Instead, he told

family and friends that the police were accusing him of something he did not do. Trial Tr. vol. V p. 62, line 15 – p. 63, line 3. When someone asked why he did it, Baltazar responded, "Shit. I was being retarded, fool." Trial Tr. vol. V p. 63, line 7 – p. 64, line 12, p. 68, lines 3–20.

ARGUMENT

I. Baltazar Fails to Prove Ineffective Assistance Because Applying 2017 Amendments to the Self-Defense Statutes Would Not Have Produced a Different Result.

Preservation of Error

Claims of ineffective assistance fall under an exception to the normal error preservation rules. *State v. Begey*, 672 N.W.2d 747, 749 (Iowa 2003).

Standard of Review

Claims of ineffective assistance of counsel are reviewed de novo. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006).

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). A defendant claiming ineffective assistance must prove both

that counsel's performance was deficient, and that prejudice resulted. *Id.* at 687.

Under the first prong, the defendant must show counsel's representation fell below an objective standard of reasonableness. *Id.* at 687–88. The reviewing court must be highly deferential to counsel's performance, avoid judging in hindsight, and "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. To prove the second prong, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

Defendants can raise claims of ineffective assistance on direct appeal if they have "reasonable grounds to believe that the record is adequate to address the claim on direct appeal." Iowa Code § 814.7(2) (2017). "[I]f a defendant wishes to have an ineffective-assistance claim resolved on direct appeal, the defendant will be required to establish an adequate record to allow the appellate court to address the issue." *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa

2010). "If, however, the court determines the claim cannot be addressed on appeal, the court must preserve it for a postconviction-relief proceeding, regardless of the court's view of the potential viability of the claim." *Id.*

Discussion

Baltazar's self-defense claim was bound to fail, so his complaints about the jury instructions do not constitute ineffective assistance. Although trial counsel did not object to the old self-defense instructions, the current record does not demonstrate a structural error. And there is no reasonable probability of a different result because the new self-defense laws did not justify Baltazar's unreasonable use of force.

A. Using the pre-2017 justification instructions was not structural error.

Baltazar's ineffective assistance claim asserts he "did not receive the benefit of legislation adopted in 2017 . . ." Def. Br. at 24. In 2017, the legislature passed a bill amending many firearm statutes. *See generally* 2017 Iowa Acts ch. 69. Among the statutory amendments were modifications to Iowa Code chapter 704's provisions concerning the justifiable use of force, including the much-touted adoption of "stand your ground." *See id.* §§ 37–44. The new legislation's use-of-

force provisions became effective on July 1, 2017. *See* Iowa Code § 3.7 (stating acts of the General Assembly "take effect on the first day of July following their passage" unless otherwise specified).

The current record does not disclose why the 2017 amendments were not applied in Baltazar's case. He killed Mercado on July 28, 2017 (Trial Tr. vol. II p. 24, line 13 – p. 25, line 1), which was after the act's effective date. But the district court instructed the jury on the "alternative course of action" provision that was eliminated by the 2017 legislation. Jury Instr. 21; App. 47; 2017 Iowa Acts ch. 69, § 37. Trial counsel did not object. Trial Tr. vol. V p. 84, line 18 – p. 85, line 6. But rather than jumping to conclusions, this Court should give counsel the opportunity to explain his actions. *See State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978) ("Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned.").

Even without giving trial counsel the opportunity to defend his actions, Baltazar fails to demonstrate structural error. Only rare cases present structural defects allowing applicants to evade the *Strickland* framework for ineffective assistance claims. *See Lado v. State*, 804 N.W.2d 248, 252 n.1 (Iowa 2011) (". . [O]ur case law provides few applications of structural error."). "Structural errors are

not merely errors in a legal proceeding, but errors 'affecting the framework within which the trial proceeds.'" *Id.* at 252 (quotation omitted). Structural error occurs when

> (1) counsel is completely denied, actually or constructively, at a crucial stage of the proceeding; (2) where counsel does not place the prosecution's case against meaningful adversarial testing; or (3) where surrounding circumstances justify a presumption of ineffectiveness, such as where counsel has an actual conflict of interest in jointly representing multiple defendants.

Id. When an applicant demonstrates structural error, "no specific showing of prejudice is required as the criminal adversary process itself is presumptively unreliable." *Id.* (punctuation omitted).

Baltazar falls well short of demonstrating that he "was constructively without counsel . . ." Def. Br. at 26. His attorney, Van Plumb, performed as an advocate throughout the trial court process. He obtained pretrial discovery. *See* Motion to Produce (8/9/2017); App. 5. He got permission to conduct depositions at State expense. *See* Motion for Depositions (8/14/2017); App. 8. He filed a timely notice of self-defense. Notice (9/25/2017); App. 15. He filed motions regarding discovery. Motion for Protective Order (3/14/2018); App. 17. He filed motions in limine seeking to exclude some of the State's

evidence and to admit favorable defense evidence. Motion in Limine (3/14/2018), Second Motion in Limine (3/14/2018), Third Motion in Limine (3/20/2018); App. 19, 25, 33. He submitted proposed jury instructions. Defendant's Proposed Instr. (3/20/2018); App. ---. At trial, he argued the motions in limine, questioned jurors in voir dire, cross examined nearly every State's witness, offered exhibits, made motions for judgment of acquittal, presented offers of proof, offered testimony from three defense witnesses, requested some changes to the jury instructions, and delivered a lengthy closing argument. *See generally* Trial Tr. vol. I–VI. Far from a constructive denial of counsel, these actions prove Baltazar had representation throughout every critical stage of the trial. The alleged oversight about the outdated justification instructions is a run-of-the-mill error that must be analyzed under the normal *Strickland* standard, which requires Baltazar to prove a reasonable probability of a different result.

B. Applying the new law would not have changed the outcome of trial.

A new trial will not lead to a different result. First, some of the 2017 changes to self-defense law would have made Baltazar's defense less likely to succeed. Second, the evidence—whether viewed under the old or new standards—overwhelmingly proved that Baltazar was

not justified to hunt down and shoot his victim. Therefore, this Court should find the current record sufficient to reject his ineffective assistance claim for failure to prove prejudice.

1. The new law would have impeded Baltazar's self-defense claim.

Baltazar emphasizes one statutory amendment that could benefit him, but he overlooks other amendments that would help disprove his self-defense claim. He notes that the 2017 amendment eliminated "the language pertaining to 'alternative course of action' . . ." Def. Br. at 25. But in its place, the legislation added language retaining an implicit duty to retreat under certain circumstances. And the legislation added a legal duty to timely report the use of force. Because those new provisions would have hindered Baltazar's self-defense claim, he cannot demonstrate a reasonable probability of acquittal.

a. The new law includes an implicit duty to retreat.

Case law interpreting the former version of the justification statutes recognized a defendant's duty to follow an alternative course of action. Although chapter 704 never included an affirmative provision to that effect, the previous definition of "reasonable force" implied the existence of such a duty by limiting when the defendant

was not required to follow an alternative course of action. *See* Iowa Code § 704.1 (2017) ("Reasonable force, including deadly force, may be used even if an alternative course of action is available if the alternative entails a risk to life or safety, or the life or safety of a third party, or requires one to abandon or retreat from one's dwelling or place of business or employment."). This implicit duty to follow an alternative course of action was recognized in the model instruction requiring the defendant "to avoid the confrontation by seeking an alternative course of action before [he] [she] is justified in repelling the force used against [him] [her]. . . ." Iowa Crim. Jury Instr. 400.10 (ISBA June 2017). The former statute and the model instruction on "alternative course of action" match the longstanding common law rule. *See State v. Jones*, 56 N.W. 427, 428 (Iowa 1893) ("If the danger which appears to be imminent can be avoided in any other way, as by retiring from the conflict, the taking of the life of the assailant is not excusable."); *State v. Bennett*, 105 N.W. 324, 325 (Iowa 1905) (creating an exception to *Jones* when "the defendant was on his own premises and was therefore not bound to retreat from the threatened assault. . .").

The 2017 statutory amendment changed—but did not eliminate—the duty to retreat. The legislation removed the "alternative course of action" language from section 704.1 and replaced it with:

> A person who is not engaged in illegal activity has no duty to retreat from any place where the person is lawfully present before using force as specified in this chapter.

Iowa Code § 704.1(3) (Westlaw 2018). This new language, which was modeled after legislation from other states, is known as "stand your ground."

Like the former statute, the current version of section 704.1 includes an implicit duty to retreat under certain circumstances. The statute says there is no duty to retreat when the person "is not engaged in illegal activity" and when "the person is lawfully present before using force." *Id.* By implication, the duty to retreat remains either if the person is engaged in illegal activity or if the person is not lawfully present. Other states interpreting similar language in their "stand your ground" statutes have recognized a continuing duty to retreat when the person was committing a crime. *See, e.g.*, *Kidd v. State*, 105 So. 3d 1261, 1263 (Ala. Crim. App. 2012) (accepting the state's argument "that, because [the defendant] was a felon in

possession of a firearm, he was engaged in an unlawful activity and therefore had a duty to retreat" under Alabama's "stand your ground" statute); *Rios v. State*, 143 So. 3d 1167, 1170 n.3 (Fla. Ct. App. 2014) (suggesting a defendant who unlawfully carried a concealed weapon would not "get the benefit of the Stand Your Ground law" following a statutory amendment that added an "engaged in criminal activity" exception). This interpretation reflects sound legislative judgment that trespassers and lawbreakers should not be allowed to stand their ground.

Baltazar would not have benefited from applying the new version of the statute. Had he objected to the outdated "alternative course of action" instruction, it would have been replaced with an instruction that he had a duty to retreat if he was "engaged in illegal activity." At the very least, Baltazar was breaking the law by carrying a firearm in public without a permit. *See* Trial Tr. vol. V p. 41, lines 8–11 (Baltazar was 19 years old); Iowa Code § 724.8(1) (stating a person must be at least 21 to obtain a nonprofessional permit to carry weapons). And he likely violated many other statutes with his conduct of arming himself with a handgun for the purpose tracking down and confronting his victim. *See, e.g.*, Iowa Code §§ 708.1(2)(c)

(assault by pointing or displaying a firearm); 708.7 (harassment), 708.8 (going armed with intent). Because Baltazar had a duty to retreat under the new law, he cannot demonstrate a reasonable likelihood of a different result.

b. The new law permits an adverse inference for failing to report the use of deadly force.

The 2017 legislation imposed a new duty on anyone who uses deadly force.

> If a person uses deadly force, the person shall notify or cause another to notify a law enforcement agency about the person's use of deadly force within a reasonable time period after the person's use of the deadly force, if the person or another person is capable of providing such notification.

2017 Iowa Acts ch. 69, § 40 (codified at Iowa Code § 704.2B(1) (Westlaw 2018)). This additional duty would have interfered with Baltazar's self-defense claim.

By enacting a legal duty to report the use of deadly force, the legislature must have intended a consequence for those who fail to do so. *See Thomas v. Gavin*, 838 N.W.2d 518, 524 (Iowa 2013) ("Normally we do not interpret statutes so they contain surplusage."). Failing to report the use of deadly force reflects the shooter's guilty knowledge that the shooting was not a legitimate application of self-

defense. The legislature's intent to create such an inference is illustrated by its choice to couple the duty to report with a special spoliation provision. *See* Iowa Code § 704.2B(2) (providing that a person using deadly force "shall not intentionally destroy, alter, conceal, or disguise physical evidence" or "intentionally intimidate witnesses" or "induce another person to alter testimony"); *see also State v. Langlet*, 283 N.W.2d 330, 333 (Iowa 1979) (stating that when a party intentionally destroys evidence, "the fact finder may draw the inference that the evidence destroyed was unfavorable to the party responsible for its spoliation). To give effect to section 704.2B(1), the jury should be instructed on the duty to report so it can draw a commonsense inference that a lawful self-defender would not attempt to conceal the shooting.

Baltazar's self-defense claim would not have survived a duty-to-report adverse inference. After shooting the victim, he got in the car and told his co-defendant to drive. Trial Tr. vol. III p. 31, lines 9–25. He then encouraged his getaway driver to lead police on a high-speed chase. Trial Tr. vol. III p. 33, lines 2–15. And when they crashed, he fled into a ravine, waded through three feet of water into a dark drainage pipe, and hid at the end of a 50-yard tunnel. Trial Tr. vol. II

p. 119, line 5 – p. 122, line 20, Trial Tr. vol. III p. 123, line 22 – p. 129, line 20. Baltazar's attempts to evade law enforcement violated the newly-articulated legal duty to report his use of deadly force. Because the jury would have drawn an adverse inference against the self-defense claim, insisting on the application of the 2017 legislation would not have resulted in a different outcome.

2. *Overwhelming evidence proved Baltazar did not act in self-defense.*

Evidence of Baltazar's guilt was overwhelming, so excising the "alternative course of action" would not change the result of trial. He was not justified to use force if the State proved any of the following:

> 1. The defendant started or continued the incident which resulted in death.
>
> . . .
>
> 3. The defendant did not believe he was in imminent danger of death or injury and the use of force was not necessary to save him.
>
> 4. The defendant did not have reasonable grounds for the belief.
>
> 5. The force used by the defendant was unreasonable.

Jury Instr. 21; App. 47. Additionally, the use of force was not justified if "the State has proved the defendant provoked the use of force intending to it as an excuse to injure Jeffrey Mercado." Jury Instr.

29; App. 54. The credible evidence presented at trial disproved Baltazar's self-defense claim under each of these elements.

Baltazar hunted down and shot his victim multiple times. Baltazar "had some beef" with Mercado and had called Mercado names. Trial Tr. vol. III p. 20, lines 5–20. He had prowled the Oakland Avenue neighborhood where he knew Mercado spent time, purportedly because he wanted to fight Mercado. Trial Tr. vol. III p. 20, line 21 – p. 21, line 11. On July 28, 2017, Baltazar asked his friend to drive him to Oakland Avenue, and along the way he pulled out his gun. Trial Tr. vol. III p. 25, line 22 – p. 27, line 2. Baltazar ordered his friend to stop the car next to Mercado, got out with the gun in hand, and started firing directly at Mercado. Trial Tr. vol. III p. 27, line 19 – p. 30, line 11. The two eyewitnesses—Baltazar's friend and Mercado's girlfriend—observed that Mercado was running away when Baltazar started shooting. Trial Tr. vol. III p. 30, line 1223, Trial Tr. vol. IV p. 106, line 21 – p. 107, line 8. Autopsy results confirmed that both shots followed back-to-front paths through Mercado's body—he died from being shot in the back. Trial Tr. vol. III p. 89, line 4 – p. 104, line 15. Baltazar then bragged, "Man, I shot the mother-fucker. You saw that mother-fucker fall." Trial Tr. vol. III p. 32, lines 1–4.

After a high-speed chase, Baltazar fled from police and hid deep inside a drainage tunnel. Trial Tr. vol. II p. 119, line 5 – p. 122, line 20, Trial Tr. vol. III p. 123, line 22 – p. 129, line 20. And in phone calls shortly after his arrest, Baltazar never told family or friends that he was acting in self-defense; instead, he said that he was "being retarded" or that police had accused him of something he did not do. Trial Tr. vol. V p. 62, line 15 – p. 65, line 1.

Likewise, Baltazar's version of events fell short of depicting a lawful use of force. He testified that he went to Oakland Avenue to "confront" Mercado because he "was tired of being afraid." Trial Tr. vol. V p. 46, line 6 – p. 47, line 13. He said he pulled out his pistol on the way, told his driver to stop next to Mercado, and got out holding the gun. Trial Tr. vol. V p. 47, line 16 – p. 49, line 9. He claimed Mercado took a couple steps toward him, so he fired shots at the ground intending to scare Mercado. Trial Tr. vol. V p. 49, line 10 – p. 53, line 9.

This evidence proved each of the disqualifying factors, so Baltazar's use of force was not justified. He started the incident by going to Mercado's neighborhood to confront him with a firearm. He could not reasonably believe that he was in imminent danger or that

he needed to shoot a man who was running away from him. His use of force—firing five shots at an unarmed man—was not reasonable. And even assuming Mercado "approached" him, Baltazar provoked that response and used it as an excuse to shoot the gun he brought along. Because the evidence so overwhelmingly defeated Baltazar's claim of self-defense, he cannot demonstrate any reasonable probability of a different result. Accordingly, this Court should find the record sufficient to reject his ineffective assistance argument.

II. Baltazar Had the Specific Intent to Kill Because the Evidence Proved He Hunted Down and Shot the Victim Multiple Times.

Preservation of Error

Baltazar preserved error by challenging the intent element in his motion for judgment of acquittal and receiving an adverse ruling in the district court. Trial Tr. vol. IV p. 141, line 6 – p. 145, line 14, p. 148, line 24 – p. 149, line 4.

Standard of Review

"Challenges to the sufficiency of the evidence are reviewed for errors at law." *State v. Hansen*, 750 N.W.2d 111, 112 (Iowa 2008) (citation omitted). "The district court's findings of guilt are binding on appeal if supported by substantial evidence." *Id.* "Evidence is substantial if it would convince a rational trier of fact the defendant is

guilty beyond a reasonable doubt." *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions that can fairly and reasonably be deduced from the record. *State v. Biddle*, 652 N.W.2d 191, 197 (Iowa 2002). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 6.904(3)(p).

Discussion

Baltazar disliked the victim. He armed himself with a pistol and hunted down the victim. He shot the victim multiple times from behind. He fled from police. And he made incriminating statements in jail phone calls. This evidence proved his specific intent to kill, so the Court should affirm his conviction for first-degree murder.

Baltazar's appellate argument attacks the specific-intent element of his murder conviction. "Intent is a matter that is seldom capable of direct proof. Consequently, we have recognized that a trier of fact may infer intent from the normal consequences of one's actions." *State v. Evans*, 672 N.W.2d 328, 331 (Iowa 2003) (citations omitted); *see also* Jury Instr. 31; App. 56 ("Because determining the defendant's specific intent requires you to decide what he was thinking when an act was done, it is seldom capable of direct proof.

Therefore, you should consider the facts and circumstances surrounding the act to determine the defendant's specific intent. You may, but are not required to, conclude a person intends the natural results of his acts."). In particular, the jury could infer Baltazar's specific intent from his use of a firearm. *See State v. Mulder*, 313 N.W.2d 885, 888 (Iowa 1981) ("The use of a deadly weapon accompanied by an opportunity to deliberate is evidence of malice, deliberation, premeditation, and intent to kill."); *accord* Jury Instr. 39; App. 57. The jury was properly instructed on these concepts, and ample evidence supported Baltazar's specific intent to kill.

Baltazar's motive to harm Mercado reflected his specific intent. He "had some beef" with Mercado. Trial Tr. vol. III p. 20, lines 18–20. In the days leading up to the murder, Baltazar said Mercado was "no good," an "enemy," and a "buster." Trial Tr. vol. III p. 20, lines 5–17. Right after shooting Mercado, Baltazar again expressed his odious feelings by calling his victim a "mother-fucker." Trial Tr. vol. III p. 32, lines 1–4. The jury could rely on these expressions of hate to find Baltazar's specific intent to harm Mercado.

Baltazar's efforts to seek out a confrontation with Mercado proved his specific intent. Baltazar enlisted his friend to drive him

around the neighborhood where Mercado was known to frequent. Trial Tr. vol. III p. 20, line 21 – p. 21, line 11. On July 28, 2017, Baltazar told his friend to drive to Oakland Avenue so he could find and "beat up" Mercado. Trial Tr. vol. III p. 25, line 22 – p. 26, line 11, p. 27, lines 3–18. Baltazar pulled out his gun along the way. Trial Tr. vol. III p. 26, line 12 – p. 27, line 2. When he spotted Mercado walking on the sidewalk, Baltazar ordered his friend to stop a few feet away. Trial Tr. vol. III p. 28, line 4 – p. 29, line 2. He got out with the gun in hand. Trial Tr. vol. III p. 29, line 13 – p. 30, line 11. These actions of hunting down Mercado while armed with a firearm proved Baltazar's intent to kill.

Baltazar's multiple shots and multiple hits demonstrated specific intent. When Baltazar got out of the car with a gun, Mercado looked afraid and ran away. Trial Tr. vol. III p. 29, lines 3–10, p. 45, lines 3–18. Baltazar fired shots directly at Mercado, who was already running away. Trial Tr. vol. III p. 30, lines 12–23, Trial Tr. vol. IV p. 106, line 21 – p. 107, line 8. Baltazar's pistol was semi-automatic, meaning he had to pull the trigger five times to fire the five shots. Trial Tr. vol. IV p. 51, lines 2–10. As the firearms expert explained, for Baltazar to "accidentally" fire five shots "that trigger would have to

be unintentionally pulled repeatedly." Trial Tr. vol. IV p. 56, line 22 – p. 58, line 7. And two of the five shots hit their target—Mercado was hit once in the back and once in the buttocks. Trial Tr. vol. III p. 89, line 4 – p. 90, line 23. The marksmanship necessary to land multiple hits on a moving target with pistol was not accidental—it proved Baltazar's intent to kill.

Baltazar's flight from police reflected his consciousness of guilt for intentionally killing Mercado. "It is well-settled law that the act of avoiding law enforcement after a crime has been committed may constitute circumstantial evidence of consciousness of guilt that is probative of guilt itself." *State v. Wilson*, 878 N.W.2d 203, 211 (Iowa 2016). After firing the fatal shots, Baltazar got in the car and told his friend to drive away. Trial Tr. vol. III p. 31, lines 9–25. When police closed in, Baltazar encouraged his getaway driver to lead officers on a high-speed chase. Trial Tr. vol. III p. 33, lines 2–15, p. 136, line 9 – p. 137, line 12. When the car crashed, Baltazar ran down a ravine, waded through three feet of creek water, and crawled deep into a dark drainage tunnel. Trial Tr. vol. II p. 119, line 5 – p. 122, line 20, Trial Tr. vol. III p. 123, line 22 – p. 129, line 20. The jury could rely on

these attempts to evade arrest as evidence of Baltazar's consciousness of guilt for intentionally killing Mercado.

Baltazar's statements during recorded jail phone calls support that the killing was intentional. He never claimed that Mercado "came at me" or that he "had to do it." Trial Tr. vol. V p. 64, line 21 – p. 65, line 1. To some people he claimed that police were accusing him of something he did not do. Trial Tr. vol. V p. 62, line 15 – p. 63, line 3. But to one friend he admitted he shot Mercado because "I was being retarded, fool." Trial Tr. vol. V p. 63, line 7 – p. 64, line 12, p. 68, lines 3–20. These jailhouse admissions reflect Baltazar's intent to inflict harm, not an accidental or self-defense shooting.

Baltazar's argument about the physical evidence (Def. Br. at 30–31) misunderstands that evidence. First, he erroneously states that there were "5 slugs collected from the scene of the shooting" and that "4 of the 5 slugs recovered came from the pistol . . ." Def. Br. at 30. Police actually recovered 5 *casings*—not "slugs"—from the street, and all 5 of those casings matched the pistol. Trial Tr. vol. III p. 6, line 10 – p. 8, line 8, Trial Tr. vol. IV p. 44, line 4 – p. 49, line 1; State's Ex. 13 (firearm report); Conf. App. 5. Police recovered a bullet projectile that struck a house beyond the victim. Trial Tr. vol. III p.

173, line 17 – p. 176, line 3. Second, Baltazar cites Detective Entrekin's beliefs about a "shot that hit the pavement was the damaged slug." Def. Br. at 31. But Detective Entrekin did not know where that copper jacket came from, only that "it's possibly connected." Trial Tr. vol. IV p. 92, line 19 – p. 93, line 10. Similarly, the firearms expert looked at the copper scraps and said they "possibly" came from a bullet. Trial Tr. vol. IV p. 59, line 25 – p. 60, line 8. Third, Baltazar overstates what could be determined from the trajectories of the gunshot wounds. Def. Br. at 32. Dr. Schmunk could opine that the weapon was fired behind Mercado, but he could not be more specific "because the body can be in motion . . ." Trial Tr. vol. III p. 103, line 20 – p. 104, line 8. The jury could reasonably find that the upward path of shot in Mercado's back was consistent with him leaning forward while running away, and the slightly downward path of the shot to his buttocks was consistent with his leg being raised while running. In short, the physical evidence did not prove Baltazar's story.

The jury did not have to believe Baltazar's version of events. He told a story about panicking and firing shots at the ground. Trial Tr. vol. V p. 51, line 10 – p. 53, line 12. But the jury had ample reason to

doubt Baltazar's professed fear considering he admitted tracking down Mercado with the intent to "confront" him. Trial Tr. vol. V p. 46, lines 6–15. And although Baltazar claimed Mercado walked toward him before he fired shots (Trial Tr. vol. V p. 49, line 20 – p. 50, line 7), both Baltazar's friend and the victim's girlfriend saw Mercado running away before the shooting started. Trial Tr. vol. III p. 30, lines 12–23, Trial Tr. vol. IV p. 106, line 21 – p. 107, line 8. It was the duty of jury—not the court—to sort through the conflicting evidence and decide who was more credible. *See, e.g.*, *State v. Blair*, 347 N.W.2d 416, 420 (Iowa 1984) ("[T[he jury is at liberty to believe or disbelieve the testimony of witnesses as it chooses . . . The very function of the jury is to sort out the evidence presented and place credibility where it belongs."). The jury's guilty verdict shows it did not believe the story Baltazar retells on appeal.

Ample evidence proved Baltazar intended to kill Mercado. He had a motive to harm, he armed himself and sought out a confrontation, he fired multiple shots and scored multiple hits, he fled from the scene, he told friends and family conflicting stories, and the jury was not required to believe his trial testimony. Therefore, this Court should not interfere with the jury's verdict.

III. The District Court Properly Excluded Videos Depicting Inadmissible Specific-Acts Evidence Offered to Prove the Victim's Character.

Preservation of Error

Baltazar preserved error for the admissibility of the character evidence by making an offer of proof and receiving an adverse ruling in the district court. Trial Tr. vol. V p. 13, line 16 – p. 33, line 10.

However, his appellate argument extends beyond the theories of admissibility he presented in the district court. On appeal he relies the concepts of "best evidence" and "demonstrative evidence" (Def. Br. at 36–39), but he does not specify where in the district court record he raised those arguments. "Nothing is more basic in the law of appeal and error than the axiom that a party cannot sing a song to us that was not first sung in trial court." *State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999)

Finally, Baltazar has waived error by not developing his alternative argument of ineffective assistance. The entirety of his ineffective assistance argument is: "Should this Court determine that error has not been properly preserved on this issue, Baltazar respectfully requests that the issue be addressed through a claim of ineffective assistance." Def. Br. at 33–34. He cites no authority and

offers no argument to support the breach-of-duty or prejudice prongs of ineffective assistance. This Court should not supplement the defendant's incomplete analysis with its own research and advocacy, so the Court should find he has waived the ineffective assistance argument. *See Inghram v. Dairyland Mut. Ins. Co.*, 215 N.W.2d 239, 240 (Iowa 1974) ("To reach the merits of this case would require us to assume a partisan role and undertake the appellant's research and advocacy. This role is one we refuse to assume."); Iowa R. App. P. 6.903(2)(g)(3). The Court should take a stand against defendants making half-hearted alternative claims of ineffective assistance. *See People v. Sutton*, No. 275447, 2008 WL 2627607, at *10 (Mich. Ct. App. July 3, 2008) (rejecting an undeveloped ineffective assistance claim and admonishing, "One cannot simply announce a position or assert an error and leave it up to the Court to do his research and develop his arguments and then accept or reject his position.").

Standard of Review

"Generally, questions involving the admissibility of evidence are reviewed for an abuse of discretion." *State v. Jordan*, 663 N.W.2d 877, 879 (Iowa 2003).

Discussion

Baltazar already got more character evidence than he deserved. Although the victim's character was not provable with specific instances of conduct unknown to the defendant, the district court allowed two police officers to testify about two prior fights. Because that specific-instances evidence was not admissible, the district court did not abuse its discretion by excluding videos of the prior fights. And even if the court abused its discretion, any error was harmless.

A. The specific-instances evidence was not admissible to prove the victim's character.

"A homicide victim's prior violent or turbulent character or reputation is ordinarily immaterial and furnishes another no excuse to become his or her private executioner." *State v. Jacoby*, 260 N.W.2d 828, 837 (Iowa 1977). However, when the accused asserts self-defense, a narrow exception allows admission of character evidence for two purposes:

> (1) To show the state of mind of the defendant, the degree and nature of his or her apprehension of danger which might reasonably justify resort to more prompt and violent measures of self-preservation. . . .
>
> (2) As tending to prove who was the aggressor in the death-resulting encounter. . . .

Id. Under the first option concerning the defendant's state of mind, evidence of the victim's character is admissible "only if these character traits were known to the accused." *Id.* Under the second option concerning the initial aggressor, the evidence is admissible "even if these character traits were unknown to the accused." *Id.*

Even if character evidence is admissible, there are still limitations against admitting specific-instances evidence. "It is the rule in Iowa and the majority of jurisdictions that the quarrelsome, violent, aggressive or turbulent character of a homicide victim cannot be established by proof of specific acts." *Id.* at 838. Although specific instances of conduct might be convincing, it "'possesses the greatest capacity to arouse prejudice, to confuse, to surprise, and to consume time.'" *Id.* (quoting Fed. R. Evid. 405 advisory committee's note). *Jacoby* left just two paths to admitting evidence of specific instances. First, it would allow specific acts "so closely related to the fatal event as to constitute part of the res gestae." *Id.* Second, *Jacoby* suggested "prior unlawful acts of violence by the deceased" are admissible to support the defendant's apprehension of danger "if prior to the homicide, the defendant . . . knew of other acts of violence of the deceased . . ." *Id.* at 838–39. *Jacoby* recognized that these rules "are

not entirely consistent." *Id.* at 839. And one leading commentator has summarized that the Court "has issued confusing and conflicting opinions concerning whether the violent or aggressive character of a victim can be established by proof of specific acts." 7 Laurie Kratky Doré, *Iowa Practice Series: Evidence* § 5.404:3 (Westlaw 2018).

Like *Jacoby*, the Rules of Evidence limit the admission of specific-instances evidence. In a criminal case, "a defendant may offer evidence of the victim's pertinent trait . . ." Iowa R. Evid. 5.404(a)(2)(A)(ii). "When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion." *Id.* R. 5.405(a). Specific instances are admissible only on cross examination or "[w]hen a person's character or character trait is an essential element of a charge, claim, or defense." *Id.* R. 5.405(b).

Baltazar did not know about the prior videotaped fights, so those specific instances were not admissible to prove the victim's character. Baltazar produced no evidence that he was aware of Mercado's fights—one occurred at a convenience store 18 hours before the murder, and the other occurred on Oakland Avenue before Baltazar arrived. *See* Trial Tr. vol. V p. 19, lines 14–20 ("These

videos, as far as we know, Mr. Baltazar didn't know anything about. . . ."); p. 28, lines 1–11 ("As far as the two videotapes, since he was unaware of them, didn't know about them, I'm not going to allow them."); *see also* 7 Laurie Kratky Doré, *Iowa Practice Series: Evidence* § 5.404:3 (Westlaw 2018) ("Unless a defendant claims to have known about the victim's violent conduct (and therefore acted reasonably in using defensive force), a defendant seeking to admit evidence of a victim's character to support self-defense should only be permitted to use reputation or opinion evidence, not specific instances of the victim's conduct.").

Next, Baltazar could not offer the specific-instances evidence under *Jacoby*'s "res gestae" exception. *See Jacoby*, 260 N.W.2d at 868 (allowing evidence of specific acts "so closely related to the fatal event as to constitute part of the res gestae"). Since *Jacoby*, this theory of "res gestae" or "inextricably intertwined evidence" has received harsh criticism. *See State v. Nelson*, 791 N.W.2d 414, 422–23 (Iowa 2010) ("Of all the different categories of inextricably intertwined evidence, none has received as harsh criticism as evidence found to be admissible because it completes the story of the crime charged."). Other-acts evidence offered "to complete the story

of what happened" is admissible only when it "is so closely related in time and place and so intimately connected to the crime charged that it forms a continuous transaction." *Id.* at 423. Admission of this other-acts evidence is only allowed "when a court cannot sever this evidence from the narrative of the charged crime without leaving the narrative unintelligible, incomprehensible, confusing, or misleading." *Id.* One video of Mercado fighting occurred 18 hours before the murder at convenience store (Trial Tr. vol. V p. 34, line 23 – p. 35, line 3), so it was not part of the same continuous transaction. The second video was closer in time and place because if occurred on Oakland Avenue a few minutes before the murder (Trial Tr. vol. V p. 37, lines 13–16), but it involved a separate transaction with different people and could be severed without making the story of the murder unintelligible or incomprehensible. Therefore, if *Jacoby*'s "res gestae" exception still exists, it did not compel the district court to admit the specific-instances evidence.

Baltazar's specific-instances evidence was not admissible. He was not aware of Mercado's two videotaped fights, so they could not have influenced his apprehension of danger. And the prior fights were severable from the murder, so the specific-acts evidence was not

admissible as res gestae. The district court should not have allowed any evidence of the specific acts depicted in the videos to prove the victim's character.

B. Videos of the inadmissible specific-instances evidence were not admissible.

Even though the two videotaped fights were inadmissible specific-acts evidence, the district court allowed the officers to describe what they observed on the videos. Trial Tr. vol. V p. 34, line 23 – p. 35, line 17, p. 37, line 13 – p. 38, line 16. Baltazar now complains "that the videos should have been admitted as they are the best evidence of Mercado's reputation for violence and they demonstrate the fact that Baltazar had a genuine reason to fear Mercado." Def. Br. at 35. But these arguments misconstrue the rules of "best evidence" and "demonstrative evidence," to Baltazar does not prove an abuse of discretion.

The "best evidence rule" had no application in Baltazar's case. Iowa's "best evidence rule" allows admission of a duplicate writing, recording, or photograph "unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate." Iowa R. Evid. 5.1003. Baltazar does not dispute the authenticity of the videos; rather, he contends "the videos are the

best way to prove the violent tendencies as the content of the videos depicts examples of those propensities." Def. Br. at 36. But his general feeling about what might be the most persuasive evidence should not be conflated with the "best evidence rule." *See* 7 Laurie Kratky Doré, *Iowa Practice Series: Evidence* § 5.1000:0 (Westlaw 2018) (explaining that the "best evidence" doctrine concerns the method of proving the content of a document, and "it is now generally accepted that the doctrine is not a general rule of preference requiring that a party produce the 'best' evidence possible with respect to a disputed fact").

Next, the videotapes were not automatically admissible as "demonstrative evidence." "Generally, 'demonstrative' evidence includes items that were not involved in the case but are offered to clarify or explain other evidence." 7 Laurie Kratky Doré, *Iowa Practice Series: Evidence* § 5.401:2(B) (Westlaw 2018). Properly authenticated videos can be relevant, but "courts are frequently asked to evaluate whether the probative value of video evidence outweighs its prejudicial effect." *Id.* Baltazar offered two videos that did not tell the whole story. As the prosecutor argued in the district court, the videos had no audio and no context from anyone who witnessed the

events. Trial Tr. vol. V p. 20, line 24 – p. 21, line 12.[2] While Baltazar believes the videos show "how quickly and violently Mercado was prone to acting" (Def. Br. at 37), proper context could have explained that Mercado only resorted to violence in those situations because he was threatened. And although Baltazar thinks the videos showed that he "had reason to fear the worst when Mercado approached him" (Def. Br. at 37), there is no way the videos impacted his apprehension of danger because he did not see them before he shot Mercado. Meanwhile, showing the videos could have inspired the jury to misuse the character evidence to draw an improper conclusion that Mercado was a bad person who deserved to die. The district court properly weighed these competing interests when disallowing the videos. *See* Trial Tr. vol. V p. 29, lines 16–25 ("It's too prejudicial because it allows the jury to speculate, . . . it's unfair to the State in that it gives

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> [2] There's no audio. We can't tell what is being said. You can't really tell what the person in the car is doing when it approaches Mr. Mercado, what they are saying, what they are doing.
>
> We can't tell from the Shop 'N Save video what is happening prior to this event occurring at the Shop 'N Save. It does appear there are multiple people that approach Mr. Mercado in the Shop 'N Save. . . .

you no opportunity to explain those two events whatsoever. It's confusing to the jury. It's isolated. You don't know exactly what was going on, especially when there's no sound to it. . . .").

The district court struck a reasonable balance. Even though the specific-acts evidence was not plainly admissible, the court allowed the officers to describe the two surveillance videos of Mercado's previous fights. But because the videos lacked context and could have misled the jury, it was not clearly unreasonable to exclude them from the jury's view. Accordingly, this Court should not second-guess the reasonable exercise of discretion.

C. Exclusion of the videos was harmless.

Assuming Baltazar could demonstrate an abuse of discretion, he is not entitled to reversal because any error was harmless. Reversal is not required in cases of nonconstitutional error unless "it appears that the rights of the complaining party have been injuriously affected by the error or that he has suffered a miscarriage of justice." *State v. Henderson*, 696 N.W.2d 5, 12 (Iowa 2005) (quotation omitted); *see also* Iowa R. Evid. 5.103(a) ("A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party . . .").

The excluded videos were cumulative to the officers' descriptions of the videos. Regarding the fight at the convenience store, Detective Entrekin said that Mercado "wasn't afraid to fight," that the video showed a fight break out, and that Mercado punched a man who then fell backwards. Trial Tr. vol. V p. 34, line 13 – p. 35, line 17. Regarding the fight on the street, Detective Towers described Mercado walking to the side of the car, taking several swings at the passenger, and causing injuries. Trial Tr. vol. V p. 37, line 13 – p. 38, line 16. These descriptions gave jurors any pertinent information about the victim's character, so excluding the videos themselves did not amount to reversible error.

The violence depicted in the videos was cumulative to other evidence of the victim's prior acts. Jurors heard evidence that Mercado had sent Baltazar's uncle to the hospital with stab wounds. Trial Tr. vol. V p. 41, line 12 – p. 42, line 15. Jurors heard evidence that Mercado had been threatening to harm Baltazar. Trial Tr. vol. V p. 42, line 16 – p. 43, line 14. Jurors heard evidence that Baltazar had been attacked, that he suffered a broken arm, and that after the assault he became concerned that his life was in danger. Trial Tr. vol. V p. 43, line 24 – p. 44, line 25. Jurors heard that Baltazar's cousin

had a confrontation with Mercado and received grazes on his face. Trial Tr. vol. V p. 45, line 2 – p. 46, line 5. If jurors were inclined to believe Baltazar's claimed fear of Mercado, these specific instances of violence would have persuaded them more than the videos that Baltazar had not seen before killing Mercado.

Finally, the evidence of Baltazar's guilt was overwhelming. Baltazar "had some beef" with Mercado and had called Mercado names. Trial Tr. vol. III p. 20, lines 5–20. He had prowled the Oakland Avenue neighborhood where he knew Mercado spent time, purportedly because he wanted to fight Mercado. Trial Tr. vol. III p. 20, line 21 – p. 21, line 11. On July 28, 2017, Baltazar asked his friend to drive him to Oakland Avenue, and along the way he pulled out his gun. Trial Tr. vol. III p. 25, line 22 – p. 27, line 2. Baltazar ordered his friend to stop the car next to Mercado, got out with the gun in hand, and started firing directly at Mercado. Trial Tr. vol. III p. 27, line 19 – p. 30, line 11. The two eyewitnesses—Baltazar's friend and Mercado's girlfriend—observed that Mercado was running away when Baltazar started shooting. Trial Tr. vol. III p. 30, line 12¬23, Trial Tr. vol. IV p. 106, line 21 – p. 107, line 8. Autopsy results confirmed that both shots followed back-to-front paths through Mercado's body—he

died from being shot in the back. Trial Tr. vol. III p. 89, line 4 – p. 104, line 15. Baltazar then bragged, "Man, I shot the mother-fucker. You saw that mother-fucker fall." Trial Tr. vol. III p. 32, lines 1–4. After a high-speed chase, Baltazar fled from police and hid deep inside a drainage tunnel. Trial Tr. vol. II p. 119, line 5 – p. 122, line 20, Trial Tr. vol. III p. 123, line 22 – p. 129, line 20. And in phone calls shortly after his arrest, Baltazar never told family or friends that he was acting in self-defense; instead, he said that he was "being retarded" or that police had accused him of something he did not do. Trial Tr. vol. V p. 62, line 15 – p. 65, line 1. The videos of Mercado's fights would not have led the jury to overlook this convincing evidence of guilt.

Baltazar deserves no relief. He was allowed to present specific-acts evidence to paint Mercado as a violent or aggressive person, but the jury concluded Mercado's character did not give Baltazar a license to hunt down and kill him. The evidence of guilt was overwhelming, so this Court should find any error was harmless.

CONCLUSION

The Court should affirm Miguel Lorenzo Baltazar's conviction and sentence.

REQUEST FOR NONORAL SUBMISSION

This case invites the application of routine principles of ineffective assistance, sufficiency of the evidence, and abuse-of-discretion evidentiary standards, so it could be appropriate for submission without oral argument.

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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