

IN THE IOWA SUPREME COURT

---

SUPREME COURT NO. 17-1701

---

STATE OF IOWA,

Appellee

vs.

STEVE WILLIAM FORDYCE JR.,

Appellant

---

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

---

---

**APPELLANT'S FINAL BRIEF  
AND  
REQUEST FOR ORAL ARGUMENT**

---

CHRISTOPHER KRAGNES, SR., AT004399  
317 6<sup>TH</sup> Avenue, Suite 1300  
Des Moines, IA 50309  
515-282-9200  
E-mail: [chris@ktkpc.com](mailto:chris@ktkpc.com)

ATTORNEY FOR APPELLANT

## **PROOF OF SERVICE**

On October 29, 2018, I, the undersigned, did serve the within Appellant's Proof Final Brief and Request for Oral Argument on all other parties to this appeal by e-filing it through the EDMS system and mailing one (1) copy thereof to the Defendant:

Attorney General's Office  
Hoover State Office Building  
Des Moines, Iowa 50319

Steven Fordyce Jr.

/s/ Christopher Kragnes, Sr.  
CHRISTOPHER KRAGNES, SR. AT004399  
317 6<sup>TH</sup> Avenue, Suite 1300  
Des Moines, IA 50309  
515-282-9200  
E-mail: [chris@ktkpc.com](mailto:chris@ktkpc.com)  
ATTORNEY FOR APPELLANT

## **CERTIFICATE OF FILING**

I hereby certify that I did file the within Final Brief and Request for Oral Argument with the Clerk of Supreme Court, Iowa Judicial Branch Building, 1111 E. Court Avenue, Des Moines, Iowa 50319 by e-filing it through the EDMS system on October 29, 2018.

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

## TABLE OF CONTENTS

Proof of Service .....	2
Certificate of Filing.....	2
Table of Contents .....	3
Table of Authorities .....	3
Statement of the Issue Presented for Review .....	4
Statement of the Case .....	5
Routing Statement.....	7
Argument .....	8
Conclusion .....	25
Request for Oral Argument .....	26
Attorney Cost Certificate .....	26
Certificate of Compliance with Type-Volume Limitations, Typeface Requirements and Type-Style Limitations.....	26

## TABLE OF AUTHORITIES

### CASES

<i>State v. Bond</i> , 340 N.W.2d 276, 279 (Iowa 1983)	7, 9
<i>State v. Elam</i> , 328 N.W.2d 314, 319 (Iowa 1982)	9, 12
<i>State v. Hagedorn</i> , 679 N.W.2d 666, 669 (Iowa 2004)	23
<i>State v. Howse</i> , 875 N.W.2d 684, 688 (Iowa 2016)	9
<i>State v. Hutton</i> , 796 N.W.2d 898, 901 (Iowa 2011)	25
<i>State v. Lindell</i> , 828 N.W.2d 1, 12 (Iowa 2013)	23
<i>State v. Nitcher</i> , 720 N.W.2d 547, 556 (Iowa 2006)	10
<i>State v. Schooner Peggy</i> , 1 Cranch 103, 2 L.Ed. 49 (1801)	22
<i>State v. Sanford</i> , 814 N.W.2d 611, 615 (Iowa 2012)	8, 10
<i>State v. Shorter</i> , 893 N.W.2d 65, 70 (Iowa 2017).	8
<i>State v. Showens</i> , 845 N.W.2d 436, 439 (Iowa 2014)	9
<i>State v. Stallings</i> , 541 N.W.2d 855 (Iowa 1995)	11
<i>State v. Thomas</i> , 561 N.W.2d 37, 39 (Iowa 1997)	9
<i>State v. Thornton</i> , 498 N.W.2d 670 (1993)	20
<i>State v. Velez</i> , 829 N.W.2d 572, 585 (Iowa 2013)	23

<i>United States v. Chambers</i> , 291 U.S. 217 (1934)	22
--	----

## STATUTES

Iowa Code section 704.1	11,12
Iowa Code section 704.3	11,12
Iowa Code section 704.4	11,12
Iowa Code section 704.5	11,12
Iowa Code section 704.4	11,12
Iowa Code 704, as amended (2017)	21
Iowa Constitution Art. I, Sec 1, 9, and 10	23
U.S. Const. 5 <sup>th</sup> and 14 <sup>th</sup> Amend	23
Iowa R. App. P. 6.1101(3))	8
Iowa R. App. P. 6.1101(2)(a), (c), (d), and (f)	8

## OTHER AUTHORITIES

<i>Iowa Criminal Jury Instruction</i> 400.1	11
<i>Iowa Criminal Jury Instructions</i> 400.2	12
Iowa R. Evidence 5.803(2)	19

## STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

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

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

#### Authorities

<i>State v. Bond</i> , 340 N.W.2d 276, 279 (Iowa 1983)
<i>State v. Elam</i> , 328 N.W.2d 314, 319 (Iowa 1982)
<i>State v. Howse</i> , 875 N.W.2d 684, 688 (Iowa 2016)
<i>State v. Keopasaeth</i> , 645 N.W.2d 637, 640 (Iowa 2002)
<i>State v. Nitcher</i> , 720 N.W.2d 547, 556 (Iowa 2006)
<i>State v. Randle</i> , 555 N.W.2d 666, 671 (Iowa 1996)
<i>State v. Sanford</i> , 814 N.W.2d 611, 615 (Iowa 2012)

*State v. Shorter*, 893 N.W.2d 65, 70 (Iowa 2017)  
*State v. Showens*, 845 N.W.2d 436, 439 (Iowa 2014)  
*State v. Stallings*, 541 N.W.2d 855 (Iowa 1995)  
*State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997)  
*State v. Thornton*, 498 N.W.2d 670 (1993)

*Iowa Criminal Jury Instruction* 400.1  
*Iowa Criminal Jury Instructions* 400.2

Iowa Code section 704.1  
Iowa Code section 704.3  
Iowa Code section 704.4  
Iowa Code section 704.5  
Iowa Code section 704.4

Iowa R. Evidence 5.803(2)

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

Authorities

*State v. Hagedorn*, 679 N.W.2d 666, 669 (Iowa 2004)  
*State v. Lindell*, 828 N.W.2d 1, 12 (Iowa 2013)  
*State v. Schooner Peggy*, 1 Cranch 103, 2 L.Ed. 49 (1801)  
*State v. Velez*, 829 N.W.2d 572, 585 (Iowa 2013)  
*United States v. Chambers*, 291 U.S. 217 (1934)

Iowa Code 704, as amended (2017)

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

Authorities

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

## STATEMENT OF THE CASE

**Nature of the Case:** This is an appeal from a verdict of guilty by the Court on or about August 29, 2017, as there was insufficient evidence to convict Fordyce of Voluntary Manslaughter, as Fordyce was justified in using self-defense and defense of others, the Court erred in failing to apply Iowa Code section 704, as amended, Iowa's Stand Your Ground law and Defendant's due process rights were violated by the Court's delayed ruling of almost one year from the close of trial.

**Course of Proceedings:** Appellant Steven William Fordyce Jr., hereinafter referred to as Fordyce, was charged by Trial Information with Murder in the First Degree. (App. p. 5). Fordyce waived his right to a jury trial via written waiver filed May 6, 2016 and confirmed on the record on the same day (App. p. 9). A non-jury trial began on August 2, 2016 through August 5, 2016, recessing for one week and recommencing on August 15, 2016, concluding on August 19, 2016. (App. p.15). On August 29, 2017, the Court found Fordyce guilty of Voluntary Manslaughter, in violation of Iowa Code section 707.4, a lesser included offense. (Order 8/29/17; App. p. 15). Sentencing was held October 23, 2017 and Fordyce was sentenced to an indeterminate term of ten years in prison, fined \$1000, surcharge and court costs and victim restitution of \$150,000. (App. p. 36). Fordyce filed a Motion for New Trial

and Judgment Notwithstanding the Verdict, which was argued prior to the pronouncement of judgment and sentence. (App. p. 33). In Fordyce's request for New Trial or Judgment Notwithstanding the Verdict, he argued the Court denied him his right to Due Process and Equal Protection as the Court should have applied Iowa Code section 704, as amended, that he was denied a fair trial when the Court improperly excluded testimony of Defense expert Emanuel Kapelsohn, that he was denied a fair and speedy trial as it took the Court over 11 months to publish a verdict, that the verdict was contrary to the evidence, and that no legal judgment could be made. Fordyce filed a Notice of Appeal on the same day as judgment and sentence was pronounced, on October 23, 2017. (App. p. 40).

**Facts:** Pursuant to *State v. Bond*, 340 N.W.2d 276, 279 (Iowa 1983), The district court's findings of fact are binding upon the appellate court if supported by substantial evidence. Defendant agrees the trial courts findings of fact contained on pages 2 through 8 of the Court's Order are supported by substantial evidence. As such, the Defendant incorporates by reference for his statement of facts the trial court's findings of fact.

Additional facts will be discussed as pertinent to Fordyce's arguments.

## **ROUTING STATEMENT**

Because this case involves the application of existing legal principles to the facts herein, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)). However, one issue relating to a matter of law, Iowa Code section 704, as amended, known as the Stand Your Ground law, has not been considered by the Iowa Supreme Court, nor its applicability to cases such as this and is a matter of first impression. This issue also presents a substantial constitutional question as it relates to Stand Your Ground and the applicability of the defense of Justification and changing legal principles. This issue presents a fundamental and urgent issue of broad public importance, such that the Iowa Supreme Court should retain this appeal. Therefore, this case should remain in the Iowa Supreme Court. Iowa R. App. P. 6.1101(2)(a), (c), (d), and (f).

## **ARGUMENT**

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

**Standard of review:** Sufficiency of the evidence claims are reviewed for errors of law. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). The Appellate Court will affirm the denial of a motion for judgment of acquittal if the trial record contains substantial evidence supporting conviction. *State v. Shorter*, 893 N.W.2d 65, 70 (Iowa 2017). The evidence is viewed in the light most favorable to the State, and the Court will indulge "all reasonable



inferences that may be fairly drawn from the evidence." *State v Howse*, 875 N.W.2d 684, 688 (Iowa 2016)(quoting *State v. Showens*, 845 N.W.2d 436, 439 (Iowa 2014)). The Court will consider all evidence, both inculpatory and exculpatory. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). "Evidence that raises only 'suspicion, speculation, or conjecture' is *not* substantial evidence." *Id.* (citing *State v. Randle*, 555 N.W.2d 666, 671 (Iowa 1996)). When reviewing a self-defense claim, we also view evidence in the light most favorable to the State. *See State v. Elam*, 328 N.W.2d 314, 319 (Iowa 1982). Additionally, the district court's findings of fact are binding upon the appellate court if supported by substantial evidence. *Bond*, 340 N.W.2d at 279.

**Preservation of error:** Fordyce preserved error by moving for judgment of acquittal at both the close of the State's evidence and at the conclusion of the trial (Transcript 8/5/16, p. 46, Transcript 8/18/16, p. 3-4; ), and filing a Motion for New Trial and Judgment Notwithstanding the Verdict and by filing a Notice of Appeal (App p. 12, 33, 40).

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

The Appellate Court upholds a verdict if it is supported by substantial evidence, which is evidence that, when viewed in the light most favorable to

the State, can convince a rational jury that the defendant is guilty beyond a reasonable doubt. *See Sanford*, 814 N.W.2d at 615. In analyzing whether a rational jury would be convinced, the Court considers all the record evidence and "all reasonable inferences that may fairly be drawn from the evidence." *Id.* (citing *State v. Keopasaeth*, 645 N.W.2d 637, 640 (Iowa 2002)). We recognize the jury is free to reject any evidence and credit other evidence. *Id.* (citing *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006)). Thus, the same can be said for a bench trial, as opposed to the jury trial.

However, in a trial to the court, the trial court provides a "findings of fact" which provide a detailed account of what the trial court considered, believed, accepted and rejected. The ability to review findings of fact from a trial court determining the evidence accepted and rejected, allows this Court to review whether there was sufficient evidence to find a defendant guilty beyond a reasonable doubt, but also to determine, based on the trial court's specific findings of fact in this case, whether the State proved beyond a reasonable doubt the Defendant's actions were not justified. When a jury renders a verdict, it is impossible to determine which facts the jury accepted and which it rejected; however, this is not the case in this matter. Therefore, this Court can now review the trial court's accepted and rejected facts, and make the determination the trial court is, in fact, incorrect and wrong, as the State failed to disprove justification of self-defense.

It is undisputed on August 14, 2015, Fordyce caused the death of Donald Harrington. Fordyce filed a claim of justification of self-defense and defense of others. (App. p. 7-8). The question in this case, is whether the State proved beyond a reasonable doubt he was not acting with justification. Justification is defined within the Iowa Model Jury Instructions (also as cited by the trial court):

A person may use reasonable force to prevent injury to a person, including Defendant. The use of this force is known as justification.

Reasonable force is only the amount of force a reasonable person would find necessary to use under the circumstances to prevent death or injury.

A person can use deadly force against another if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

The State must prove the Defendant was not acting with justification.

*Iowa Criminal Jury Instruction 400.1; Iowa Code section 704.1, 704.3, 704.4, 704.5, 704.7; State v. Stallings, 541 N.W.2d 855 (Iowa 1995).*

A person is justified in using reasonable force if he reasonably believes the force is necessary to defend himself from any imminent use of unlawful force.

If the State has proved any one of the following elements, Defendant was not justified:

1. Defendant started or continued the incident which resulted in death.
2. An alternative course of action was available to Defendant.

3. 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. Defendant did not have reasonable grounds for the belief.
5. The force used by Defendant was unreasonable.

*Iowa Criminal Jury Instructions* 400.2, Iowa Code sections 704.1, 704.3, *State v. Elam*, 328 N.W.2d 314, 317 and 319 (Iowa 1982).

If the State has proven any one of the items listed in 1 through 5, Fordyce would not be justified in his actions. These items the State must prove and must prove beyond a reasonable doubt.

The trial court concluded the State proved beyond a reasonable doubt Fordyce was not acting with justification as, while Donald had initiated the difficulties resulting in his death, the trial court also concluded Fordyce continued the incident when he came back and then followed his sister, Nikki, and friend, Katia. (Order 8/29/17, p. 15 App. p. 30). The trial court also concluded Nikki and Katia, not the Defendant initiated further escalation of tensions with Donald and Samantha and continued the events “set in motion initially by Donald.” (Order 8/29/17, p. 15, App. p. 30). The trial court also concluded Fordyce had an alternative course of action by retreating. (Order 8/29/17, p. 15, App. p. 30). The trial court erred in finding the State proved both elements beyond a reasonable doubt.

**i. Fordyce did not start or continue the incident.**

First, the evidence presented and found by the trial court, does not support the contention Fordyce started or continued this incident. In fact, the trial court specifically noted Donald initiated the difficulties by fingering Fordyce, otherwise known as “flipping the bird” or middle finger, over what appears to be Fordyce’s minor child throwing fruit snacks over the fence onto the Harrington property. (Order 8/29/17, p. 3, App. p. 18). As Fordyce stopped his truck and was confused as to the reasoning of Donald’s behavior, Donald came down off his porch and attempted to get into Fordyce’s truck. (Order 8/29/17, p. 3, App p. 18). The trial court found after Donald was unsuccessful in getting into Fordyce’s truck, he then attempted to provoke Fordyce into a fight by saying “Come on. You want to go?” (Order 8/29/17, p. 3, App p. 18). The trial court specifically concluded Donald to have initiated the encounter and was the aggressor. (Order 8/29/17, p. 15, App p. 30).

The trial court then found credible evidence that after Fordyce drove away, Samantha flagged down two of her children’s friends and instructed them to find her boys as she thought something was going to happen. (Order 8/29/17, p. 4, App p. 19). This was AFTER Fordyce drove away. (Order 8/29/17, p. 4, App. p. 19). Samantha’s behavior of flagging down her children’s friends indicates she believed more actions and aggression was

going to occur considering Donald's behavior. In fact, Donald attempted to call his brother, John, but was unable to reach him. (Order 8/29/17, p. 4, App p. 19). Thus, it is clear by both Samantha and Donald's actions, they did not believe the incident was over.

However, Fordyce's actions indicated this incident was over. Fordyce left the area in front of the Harrington residence, but did return to his sister's residence. This is not continuing the incident. The trial court's finding regarding the Defendant continuing the incident simply is not supported by the Court's own findings or substantial evidence even considering the evidence in the light most favorable to the State. The Court is misguided when it attempts to meld together two separate incidents into one incident.

The Court made the following analysis and conclusion:

The Court initially considers whether the State has proven beyond a reasonable doubt that the Defendant was not acting with justification when he shot Donald Harrington. The Court finds Donald initiated the difficulties which ultimately resulted in his death when he fingered the Defendant and attempted to get in the Defendant's truck. However, the Court also finds that the State has proven beyond a reasonable doubt that no matter what the Defendant's motivations may have been, the Defendant continued the incident when he came back and accompanied his sister and Katia when they confronted Samantha. The Court also finds that Nikki and Katia were both initiating a further escalation of tensions with Donald and Samantha, as well as continuing the course of events set in motion initially by Donald. (Order 8/29/17, p. 15, App. p. 30)

The above conclusion is neither supported by substantial evidence, nor the

Courts own Findings of Fact:

The Court finds that Donald initiated this encounter and was the aggressor at the point the Defendant drove away. ... The Defendant drove up the street before doing a U-turn and returning to Nikki's house to warn her that her neighbor "went nuts." The Defendant drove his truck back down the street and parked on Nikki's lawn in front of her house. Nikki and her son's girlfriend, Katia Hoag, were seated on the front porch of Nikki's house. The Defendant rolled his window down to tell Nikki about what had just happened so she would have warning if any drama resulted with Donald and Samantha. Nikki and Katia Hoag ran next door to confront Samantha and Donald. The Defendant told his kids to stay in the truck before getting out of the truck to follow Nikki and Katia. The Defendant followed them because he was worried about what might happen. (Order 8/29/17; p. 4, App. p. 19).

These are clearly two separate incidents. The first incident involved Donald initiating the encounter at the truck. The Court found the credible evidence to be the Defendant leaving this incident without or continuing anything. Defendant then turned around to warn his sister, as any reasonable person would do, that Donald "went nuts." What does this incident prove? It proves the Defendant knows how to take an alternative course of action if it is available to him. As the Court found, at no time during the incident involving Donald attacking the truck did Defendant do anything of a provocative nature, and in fact fled when it looked like the situation was escalating. This incident was over.

A new incident began as, Nikki and Katia approached Samantha and Donald, with Nikki leading the way and Fordyce trailing behind her and Katia. (Order 8/29/17, p. 4, App p. 19). The trial court found Fordyce stood back as an observer and did not say anything or join in any of the arguing in any way. (Order 8/29/17, p. 4 App p. 19). Fordyce was near the property line but remained on Nikki's property the entire time. (Order 8/29/17, p. 4, App p. 19). While Samantha, Nikki and Katia interacted, the trial court found Donald was not concerned about this verbal argument; however, Donald did become upset when he saw Fordyce. (Order 8/29/17, p. 5, App p. 20). The trial court found Donald's angry behavior was directed at Fordyce, not at Nikki or Katia. (Order 8/29/17, p. 5, App p. 20). Donald moved toward Fordyce quickly and even Samantha testified Donald wanted to fight Fordyce. (Order 8/29/17, p. 5, App p. 20).

The trial court erred when it found Fordyce continued the incident and further erred when holding Fordyce responsible for Nikki and Katia's actions in initiating a further escalation of the event and furthering the course of actions set in motion initially by Donald. First and foremost, the trial court repeatedly found Donald initiated the encounter. Donald flipped the bird to Fordyce, Donald came off the porch attacking the Fordyce vehicle and trying to get inside the vehicle. Fordyce did not initiate this contact. Further,



Fordyce did not continue the incident by coming back over the property following Nikki and Katia.

While there is substantial evidence to show Nikki and Katia were involved in a verbal altercation, and may have been provoking the incident, Fordyce was not. The Court mistakenly transfers the initiation and continuation of Nikki and Katia to the Defendant. While it may negate his claim of defense of another because Nikki and Katia were the aggressors, that fact cannot negate his claim to defend himself. Under the Court's reasoning a person watching his friend get into a fight, even if his friend starts the fight, has no right to defend himself if the other participant in the altercation turns his attention to the person watching. Not only is this an absurd result, it is not supported by common sense. Defendant simply followed to make sure his sister would be ok, did nothing to escalate the situation, did not even speak, stood on his sister's property, and then has a 6' 3" 281 pound man charge him while saying "I will fucking kill you." To conclude because others instigated the incident negates Defendant's ability to defend himself, is misguided. (Transcript 8/5/16, p. 14-15).

Using the Courts own findings, the record is void of substantial evidence proving beyond a reasonable doubt Defendant continued the incident. This is the evidence found by the trial court and determined to be credible evidence. It is the State's responsibility to prove beyond a reasonable

doubt Fordyce initiated or continued the incident. Based on the facts found by the trial court, and in the light most favorable to the State, the State fails in this regard and the trial court erred in finding Fordyce continued any escalation.

**ii. Fordyce did not have an alternative course of action, nor the ability to retreat.**

Second, the trial court concluded Fordyce had an alternative course of action by retreating sooner once he was aware Donald was coming toward him. (Order 8/29/17, p. 15, App p. 30). While there were no obstacles preventing a retreat, to retreat at this stage would leave the two individuals he had originally followed, with a further crazed individual. It is undisputed a 6' 3" 275-pound man was charging at Fordyce while saying "I will fucking kill you." Further, it was abundantly clear Donald had no qualms of following Fordyce, nor attempting to get into his vehicle. To retreat and return to the front yard area of Nikki's house, would also take a crazed lunatic to Fordyce's vehicle where his children were located. The trial court erred in finding Fordyce could not reasonably believe Nikki, Katia or his children were in imminent danger. While the trial court found Donald had focused his hostilities at Fordyce and there was no evidence he posed a threat to any other person in the immediate vicinity, belies the potential and belief of Fordyce that if he left, Donald would turn his anger, violence, and hostilities at Nikki

and/or Katia. If Fordyce left the area, two things would have occurred, Donald would have continued to follow Fordyce to his children or Donald would have focused his rage on Nikki and/or Katia. To disregard either of those scenarios is simply not considering the irrational behavior of a man upset over fruit snacks being thrown over the fence.

Additional support for Fordyce's claim of justification are both an unknown witness and Fordyce's own actions after the shooting. First, caught on body camera audio of a first responder on the scene is the voice of a male who was never located after the shooting to be interviewed. Upon law enforcement arrival, this male apparently ran up to the officer and said, "It was Steve Fordyce, he shot him in self-defense." (Exhibit E) This evidence was completely ignored by the trial court as it was not referenced in its order, however it was accepted into evidence. For much the same reasons the rules of evidence allow for the hearsay admission of "excited utterances" i.e., the circumstantial guarantee of trustworthiness, the district court was in error in failing to consider or rely on this evidence. Iowa R. Evidence 5.803(2). What can be more trustworthy than an independent witness indicating they saw the incident and the shooter acted in "self-defense." Obviously, this witness believed Fordyce did not have an alternate course of action nor felt he was the aggressor. He did not run up to law enforcement and say, "he killed him, he murdered him, he was fighting with him," or anything of the sort.

Furthermore, this Court in numerous situations, in affirming the denial of justification appeals has referred to conduct after an incident as evidence of whether a defendant felt he had acted in self-defense or was justified. *See generally, State v. Thornton*, 498 N.W.2d 670 (1993). For example, does the defendant call police, does he flee, does he turn himself in, is he cooperative with police? The rationale being if the defendant believes their conduct was appropriate or justified, there is no need to flee or act as though they are guilty of anything. Fordyce's conduct shows with 100% certainty the mindset was he was not guilty of any wrongdoing. After the shooting, Fordyce walked to his truck, secured his weapon, and sat on the front porch waiting for law enforcement. Upon their arrival he fully cooperated and gave a full recorded statement at the police department. This is exactly how a law-abiding citizen, who was justified in his actions, should act.

To uphold the trial court's ruling would be akin to eviscerating any justification claim. To affirm a voluntary manslaughter finding is affirming a citizen in the State of Iowa cannot defend oneself from a 6' 3" 275 pound male, with a known history of violence and methamphetamine usage, charging at a person from a distance he was able to cover in approximately four seconds while saying "I will fucking kill you" and further expect a lawful carrier of a firearm to turn his back on this person, risking he could lose his weapon to the aggressor, and requiring one to retreat on a fractured foot with the knowledge

that a simple punch could end his life because of the medication he is taking, while leaving two women to fend for themselves, and then drawing the aggressor to the truck where his children are and have already been subject to an attack by the same aggressor. If this situation is not self-defense, a self-defense situation does not exist.

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

Iowa Code Chapter 704 was amended by the Iowa Legislature in House File 517 during the 2017 Iowa Legislative Session. This file is commonly known as the Stand Your Ground provision. The effective date of HF517 was July 1, 2017. Iowa Code 704, as amended (2017). The amendments of Iowa Code section 704 clarified the ambiguous nature of whether there was a duty to retreat while acting in self-defense or defense of another. (Iowa Code section 704, as amended, 2017).

The trial court argued and found HF517 was not ambiguous and was a substantial change in the law. (Order 8/29/17, p. 8, App. p. 23). Thus, because it was a substantial change in the law, this was prospective application as opposed to retroactive application. (Order 8/29/17, p. 8, App. p. 23). However, this case does not involve true retroactivity, in the sense of the application of a change in law to overturn a judicial application of rights that has already become final. Neither a final verdict, nor adjudication had

been rendered as of July 1, 2017. The trial court entered verdict and judgment well after the effective date of Iowa Code 704, as amended, being rendered on August 29, 2017. (Order 8/29/17, p. 1, App. p. 15). As a final verdict or adjudication had not been rendered, the trial court was required to apply the amended provisions of Iowa Code section 704. *State v. Schooner Peggy*, 1 Cranch 103, 2 L.Ed. 49 (1801); *United States v. Chambers*, 291 U.S. 217 (1934)(repeal of a criminal statute change after a criminal defendant had pleaded guilty but before judgment had been rendered).

The trial court also stated HF517 and Iowa Code section 704, as amended could not be applied retroactively. (Order 8/29/17, p. 8, App. p. 23). Unfortunately, this is a situation created by the trial court and the incredibly lengthy time frame awaiting a verdict. HF517 and Iowa Code section 704, as amended, occurred while the trial court was considering its verdict. This was not a surprise amendment to Iowa Code chapter 704. In fact, this had been debated frequently during the time frame this case was pending. While the trial court was considering its verdict, the provision for retreat was eliminated, and Iowa Code section 704, as amended, was clarified. Thus, the trial court should have applied Iowa Code section 704, as amended, finding the State failed to prove beyond a reasonable doubt that Fordyce had an alternative course of action or had a duty to retreat.

If this Court, does not agree Iowa Code section 704, as amended, should be applied, this Court must also consider the Rule of Lenity. The rule of lenity provides that criminal statutes are strictly construed, and doubts resolved in favor of the accused. *State v. Lindell*, 828 N.W.2d 1, 12 (Iowa 2013). The rule of lenity is to only be applied in cases involving “grievous ambiguity.” *State v. Velez*, 829 N.W.2d 572, 585 (Iowa 2013). The Iowa Supreme Court has stated “[w]e recognize the principle of construing a statute reasonably in light of its plain purpose is sometimes in tension with the rule of lenity, which directs that criminal statutes are to be strictly construed in favor of the accused.” *State v. Hagedorn*, 679 N.W.2d 666, 669 (Iowa 2004).

Failing to apply Iowa Code section 704 as amended results in Fordyce being denied his right to Due Process and Equal Protection under the law under Iowa Constitution Article I Sections 1, 9, and 10 and the Fifth and Fourteenth Amendments of the U.S. Constitution. Failing to apply Iowa Code section 704 as amended creates a grievous ambiguity and absurd result. The Iowa Legislature made clear an individual does not need to retreat. A person can rightfully defend themselves whether they have an alternative course of action or not.

Fordyce was lawfully carrying a concealed weapon on his person on

August 15, 2015 having been provided this right under the applicable state laws. To not apply this, now amended, statute creates an absurd result. A member of the public was lawfully carrying a handgun when an individual, in this case Donald Harrington, attacked his vehicle with young children inside. A member of the public was lawfully carrying a handgun, when an individual, Donald Harrington, charged this person who was quietly standing on property he had every right to be upon. A member of the public, who was lawfully carrying a handgun, pulled this handgun from his pocket and fired this weapon after being told by Donald Harrington he was going to “fucking” kill him. Steven Fordyce Jr. acted in conformity with any individual who was protecting themselves or others in the light intended by the Legislature. Had the firing of this weapon and death of Donald Harrington occurred AFTER July 1, 2017, there would be no question this code section would be applied—but it did not. However, this matter was still under consideration by the trial court at the time the Legislature and Governor of Iowa signed this law into effect. An absurd result occurs when an individual, who had diligently been waiting a verdict in jail for almost eleven months, sees a law, which benefits him be enacted and he cannot have it applied to him. An absurd result has occurred as Fordyce would not have been charged with this crime had Iowa Code 704 as amended been



enacted in August 2015. Failure to apply this code section, as amended, is a travesty of justice.

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

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

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

### **Merits:**

Fordyce was charged with Murder in the First Degree in August 2015. Fordyce waived his right to a jury trial on or about May 6, 2016. (App. p. 9). Fordyce submitted himself to a verdict by a judge, as opposed to a jury of his peers. Trial commenced on August 2, 2016 through August 5, 2016, reconvening on August 15, 2016 and concluding on August 19, 2016. (Order 8/29/17, p. 1, App p. 15). The matter was deemed submitted to the trial court on September 29, 2016. (App. p. 33). A verdict was returned eleven months later, on August 28, 2017. (Order 8/29/17, App. p. 15).

Fordyce was denied his right to a fair and speedy trial under both the Iowa and United States Constitutions in that it took the trial court over eleven months to render a verdict. (Iowa Constitution Art. I, Sec 1, 9, and 10; U.S.

Const. 5<sup>th</sup> and 14<sup>th</sup> Amend.) There was no reason for such a delay. A delay of such a length of time forced Fordyce to spend an extra twelve months in jail. Fordyce further has been prejudiced as he was delayed in being sent to the custody of the Iowa Department of Corrections and has delayed his ability to be paroled in a timely fashion.

Finally, Fordyce argued at hearing for his Motion for New Trial and Motion in Arrest of Judgment, due to the delay in rendering a verdict, the trial court felt compelled to convict Fordyce of something. If the trial court had simply acquitted Fordyce, he may have a cause of action against the State for a variety of claims including cruel and unusual punishment and unlawful imprisonment. This was not a case of 'whodunit' nor was it a matter where facts were in complete dispute. Delay of this length of time was unnecessary and in violation of Fordyce's speedy trial rights. Simply because this matter was tried to the bench, does not allow the trier of fact to take whatever length of time to render a verdict. In fact, had this matter been tried by a jury, this matter would have been declared mistrial by the trial court. This is yet another travesty of justice as there was no valid reason for the length of delay of approximately eleven months for a verdict.

### **CONCLUSION**

For all the reasons stated above, Appellant Steven Fordyce Jr.

respectfully requests that this Court reverse the finding of guilty to Voluntary Manslaughter and remand for implementation of a not guilty verdict consistent with self-defense findings.

### **NOTICE OF ORAL ARGUMENT**

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

### **ATTORNEY COST CERTIFICATE**

I hereby certify that the cost of printing the foregoing Appellant's Proof Brief and Request for Oral Argument was the sum of \$0.

/s/Christopher Kragnes, Sr.  
CHRISTOPHER KRAGNES, SR. AT0004399  
317 6<sup>TH</sup> Ave, Suite 1300  
Des Moines, IA 50309  
515-282-9200  
E-mail: chris@ktkpc.com  
ATTORNEY FOR APPELLANT

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

1. This Proof Brief complies with the type-volume limitation of Ia. R. App. P. 6.903(1)(g)(1) because the Proof Brief contains 6,677 words.

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

/s/Christopher Kragnes, Sr.  
CHRISTOPHER KRAGNES, SR. AT0004399  
317 6<sup>TH</sup> Avenue, Suite 1300  
Des Moines, IA 50309  
515-282-9200  
E-mail: chris@ktkpc.com

ATTORNEY FOR APPELLANT