

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 17-1701

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STATE OF IOWA,  
Plaintiff-Appellee,

vs.

STEVE WILLIAM FORDYCE, JR.,  
Defendant-Appellant.

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

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**APPELLEE'S BRIEF**

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## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

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*Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1 (Iowa 2004)  
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### **II. The District Court Did Not Violate Fordyce's Right to Due Process by Returning a Verdict Almost One Year after Trial.**

*Barker v. Wingo*, 407 U.S. 514 (1972)  
*Com. v. Adamo*, 637 A.2d 302 (1994)  
*Hoang v. People*, 323 P.3d 780 (Colo. 2014)  
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U.S. Const. amend. V and XIV  
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Pa.R.Crim.P. 1122

## **ROUTING STATEMENT**

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**

The defendant, Steve Fordyce, appeals the judgment and sentence entered upon his conviction of voluntary manslaughter in violation of Iowa Code section 707.4. He argues: (1) the State failed to disprove his justification defense beyond a reasonable doubt; (2) the district court erred by not applying amended Iowa Code chapter 704 in this case, and (3) his due process rights were violated by the length of time between his trial and the district court's verdict.

### **Course of Proceedings**

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

### **Facts**

The shooting death of forty-three-year old Donald Harrington on August 14, 2015, was the tragic and needless result of ongoing

hostility<sup>1</sup> between neighbors. Samantha Harrington, Donald's estranged wife, lived on West Locust Street in Waterloo, Iowa. Trial Tr. (8-2-2016) p. 56, lines 20-21. Nikki, Fordyce's sister, resided on the corner of West First Street and Locust Street, which was adjacent to Samantha's property. Trial Tr. (8-2-2016) p. 27, lines 6-7, p. 61, lines 7-9, 25-p. 62, line 1, p. 66, lines 11-16, State's Exhibits B-1, B-2 and C.

At approximately 7:00 p.m., Donald arrived to visit Samantha. He asked Samantha who drove the red truck parked in Nikki's driveway next door. Trial Tr. (8-2-2016) p. 27, lines 10-19, p. 57, line 11-p. 58, line 3, p. 58, line 12-p. 59, line 1, p. 60, lines 1-6. Samantha told him it belonged to Fordyce. Trial Tr. (8-2-2016) p. 59, line 7-9, p. 60, line 17-p. 62, line 1, lines 21-25, p. 66, lines 11-22.

Donald explained to Samantha that he had seen Fordyce pick up his kids and had them throw garbage over the fence onto Samantha's property. Trial Tr. (8-2-2016) p. 62, lines 6-9, p. 63, lines 4-9. Because Donald was upset, Samantha moved them toward the chairs on the porch and they sat down. Trial Tr. (8-2-2016) p. 62,

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<sup>1</sup> In Fordyce's police interview, he explained the animosity was due to Nikki and Samantha both having a sexual relationship with the same man. State's Exhibit H.

lines 19- 24, p. 63, lines 10-18. The couple began talking about a job interview and their relationship. Trial Tr. (8-2-2016) p. 65, lines 1-9.

When a short time later Fordyce backed up out of the Nikki's driveway, Donald gave him the finger. Trial Tr. (8-2-2016) p. 65, line 22-p. 66, line 15. Fordyce immediately stopped his truck. Trial Tr. (8-2-2016) p. 66, lines 16-21. Donald lumbered toward it and tried to open the truck door; it was locked.<sup>2</sup> Trial Tr. (8-2-2016) p. 68, lines 5-14. Fordyce drove away, did a U-turn, and parked in front of Nikki's house. Trial Tr. (8-2-2016) p. 70, line 19-p. 71, line 1, p.73, line 20-p. 74, line 8.

Meanwhile, Samantha and Donald returned to her front porch and sat down again. Trial Tr. (8-2-2016) p. 74, lines 12-18. Samantha feared there may be trouble and told Donald to call his brother.<sup>3</sup> Trial Tr. (8-2-2016) p. 77, line 24-p. 78, line 10. Around this time,

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<sup>2</sup> Samantha testified that she saw Fordyce brandish a gun, get out of his truck and start to walk around it. Trial Tr. (8-2-2016) p. 68, lines 15-18, 24-25. p. 69, line 15-p. 70, line 18. However, the district court specifically found this portion of her testimony incredible. Order (8-29-2017); Conf. App. 18.

<sup>3</sup> As it happened, Donald did phone his brother, John. Trial Tr. 26, line 8-p. 27, line 7. Although John did not realize the call had been made until later, the call did connect and the sound of the altercation was recorded on his phone. State's Exhibit D-2, Trial Tr. (8-2-2016) p. 39, line 9-p. 40, line 13.

Samantha saw Nikki, Katia Hoag, a Fordyce family friend, and Fordyce walking toward the property line. Trial Tr. (8-2-2016) p. 78, line 23-p. 79, line 16.

Donald rose and walked toward the steps. Trial Tr. p. 80, lines 2-14. Nikki argued with Samantha. Trial Tr. (8-2-2016) p. 80, line 20-p. 81, line 10. Donald walked down the steps. Trial Tr. (8-2-2016) p. 82, lines 13-18. Samantha then noticed that Fordyce had a gun. Trial Tr. (8-2-2016) p. 83, lines 1-16. Donald also noticed the gun and, with his hands outstretched to the side, questioned Fordyce, “Oh, you’re gonna shoot me?” Trial Tr. (8-2-2016) p. 83, line 15-p. 84, line 13, p. 85, line 15-p. 86, line 11.

From a distance of approximately three to six feet, Fordyce shot Donald three or four times.<sup>4</sup> Trial Tr. (8-2-2016) p. 85, line 15-p. 86, line 1, State’s Exhibit H. Donald fell to the ground. Trial Tr. (8-2-2016) p. 88, lines 19-21. Fordyce then walked back to his truck, placed his gun in the glove compartment, and took his children inside Nikki’s house. State’s Exhibit H, Trial Tr. (8-2-2016) p. 92, lines 14-17.

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<sup>4</sup> Four cartridges were found on the scene; only three bullets were recovered. Trial Tr. (8-3-2017) p. 95, lines 12-17.

On August 25, 2015, the State filed a trial information charging Fordyce with the first-degree murder of Donald Harrington. Trial Information; Conf. App. 5. Fordyce pleaded not guilty and filed notices of self-defense and defense of another. Written Arraignment and Plea of Not Guilty, Notice of Self Defense, Notice of Defense of Another; Conf. App. 7, 8.

On May 6, 2016, Fordyce waived his right to a jury trial. Waiver of Jury Trial; Conf. App. 9. On May 27, 2016, Fordyce waived his right to a speedy trial. Waiver of Speedy Trial; Conf. App. 10. A trial to the district court began on August 2, 2016, and, after recessing for a week, concluded on August 19, 2016. Order (8-29-2017) unnum. p. 1; Conf. App. 15.

At trial, among other evidence, the State presented Fordyce's recorded police interview. State's Exhibit H. It also admitted the message that had been recorded on John Harrington's phone at the time of Donald's argument with Fordyce. State's Exhibit D-2. In the cell phone recording, Donald can be heard to say, "It's over with" and "Fucking kill you" and "Go ahead, go ahead do it[]." Trial Tr. (8-2-2016) p. 43, lines 5-16, State's Exhibit D-2.

Medical Examiner Julia Goodin performed Donald's autopsy and testified that his death was caused by gunshot wounds to his chest and upper extremity. Trial Tr. (8-5-2016) p. 17, line 23-p. 18, line 6, p. 21, line 23-p. 22, line 8, p. 28, lines 8-11. Dr. Goodin was able to determine that none of gun shots were made at close-range, that is, within three feet. Trial Tr. (8-5-2016) p. 22, line 15-p. 23, line 7. Donald's blood alcohol content was .068. Trial Tr. (8-5-2016) p. 26, lines 8-10. Dr. Goodin found no indication he was under the influence of any drugs. Trial Tr. (8-5-2016) p. 27, lines 2-10.

Firearms expert Carl Bessman testified that four cartridges were recovered from the scene. Trial Tr. (8-3-2017) p. 95, lines 12-17. Three bullets were examined and each was a hollow point, designed to inflict maximum damage. Trial Tr. (8-3-2017) p. 151, line 8-p. 152, line 20. Bessman also examined the gunshot residue on Donald's shirt and determined that one shot could have been fired from as close as two feet but that the other shots were fired from at least three feet away from Donald. Trial Tr. (8-3-2017) p. 144, line 19-p. 146, line 6.

On August 23, 2017, Fordyce filed a “Motion to Apply ICS 704 As Amended.” Motion to Apply ICS 704 as Amended; Conf. App. 12. The State filed a resistance to the motion. State’s Resistance.

On August 29, 2017, the district court found that Iowa Code section 704.3, as amended, effective July 1, 2017, did not apply retroactively. Order (8-29-2017), unnum. p. 8; Conf. App. 23. Further, it found Fordyce guilty of voluntary manslaughter. Order (8-29-2017), unnum. pp. 14-16; Conf. App. 30-31.

Fordyce was sentenced to a term of imprisonment not to exceed ten years. Sentencing Tr. p. 35, line 19-p. 36, line 5. The district court credited Fordyce with 804 days for time served in the Black Hawk County Jail. Orders (10-23-2017) (12-5-2017); Conf. App. 37, -.

Additional facts will be set forth below as relevant to the State’s argument.

## **ARGUMENT**

### **I. The State Proved Beyond a Reasonable Doubt that Fordyce Did Not Act in Self-Defense.**

#### **Preservation of Error**

Fordyce moved for a judgment of acquittal at the close of the State’s case. Trial Tr. (8-5-2017) p. 46, line 1-p. 58, line 5. The district court reserved its ruling on the motion. Trial Tr. (8-5-2017) p. 64, line

15-19. The State agrees that Fordyce preserved error on the issue of whether the State disproved his defense by filing a motion prior to the district court's verdict. *See State v. Abbas*, 561 N.W.2d 72, 74 (Iowa 1997) (when "criminal case is tried to the court, a defendant may challenge the sufficiency of the evidence on appeal irrespective of whether a motion for judgment of acquittal was previously made").

The State also agrees that Fordyce generally preserved error on the issue of whether amended Iowa Code section 704.3 should apply to his case because he raised the issue in a post-trial motion and obtained the district court's ruling on it. Motion to Apply ICS 704 as Amended, Order (8-29-2017) unnum. pp. 9-10; Conf. App. 12, 23-24. Frankly, as a sufficiency-of-the-evidence question, if the statute applied to the case at hand the court would have a duty to consider it when entering its verdict. Further, although Fordyce did make an equal protection challenge in his post-trial motion, the district court's ruling does not specifically address this argument. Motion to Apply ICS 704 as Amended, Order (8-29-2017), unnum. p. 9; Conf. App. 12, 23. Because Fordyce did not file an Iowa Rule of Civil Procedure 1.904 motion to expand the district court's ruling, he has failed to preserve error on this particular argument.

## Standard of Review

Review of a challenge to the sufficiency of the evidence is on assigned error. *State v. McPhillips*, 580 N.W.2d 748, 753 (Iowa 1998). The reviewing court will uphold the denial of a motion for judgment of acquittal if there is substantial evidence in the record to support the defendant's conviction. *Id.* at 752. Substantial evidence is evidence that could convince a trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). In determining whether there is sufficient evidence, the court considers all the evidence. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). However, the court views the evidence in a light most favorable to the State and makes all reasonable inferences that may be drawn from the evidence. *McPhillips*, 580 N.W.2d at 752.

The issue of whether the district court erred in failing to apply amended Iowa Code section 704.3 involves an issue of statutory interpretation. Review is for errors at law. *See State v. Coleman*, 907 N.W.2d 124, 134 (Iowa 2018).

## **Merits**

Fordyce argues that the State failed to disprove his justification defense beyond a reasonable doubt. Additionally, Fordyce contends the district court erred in denying his request to apply amended Iowa Code section 704.3 in considering his justification defense.

### **A. The State Disproved Fordyce’s Justification Defense Beyond a Reasonable Doubt.**

“A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force.” Iowa Code § 704.3 (2015). “When the defense is raised, the burden rests upon the State to prove --beyond a reasonable doubt-- that the alleged justification did not exist.” *State v. Rubino*, 602 N.W.2d 558, 565 (Iowa 1999).

“The State can meet its burden by proving any of the following facts: 1. The defendant initiated or continued the incident resulting in injury; or 2. The defendant did not believe he was in imminent danger of death or injury and that the use of force was not necessary to save him; or 3. The defendant had no reasonable grounds for such belief; or 4. The force used was unreasonable.” *Id.*

The district court correctly found that the State proved beyond a reasonable doubt that Fordyce

*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.

The Court further finds the State has proved beyond a reasonable doubt that the Defendant *could have pursued an alternative course of action by retreating sooner* once he was aware that Donald was coming toward him. There were no obstacles which would have prevented the Defendant's retreat. He could have done this without endangering himself or anyone else. The Court finds that the Defendant could not have reasonably believed Nikki, Katia or his children were in imminent danger of death or injury at the time he fired the shots. In fact, the Defendant acknowledged at one point during his interview with Officer Gergen that he just wanted to get out of there. Donald had focused his hostilities on the Defendant and there is no evidence that he posed a threat of any kind to the other persons in the immediate vicinity.

Order (8-29-2017) unnum. p. 15 (Emphasis added); Conf. App. 29.

Fordyce argues that the district court erred in finding he continued the incident by following Nikki and Katia to the property line where *they* engaged in an argument with Samantha and Donald. Moreover, Fordyce contends the district court erred in finding an alternative course of action was available to him. He maintains the threat Donald presented was too grave to leave Nikki and Katia alone with him. Further, he argues that if he had retreated, he would have placed his children, who were in his truck, in danger of being hurt by Donald, who might pursue him.

The State's evidence set the scene of the events leading to Fordyce's decision to shoot Donald. This homicide occurred on an early summer evening in a residential neighborhood. Neighbors Samantha and Nikki had feuded with each other in the past. However, Donald was merely a visitor at Samantha's house and Fordyce had not had any encounters with Donald prior to that evening.

Fordyce drove away from Nikki's house but chose to return to tell her there might be "drama" with the neighbors. State's Exhibit H. Fordyce, carrying his gun, well aware that Donald was agitated, then exited his truck and followed Nikki and Katia to the property line.

Therefore, as the district court found, this is one instance of Fordyce continuing the incident.

Additionally, Fordyce continued the incident when he grasped the gun in his pocket to indicate its presence and his silent threat to use it. By making the fateful decision to display his gun, Fordyce continued the incident and increased Donald's agitation.

Fordyce's contention that he could not have retreated is not credible for several reasons. First, he could have simply kept driving and never returned to the property. Second, Fordyce's children were in his truck, which was parked in front of Nikki's house and some distance away from the property line. State's Exhibit A-4. Fordyce never had to approach Donald. Next, as the district court found, the evidence was convincing that Donald did not appear to be angry with anyone but Fordyce; therefore, had Fordyce simply walked away, there is no reasonable likelihood that he would have left Nikki and Katia at risk of being assaulted by Donald.

Finally, although the district court did not make a specific finding, the State argued at trial, and maintains now, that it proved that the force used by Fordyce was unreasonable. Trial Tr. (8-5-2017) p. 63, lines 3-11. Fordyce did not believe Donald was armed. State's

Exhibit H. Rather, Fordyce told police he was intimidated by Donald's size and believed Donald was under the influence of alcohol or a drug. State's Exhibit H.

In fact, Donald was not legally intoxicated and was not under the influence of drugs. The evidence shows that Donald was unarmed. Trial Tr. p. 71, line 11-p. 2, p. 89, lines 2-8. During his police interview, Fordyce never asserted he believed Donald had a weapon on him. State's Exhibit H. Fordyce claimed Donald was a big man; however, the State presented evidence that although large, Donald was not necessarily muscular or agile. Donald was six-feet three inches and weighed approximately 281 pounds; he was described as "fat." Trial Tr. (8-5-2017) p. 14, line 21-p. 15, line 1, Trial Tr. (8-2-2018) p. 52, line 24-p. 53, line 13, p. 57, line 23-p. 58, line 11.

Fordyce shot his gun four times directly at Donald who was within two to six feet of him. Trial Tr. (8-2-2016) p. 85, line 15-p. 86, line 1. The bullets he used were hollow point, meant to inflict massive damage. Trial Tr. (8-3-2017) p. 151, line 8-p. 152, line 20. Again, this was a dispute between neighbors that was apparently not uncommon. State's Exhibit H, Trial Tr. (8-2-2017) p. 116, lines 4-5, 9-10. Even if Fordyce's version of events, describing Donald as coming towards

him, is to be credited, Fordyce used unreasonable force in responding to Donald by shooting to kill.

The district court determined the State had not proved Fordyce committed first or second-degree murder. Order (8-29-2017) unnum. pp. 9-10; Conf. App. 23-24. However, it did find the State had disproved Fordyce's justification defense. Fordyce exercised terrible judgment in continuing the incident with Donald and failing to retreat when there was no impediment to doing so. Fordyce chose to stay and shoot a threatening but unarmed neighbor at his first, allegedly, aggressive movement.<sup>5</sup>

**B. The District Court Did Not Err or Violate Fordyce's Due Process Rights When it Denied His Request to Apply Amended Iowa Code section 704.3**

Fordyce contends the district court erred in refusing to apply amended Iowa Code section 704.3 retroactively to his case. In discussing the 2017 amendment, one commentator explained the amendment's:

first change was to delete the existing language regarding alternative course of action. Additional provisions to the statute

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<sup>5</sup> Samantha testified that Donald had his phone in hand and had his arms out to his side immediately before he was shot. Trial Tr. p. 89, lines 2-20.

were made for the erroneous estimation of the danger presented and or force necessary as long as there is a “reasonable basis for the belief” and the person acts “reasonably in the response” to the perceived threat. Significantly, the amendment provides a person does not have a duty to retreat as long as a person “is not engaged in illegal activity” and is in a place where they were “lawfully present.”

4 Ia. Prac., Criminal Law § 2:21 (2017-2018 ed.) (footnotes omitted).

The amendment was effective July 1, 2017.

Iowa Code section 4.5 provides that “[a] statute is presumed to be prospective in its operation unless expressly made retrospective.” The legislature did not make its revisions to chapter 704 retroactive—indeed, it did not even include those revisions to chapter 704 in its list of provisions that it “deemed of immediate importance” that would be given effect upon enactment, rather than waiting until July 1, 2017. *See* 2017 Iowa Acts ch. 69, § 50; Iowa Code § 3.7(1); *see also* Iowa Code § 4.5 (“A statute is presumed to be prospective in its operation unless expressly made retrospective.”). The legislature’s decision not to make “stand your ground” provisions effective upon enactment is an indisputably unambiguous expression of legislative intent to make those defenses unavailable for shootings that occur between the enactment date and the default effective date.

Further, Iowa Code section 4.13(1) provides that “[t]he reenactment, revision, amendment, or repeal of a statute does not affect ... the prior operation of the statute or any prior action taken under the statute.” Iowa Code § 4.13(1)(a). “It is a well-settled law that substantive amendments to criminal statutes do not apply retroactively.” *State v. Harrison*, 914 N.W.2d 178, 205 (Iowa 2018). “[T]he statute in force at the time of the commission of an offense governs the character of the offense and, generally, the punishment prescribed thereby.” *State v. Chrisman*, 514 N.W.2d 57, 63 (Iowa 1994) (citing *State ex rel. Abrogast v. Mohn*, 260 S.E.2d 820, 824 (W.Va. 1979)). Section 4.13 “gives a defendant the benefit of a more lenient sentence; it does not require that the characterization of the crime of which he is convicted be changed.” *See Chrisman*, 514 N.W.2d at 63; *see also Harrison*, 914 N.W.2d at 205.

Iowa had no “stand your ground” justification defense in effect at the time of the 2015 shooting; therefore, the district court did not err in finding Fordyce was not entitled to have amended section 704.3 apply to his case.

Fordyce next contends that the rule of lenity requires application of Iowa Code section 704.3 as amended. “The rule of

lenity requires that ambiguous statutes imposing criminal liability be strictly construed in favor of the defendant.” *State v. Hearn*, 797 N.W.2d 577, 585 (Iowa 2011). Because the statute is not ambiguous about its retroactive application, there is no need to invoke the rule of lenity.

Finally, Fordyce mentions his equal protection rights were violated by the district court’s determination not to apply the amended section 704.3 to his justification defense. “The essential promise of equal protection is that “all persons similarly situated should be treated alike.” *Clayton v. Iowa Dist. Court for Scott Cty.*, 907 N.W.2d 824, 827 (Iowa Ct. App. 2017) (quoting *Racing Ass’n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004)).

However, as a preliminary matter, Fordyce is not similarly situated with those people who invoke a justification defense for an offense committed *after* the statute became effective. *See State v. Varnum*, 763 N.W.2d 862, 882 (Iowa 2009) (“[I]f plaintiffs cannot show as a preliminary matter that they are similarly situated, courts do not further consider whether their different treatment under a statute is permitted under the equal protection clause.”).

The district court did not err in denying Fordyce's request to apply amended section 704.3.

**II. The District Court Did Not Violate Fordyce's Right to Due Process by Returning a Verdict Almost One Year after Trial.**

**Preservation of Error**

Fordyce filed a motion for new trial in which, among other things, he argued the district court's delay in issuing its verdict violated his right to due process under the Iowa and United States Constitutions. Motion for New Trial; Conf. App. 33. The district court denied the motion and specifically found Fordyce's due process rights were not violated by the length of time between trial and the verdict. Sentencing Tr. p. 16, line 23-p. 17, line 13. The State agrees Fordyce preserved error on this issue.

**Standard of Review**

Constitutional claims are reviewed de novo. *State v. Keys*, 535 N.W.2d 783, 786 (Iowa Ct. App. 1995).

**Merits**

Fordyce argues that the length of time between his trial, ending in August 2016, and the district court's August 29, 2017 guilty verdict violated his due process rights under the United States and Iowa Constitutions. U.S. Const. amend. V and XIV, Iowa Const. art. I, §§ 1,

9, and 10. Specifically, Fordyce maintains that his constitutional right to “a fair and speedy trial” was violated. Appellant’s Br. p. 23.

In denying Fordyce’s due process challenge, the district court acknowledged that its decision took “a lengthy amount of time” and “more time than” it would have wanted in rendering its verdict.

However, it explained:

I do note for the purposes of this record that the Court’s findings of fact were done actually within several weeks of the completion and submission of the trial. It was the consideration and the analysis of the law as to those facts which ended up taking additional time and, in fact, in this case, I can assure both parties that the Court spent a great deal – amount of time wrestling with the application of the law in this case to the evidence that was presented. And so if anything, I believe the Court has afforded complete and full due process to the defendant in every respect as far as consideration of the evidence and the application – the Court’s application of the law in this case.

Sentencing Tr. p. 16, line 23-p. 17, line 13.

Fordyce does not cite any case law in support of his contention that a delay between trial and the district court’s verdict may result in a violation of a defendant’s right to due process or speedy trial. The

State was unable to locate any case in which the length of time between a bench trial and a verdict was found to violate due process.<sup>6</sup>

Some Courts have “evaluat[ed] due process challenges to the length of an appeal[.]” *Hoang v. People*, 323 P.3d 780, 788 (Colo. 2014). Those “courts find the criteria set out in [*Barker v. Wingo*, 407 U.S. 514, 530 (1972)] generally applicable. The factors to consider are: (1) length of delay; (2) reason for delay; (3) defendant's assertion of his right; and (4) prejudice to the defendant.” *Id.*

The district court acknowledged that the length between trial and its verdict was significant. Sentencing Tr. p. 16, line 23-p. 17, line 13. However, the district court’s reason for the delay was the understandably difficult task of considering the charge of first-degree murder and lesser included charges of second-degree murder and voluntary manslaughter. Additionally, the district court then had to determine whether the State had disproved Fordyce’s justification defense beyond a reasonable doubt. The district court faced a complex task in applying the law to the facts.

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<sup>6</sup> However, some states have criminal rules that require “a verdict in a bench trial ‘shall be rendered’ within a specified number of days.” *Com. v. Adamo*, 637 A.2d 302, 308 (1994) (quoting Pa.R.Crim.P. 1122).

Fordyce waived his right to a speedy trial. Waiver of Speedy Trial; Conf. App. 10. At no time did Fordyce request the district court to hasten its deliberations. Ironically, had the case been processed more quickly the defendant's claim that 704.3 applied would have been completely eliminated.

The determination of whether Fordyce was prejudiced by the delay "should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Barker v. Wingo*, 407 U.S. 514, 532 (1972).

Fordyce contends he was prejudiced by the delay in the return of the verdict because it also delayed his transfer to the "custody of the Iowa Department of Corrections and has delayed his ability to be paroled in a timely fashion." However, Fordyce was given credit upon his sentence for the days he spent in jail awaiting the verdict and sentence. Orders (10-23-2017) (12-5-2017); Conf. App. 37, --. Fordyce cannot show that he would have been paroled at all, much less that his parole would have been granted earlier had he been

transferred to the custody of the Iowa Department of Corrections sooner. Fordyce does not complain about the conditions of his incarceration at the Black Hawk County Jail.

The district court emphasized that its recall of the facts of the case was not hindered by the delay because it had primarily written its fact findings shortly after the conclusion of the trial. Sentencing Tr. p. 16, line 23-p. 17, line 13. In short, Fordyce was not prejudiced by the length of time between his trial and the district court's verdict.

Fordyce due process rights to a fair and speedy trial were not violated by the length between his trial and the return of the verdict. Accordingly, the district court did not err in denying Fordyce's post-trial motion on this ground.

### **CONCLUSION**

For all the reasons set forth above, the State respectfully requests this Court to affirm Fordyce's conviction of voluntary manslaughter.

## REQUEST FOR NONORAL SUBMISSION

The State believes that this case can be resolved by reference to the briefs without further elaboration at 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:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **4,737** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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