IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. LAMAR CHEYEENE WILSON, Defendant-Appellant.	)	S.CT. NO. 18-0564

APPEAL FROM THE IOWA DISTRICT COURT
FOR JOHNSON COUNTY
PAUL D. MILLER, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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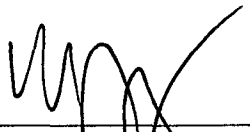
CERTIFICATE OF SERVICE

On the 25th day of April, 2019, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Lamar C. Wilson, No. 6341416, Fort Dodge Correctional Facility, 1550 "L" Street, Fort Dodge, IA 50501-5767.

APPELLATE DEFENDER'S OFFICE



Melinda J. Nye
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MN/d/4/19

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Authorities

Slockett v. Iowa Valley Community School District, 359 N.W.2d 446, 448 (Iowa 1984)

Iowa Code section 232.73 (2017)

Nelson v. Lindaman, 867 N.W.2d 1, 7 (Iowa 2015)

State v. King, 434 N.W.2d 627, 629 (Iowa 1989)

Iowa State Ed. Ass'n-Iowa Higher Ed. Ass'n v. Pub. Employment Relations Bd., 269 N.W.2d 446, 448 (Iowa 1978)

Ruthven Consol. Sch. Dist. v. Emmetsburg Cmty. Sch. Dist., 382 N.W.2d 136, 140 (Iowa 1986)

Dennis v. State, 51 So.3d 456, 463-464 (Fla. 2010)

Rodgers v. Commonwealth, 285 S.W.3d 740, 752-756 (Ky. 2009)

State v. Ultreras, 295 P.3d 1020, 1031-1032 (Kan. 2013)

II. If the court concludes the procedure used by the district court does not warrant and new trial and/or immunity hearing, the district court erred in concluding Wilson had not established he was justified in his use of force and was immune from criminal liability for his actions.

This issue is not addressed in this reply brief.

III. Whether the evidence was insufficient to support the verdict that Wilson was not justified in his actions?
IV. Whether the district court erred by denying Wilson's motion for a new trial on the voluntary manslaughter and assault charges because the district court findings regarding Wilson's intent were inconsistent with the jury's verdicts for voluntary manslaughter and assault with intent to cause serious injury?

This issue is not addressed in this reply brief.

IV. Whether the district court erred by denying Wilson's motion for a new trial on the voluntary manslaughter and assault charges because the district court findings regarding Wilson's intent were inconsistent with the jury's verdicts for voluntary manslaughter and assault with intent to cause serious injury?

This issue is not address in this reply brief.

V. Whether the district court erred in denying Wilson's motion for "necessary remedial measures" to ensure Wilson's right to a jury made up of a fair cross section of the community pursuant to the Sixth Amendment and article 1, section 10?

This issue is not addressed in this reply brief.

VI. Because the Department of Corrections is not statutorily authorized to give a sentencing recommendation, the sentencing court utilized an improper factor and abused its discretion in considering the PSI recommendation. Alternatively, counsel rendered ineffective assistance in failing to object to such PSI recommendation.

Authorities

State v. Headley, No. 18-0594, 2019 WL 1574685, at *5 (Iowa Apr. 12, 2019)

STATEMENT OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's proof brief filed on or about March 21, 2019. While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I. The district court erred in interpreting and applying Iowa Code section 704.13 (2017). The procedure used by the court resulted in a fundamentally unfair trial and an inadequate and unfair immunity hearing.

"A statutory amendment usually changes the law, though there are exceptions where minor details are changed in such a way as to cast light on the legislature's earlier intent." Slockett v. Iowa Valley Community School District, 359 N.W.2d 446, 448 (Iowa 1984). The addition of the immunity provision of section 704.13 was not a minor change of detail.

Although in one sense, the legislative intent behind section 704.13 might have been clearer had the legislature provided explicitly for immunity from "prosecution," mimicking

the language used in some other states. However, it's more likely the legislature saw no need to copy language used in other states when instead it could use language previously used in other Iowa immunity statutes. The legislature would be aware of how similar language had already been interpreted and applied by the courts of this state. See, e.g, Iowa Code section 232.73 (2017); Nelson v. Lindaman, 867 N.W.2d 1, 7 (Iowa 2015); State v. King, 434 N.W.2d 627, 629 (Iowa 1989).

The parties below supported their arguments with statements made by legislators when HF 517 was introduced—both sides were able to point to some part of the legislative discussion that supported their position. The district court acknowledged that the various members of the legislature "offered differing viewpoints on their interpretations of the legislation." (Ruling on Motion to Dismiss, p. 3) (App. p. 56). This one of the reasons the reason the Iowa Supreme Court has repeated held that statements from legislators about their intent when drafting or voting on a bill are not properly considered by the court when interpreting statutes.

> The legislative process is a complex one. A statute is often, perhaps generally, a consensus expression of conflicting private views. Those views are often subjective. A legislator can testify with authority only as to his own understanding of the words in question. What impelled another legislator to vote for the wording is apt to be unfathomable.
>
> Accordingly we are usually unwilling to rely upon the interpretations of individual legislators for statutory meaning. This unwillingness exists even where, as here, the legislators who testify are knowledgeable and entitled to our respect.

Iowa State Ed. Ass'n-Iowa Higher Ed. Ass'n v. Pub. Employment Relations Bd., 269 N.W.2d 446, 448 (Iowa 1978). See also Ruthven Consol. Sch. Dist. v. Emmetsburg Cmty. Sch. Dist., 382 N.W.2d 136, 140 (Iowa 1986) (rejecting consideration of statements of a legislative consultant who drafted "about all" of the relevant legislation).

The procedure ultimately utilized by the district court resulted in an unfair trial and an unfair immunity hearing. In a single proceeding, Wilson had to defend himself against charges of first degree murder, attempted murder and intimidation, while at the same time bear the burden of proving to the judge that he was justified when he fired his weapon that

night. These are two entirely separate tasks, akin to trying to knock down someone else's building while at the same time trying to construct your own. The materials and methods for accomplishing each of these tasks may have some overlap, but ultimately they are two separate endeavors, and doing something that helps knock down the other building may also damage your own structure. Forcing a defendant to do both at the same time is unfair.

Courts in other states which have held otherwise were not presented with the same arguments made here—that the trial was fundamentally unfair in violation of the defendant's federal and state rights to due process. See Dennis v. State, 51 So.3d 456, 463-464 (Fla. 2010) ("Dennis does not contend that his trial itself was unfair or that his ability to present his claim of self-defense was limited in any way by the trial court's pretrial ruling. Dennis also does not assert that at a pretrial evidentiary hearing he would have presented evidence different from or additional to the evidence he presented at trial."); Rodgers v. Commonwealth, 285 S.W.3d 740, 752-756 (Ky. 2009) (finding

Rodgers suffered no prejudice from denial of pretrial immunity hearing but not considering a fair trial/due process claim); State v. Ultreras, 295 P.3d 1020, 1031-1032 (Kan. 2013) (noting that because the "claimed error was in application of a statutory right," harmless error analysis applied and concluding improper hearing did not affect the outcome of trial).

Conclusion. Because the district court erred in interpreting and applying Iowa Code section 704.13, Wilson's due process right to a fair trial was violated and Wilson is entitled to both a pretrial evidentiary hearing under section 704.13 and a new trial.

VI. Because the Department of Corrections is not statutorily authorized to give a sentencing recommendation, the sentencing court utilized an improper factor and abused its discretion in considering the PSI recommendation. Alternatively, counsel rendered ineffective assistance in failing to object to the PSI recommendation.

The Iowa Supreme Court's recent opinion in State v. Headley addressed whether it was improper for the sentencing court to consider the recommendation of the Department of Corrections contained in the PSI. State v. Headley, No.

18-0594, 2019 WL 1574685, at *5 (Iowa Apr. 12, 2019). The court concluded in that case it was not abuse of discretion. Id.

> When the department of correctional services recommends a deferred judgment, deferred sentence, or a suspended sentence, each of which is accompanied by probation, the department is telling the court the defendant can be rehabilitated in the community without incarceration, is a low risk for recidivism, and is not a danger to the community. When the department of correctional services recommends incarceration, the department is telling the court that the defendant cannot be rehabilitated in the community, is a high risk for recidivism, or is a danger to the community.

Id.

While this reasoning identifies the ideal rationale behind a PSI sentencing recommendation, the reasoning of the recommendation in this case was different. The PSI authors identified their reasoning: the offense was violent and involved the death of one person and serious injury to two others; Wilson's score on the Iowa Risk Revised; and the "serious nature" of the offense. (PSI, p. 10) (Conf. App. p. 141). The court is tasked with considering certain factors and applying them in conformance with constitutional considerations, and

these considerations that form the basis of the PSI recommendation—the nature of the offense and the harm to victims—are for the judge to evaluate and weigh. These reasons identified by the PSI authors are not based on their assessment of whether the "defendant [can or] cannot be rehabilitated in the community, is a high risk for recidivism, or is a danger to the community." Id.

Conclusion. Because the district court relied on the recommendation when sentencing Wilson, Wilson's sentences should be vacated and his case remanded for a new sentencing hearing.

ATTORNEY'S COST CERTIFICATE

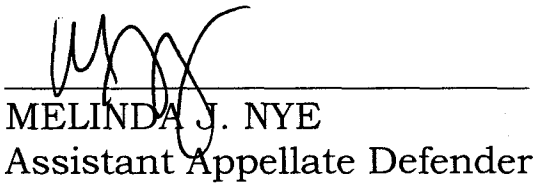
The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $1.60, and that amount has been paid in full by the Office of the Appellate Defender.

MELINDA J. NYE
Assistant Appellate Defender

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

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) because:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 1,210 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



Dated: 4.24.19

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