

**IN THE COURT OF APPEALS OF IOWA**

No. 2-161 / 10-0669  
Filed March 28, 2012

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**DARYL GERARD SANDERS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Carroll County, Fredrick E. Breen,  
Judge.

A defendant appeals his judgment and sentence for domestic abuse assault, contending the district court erred in failing to instruct the jury on justification and self-defense. **REVERSED AND REMANDED.**

James S. Nelsen of James Nelsen, P.L.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, John Werden, Jr., County Attorney, and James Van Dyke, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

**VAITHESWARAN, P.J.**

Daryl Sanders appeals his judgment and sentence for domestic abuse assault. He contends the district court erred in failing to instruct the jury on justification and self-defense. He also contends the court erred in ordering him to pay restitution for expenses he claims were unrelated to the crime.

***I. Background Facts and Proceedings***

Sanders and Kim Wright began a romantic relationship and subsequently moved in together. Shortly thereafter, Wright sustained injuries that required her hospitalization. The State charged Sanders with domestic abuse assault causing bodily injury.

At trial, Sanders and Wright provided differing accounts of what led to the hospitalization. Sanders testified that he returned from meeting friends at bars, saw that Wright was inebriated, and tried to cut off her supply of beer, only to have Wright start swinging at him. He responded by shoving her aside. Sanders asserted that, when he shoved Wright, she may have bumped into a storage shelf. Wright, in contrast, testified that Sanders returned from a night out and began assaulting her, as he had in the past. She stated that Sanders threw her to the floor, choked her, and struck her in the face.

At the close of trial, Sanders asked the district court to instruct the jury that his conduct was justified and that he acted in self-defense. The district court declined to give his proposed instructions. A jury found Sanders guilty of the lesser-included offense of domestic abuse assault rather than domestic abuse assault causing bodily injury. The district court entered judgment and sentence

and deferred a determination of the amount of restitution he owed. Sanders appealed.

## ***II. Failure to Instruct on Justification and Self-Defense***

Domestic abuse assault is defined as “an assault . . . which is domestic abuse as defined in section 236.2, subsection 2, paragraph ‘a’, ‘b’, ‘c’, or ‘d.’” Iowa Code § 708.2A(2)(b) (2009). An assault, in turn, is committed when a person, “without justification . . . does any” of three specifically enumerated acts. *Id.* § 708.1. The two acts relevant to this appeal are (1) “[a]ny act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act” and (2) “[a]ny act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.” *Id.* § 708.1(1), (2).

In pertinent part, the district court instructed the jury as follows:

The defendant, Daryl Sanders, did an act, which was intended to cause pain or injury, result in physical contact which was insulting or offensive, or place Kim Wright in fear of an immediate physical contact which would have been painful, injurious or offensive to Kim Wright.

Sanders takes issue with this marshalling instruction on the ground that it did not include the “without justification” language of section 708.1. He also challenges the district court’s refusal to give a separate instruction on self-defense.

### **A. Scope of Review**

Initially, the parties disagree on the scope of our review of a district court's refusal to give a jury instruction. Sanders maintains our review is for errors of law; the State counters that we must apply an abuse-of-discretion standard.

The State has time on its side, as a recent opinion states review of a refusal to give a jury instruction is for an abuse of discretion. See *State v. Marin*, 788 N.W.2d 833, 836 (Iowa 2010). However, in that case, the proposed jury instruction related to an unsettled issue of law. *Id.* at 837. While the district court could have addressed and decided the unsettled issue, it instead chose to give a stock jury instruction. *Id.* at 835. The court's decision was a paradigmatic discretionary act.

Here, in contrast, Sanders did not propose anything novel. He simply asked the court to instruct the jury on the well-established doctrine of justification, based on his belief that the record contained substantial evidence to support this theory. See *State v. Sharkey*, 311 N.W.2d 68, 72 (Iowa 1981) (“[W]here the record does not contain substantial evidence of self defense the trial court is not obligated to instruct the jury on justification.”). We believe that if there was substantial evidence of justification, the district court had no discretion to refuse the instruction. For that reason, we conclude our review is for errors of law. See *State v. Rains*, 574 N.W.2d 904, 915 (Iowa 1998) (reviewing district court's refusal to submit a requested jury instruction on justification for errors of law); see also *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 160 (Iowa 2004) (“[A] trial court is generally required to give a requested instruction when it states a correct rule of law having application to the facts of the case.” (citation omitted)); *State v.*

*Hartsfield*, 681 N.W.2d 626, 630 (Iowa 2004) (reviewing refusal to give spoliation instruction for errors of law, which the court characterized as “our typical review of alleged instructional error”).

***B. Marshalling Instruction—Exclusion of “Without Justification”***

We begin with Sanders’s argument that the marshalling instruction should have included the “without justification” language contained in Iowa Code section 708.1. That instruction sets forth the elements the State was required to prove. “Justification” is an affirmative defense to assault rather than an element of the State’s case. See *State v. Delay*, 320 N.W.2d 831, 834 (Iowa 1982). Accordingly, the “without justification” language was correctly excluded from the marshalling instruction. See *id.*

***C. Proposed Self-Defense Instruction***

We turn to Sanders’s contention that the district court should have separately instructed the jury on self-defense as justification, which states: “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. As noted, a district court is obligated to instruct the jury on that defense if substantial evidence exists to support it. *Rains*, 574 N.W.2d at 915; *State v. Dunson*, 433 N.W.2d 676, 677 (Iowa 1988) (“Substantial evidence in the record from any source justifies submission of a self-defense instruction. If there is such substantial evidence, the district court has a duty to give a requested instruction on the defense.” (citation omitted)).

Sanders asserts that his version of events amounted to substantial evidence of self-defense and entitled him to the following jury instruction on justification as self-defense:

The Defendant claims he acted with justification.

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

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

The state must prove beyond a reasonable doubt the defendant was acting without justification.

The district court rejected this proposed instruction, reasoning as follows:

Surprisingly, when we heard the Defendant testify he did not—his defense clearly is not that he struck her but with justification his defense is I didn't hit her and so there is no question in the evidence, even from the Defendant's point of view, that he acted in any way to cause an assault in the just way or by self defense or property or of his person. So that's why the set instruction I gave does not include the requested instruction by the Defendant on that issue. And so that objection to these instructions is denied.

We believe there was substantial evidence to support a self-defense theory. Sanders testified that Wright initiated the altercation by swinging at him and hitting him on his "face, nose, and eye." He said he responded by shoving her and holding her back. He proffered a photo of an injury to his eye that he said he sustained as a result of Wright's unprovoked attack. In light of this evidence, we conclude Sanders was entitled to an instruction on self-defense as justification. See *Dunson*, 433 N.W.2d at 679 (finding substantial evidence to instruct the jury on self defense). But see *Rains*, 574 N.W.2d at 915 (finding insubstantial evidence of self-defense where defendant accelerated vehicle as officer placed hands inside vehicle on defendant driver's right shoulder and

forearm); *Delay*, 320 N.W.2d at 835 (finding insubstantial evidence of self defense where defendant stomped on accelerator and moved car away as officers reached into car and grabbed defendant); *Sharkey*, 311 N.W.2d at 73 (finding insubstantial evidence of self-defense where nothing suggested victim of robbery made any threatening movements or gestures toward robber).

We reverse Sanders's judgment and sentence and remand for a new trial. In light of our conclusion, we find it unnecessary to address the restitution issue raised by Sanders but, in any event, note that the issue was premature, as the court had not yet entered a restitution order.

**REVERSED AND REMANDED.**