IN THE SUPREME COURT OF IOWA

STATE OF IOWA,
Appellee,

v.

WILL E. YOUNG, JR.,
Appellant.

No. 23-1924

BRIEF OF APPELLANT

Appeal from the Iowa District Court for Black Hawk County
Hon. David P. Odekirk, District Court Judge

Case No. FECR237961

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CERTIFICATE OF SERVICE

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Trial counsel provided ineffective assistance of counsel in violation of the Sixth Amendment when he failed to object to flawed jury instructions. Iowa Code § 814.7 prohibits such claims from being raised on direct appeal. But under the Supremacy Clause, state judges must apply the U.S. Constitution when deciding a case despite anything in state law to the contrary. Is section 814.7 unconstitutional?

II. The crime of intimidation with a dangerous weapon requires the State to prove that all persons within an assembly of people shot into by a defendant were placed in reasonable apprehension of serious injury. But the State only offered proof that one of those persons had a fear of the consequences of being shot, not the shooting itself. Was there sufficient evidence to convict Young of this offense?

III. When sentencing a first-time offender under Iowa Code § 902.7 for use of a dangerous weapon in a forcible felony, the district court has discretion to impose less than the five-year mandatory minimum sentence. Here, the district court did not explain why it found there were insufficient mitigating circumstances or show awareness it had such discretion. Should Young be resentenced?

ROUTING STATEMENT

This is a criminal appeal following defendant-appellant's conviction at a jury trial of the offenses of willful injury resulting in serious injury and intimidation with a dangerous weapon. Appellant raises claims of ineffective assistance of counsel which, by the terms of Iowa Code § 814.7, may not be resolved on direct appeal. See *State* v. *Tucker*, 959 N.W.2d 140 (Iowa 2021), *State* v. *Treptow*, 960 N.W.2d 98 (Iowa 2021). But because this brief presents an argument not raised in *Tucker* or *Treptow*, that section 814.7 is unconstitutional under the Supremacy Clause of the U.S. Constitution, retention by the Iowa Supreme Court is appropriate. Iowa R. App. P. 6.1101(3)(a).

NATURE OF THE CASE

Defendant-Appellant Will E. Young, Jr. was charged by criminal complaint with the offenses of willful injury causing serious injury in violation of Iowa Code § 708.4(1) and intimidation with a dangerous weapon, with the intent to injure in violation of Iowa Code § 708.6(1). D0001, D0002. The complaints were filed November 8, 2020. Each offense is a class "C" felony.

The Black Hawk County Attorney filed a trial information on November 17, 2020, charging the same offenses. D0011. Young waived his right to trial within 90 days (D0021) and later his right to trial within a year of arraignment. D0031. The county attorney filed an amended trial information on June 2, 2023, that added the allegation under Iowa Code § 902.7 that each offense was committed while Young was in possession of a dangerous weapon. D0118.

A three-day jury trial began September 12, 2023. D0196, Tr. Jury Trial (Day 1). The jury returned guilty verdicts on both counts. D0165, D0166. The jury found the offenses were committed while Young was in possession of a dangerous weapon. D0167. The district court sentenced Young on November 13, 2023, to serve an indeterminate term not to exceed 10 years on each count, with the five-year mandatory minimum for use of a dangerous weapon. D0175. The court ordered the sentences to be served consecutively for a total indeterminate term of not to exceed 20 years with a ten-year mandatory minimum. *Id.* The court imposed, but suspended, fines of $1,000 plus surcharge on each count. *Id.*

Young's counsel filed a notice of appeal on November 21, 2023. D0183.

STATEMENT OF THE FACTS

Young and his brother Willis Brown went to the Saloon bar in Waterloo in the early morning hours of November 8, 2020. D0197, Tr. Jury Trial Day 3 (morning session) at 42:22-43:2 (9/14/2023). He consumed half a beer while at the bar. *Id.* at 43:5-8. Young and Brown left the bar at closing time. *Id.* at 43:9-10. A man named Joseph Ayala approached Young and Brown and asked them "what's that fucking shit y'all was talking about." *Id.* at 43:11-15. Ayala then struck Young in the face. *Id.* at 43:17-18.

Young was struck in the eye. *Id.* at 44:9-10. He started bleeding from the wound. *Id.* at 44:10-14. He was stunned by the blow, and it took him approximately "fifteen seconds" to recover. *Id.* at 45:2-7. When Young regained his senses, he saw Ayala and Brown fighting. *Id.* at 45:9-13. Young, having just experienced Ayala's punching power, was fearful for Brown's safety. *Id.* at 45:14-23. Young asked Ayala several times to get off his brother. *Id.* at 46:13. A nearby security guard did nothing to break up the fight, nor did any bystanders. *Id.* at 46:14-18. There were no police in the area. *Id.* at 46:19-20. Fearful for Brown's safety, Young produced a pistol and shot Ayala as he was getting up off the ground while fighting Brown. *Id.* at 47:4-20. Young thought it was the only way to stop Ayala. *Id.* at 47:24-48:1.

Young and his brother left the area after the shooting. Waterloo police investigated the shooting and executed a search warrant at Young's residence at about 7:30 a.m. on November 8. D0196, Tr. Jury Trial Day 1 at 62:12-14 (9/12/2023). The firearm used to shoot Ayala was recovered, along with a magazine and a holster. *Id.* at

63:23-25, D0195, Tr. Jury Trial Day 2 at 109:21-24 (9/13/2024); *Id.* at 110:2-6; 115:22-25.

Ayala was transported to a local hospital where he was treated for his gunshot wounds. He had injuries to his flank, right leg, and scrotum. D0197 at 6:8-15. His injuries required surgery. *Id.* at 8:2-6. Ayala's treating physician testified that the injuries, if left untreated, would pose a substantial risk of death or serious injury. *Id.* at 13:19-21. He also testified that he expected Ayala to make a full recovery. *Id.* at 14:19-21.

Additional facts as necessary will be discussed below.

ARGUMENT

I. Trial counsel provided ineffective assistance of counsel in violation of the Sixth Amendment when he failed to object to flawed jury instructions. Iowa Code § 814.7 prohibits such claims from being raised on direct appeal. But under the Supremacy Clause, state judges must apply the U.S. Constitution when deciding a case despite anything in state law to the contrary. Is section 814.7 unconstitutional?

Review of constitutional issues is de novo. *State* v. *Ortiz*, 905 N.W.2d 174, 179 (Iowa 2017). Young's trial counsel did not object to the errors in the jury instructions identified below. Because Iowa Code § 814.7 is unconstitutional, it does not prevent review of a claim of ineffective assistance of counsel on direct appeal.

A. The prohibition in Iowa Code § 814.7 against consideration of claims of ineffective assistance of counsel on direct appeal violates the Supremacy Clause of the U.S. Constitution.

Before 2019, criminal defendants could raise ineffective-assistance-of-counsel claims on direct appeal as an exception to traditional error preservation rules. *State* v. *Fountain*, 786 N.W.2d 260, 263 (Iowa 2010). "If a claim of ineffective assistance of counsel is raised on direct appeal from the criminal proceedings, the court may address it if the record is adequate to decide the claim." *Id. See* Iowa Code § 814.7(2) (2018) ("A party may, but is not required to, raise an ineffective assistance claim on direct appeal from the criminal proceedings if the party has reasonable grounds to believe that the record is adequate to address the claim on direct appeal.") In 2019 the Iowa legislature amended section 814.7 to strike the former subsection (2) and

provide that ineffective assistance of counsel claims "shall not be decided on direct appeal from the criminal proceedings." 2019 Iowa Acts, Ch. 140, § 31.

(1) The Court rejects a separation-of-powers argument against section 814.7 in *State* v. *Tucker*.

The constitutionality of this amendment (along with a companion legislative change) was challenged in *State* v. *Tucker*, 959 N.W.2d 140 (2021). Tucker had pleaded guilty but still wished to appeal and raise an ineffective-assistance-of-counsel claim. *Id.* at 144-45. He faced two obstacles: the prohibition against considering such claims on direct appeal and the removal of the right to appeal following guilty pleas unless good cause is established. *See* Iowa Code § 814.6(1)(a). The appeal prohibition was enacted as part of the same legislation as the amendment to section 814.7. 2019 Iowa Acts, Ch. 140, § 28.

Tucker's sole claim against the change to section 814.7 was that it violated the separation-of-powers doctrine. *Tucker*, 959 N.W.2d at 151. The Court disagreed, finding the amendment did not "deprive this court of jurisdiction" and did not "impede the immediate, necessary, efficient, and basic functioning of the courts." *Id.* at 151-52. "Our cases recognize claims of ineffective assistance of counsel can rarely be resolved on direct appeal and generally must be preserved for and developed in post-conviction-relief proceedings." *Id.* at 152. "The new law merely codifies, albeit more strongly, a judicial practice stretching back for almost a half-century." *Id.* The Court also credited the legislature's policy reasons for pushing ineffective-assistance-of-counsel claims into collateral proceedings. *Id.* Because the legislature has the duty "to provide for a system of practice in all Iowa Courts" the determination that all

claims of ineffective assistance of counsel must be resolved within collateral review was "within the legislative department's prerogative and not in derogation of the judicial power." *Id.* at 152-53.

The Court also cited two cases as persuasive authority to support the ability to prohibit consideration of ineffective-assistance-of-counsel claims on direct appeal. *Id.* at 152 (citing *Wrenn* v. *State*, 121 So.3d 913, 914-15 (Miss. 2012) and *State* v. *Rettig*, 416 P.3d 520, 521 (Utah 2017)). But the Court misunderstood the scope of these cases. In *Wrenn*, the Mississippi Supreme Court enforced a statute that prohibited any appeal following a guilty plea. *Wrenn*, 121 So.3d at 914-15 (citing Miss. Code § 99-35-101). The decision said nothing about whether, when appellate jurisdiction exists, a criminal defendant is barred by statute from raising a claim of ineffective assistance of counsel. *Wrenn* was authority for rejecting the first, but not the second, of Tucker's arguments.

So, too, with *Rettig.* In that case the Utah Supreme Court considered an appeal by a defendant who had not followed the procedures in state law to withdraw his guilty plea. *Rettig*, 416 P.3d at 523 ("Recognizing our long line of precedents holding that we lack appellate jurisdiction to review untimely withdrawals of guilty pleas, Rettig contends that the Plea Withdrawal Statute is unconstitutional.") The court rejected this argument, finding the statute (which permitted a defendant to pursue collateral review) did not "foreclose an appeal" but "simply prescribe[s] a sanction for the failure to satisfy the timing deadlines set forth in the rule." *Id.* at 524. That sanction was the loss of jurisdiction of the appellate court to consider the claim. *Id.*

at 529 (finding the statute "establishes a preservation standard that stands as a jurisdictional bar to plain error review.")

Two problems present themselves with the Court's citation of *Rettig*. First, as with *Wrenn*, it only deals with a statutory bar to considering an appeal following a guilty plea. Second, the *Rettig* court found, under Utah's constitution, the statute was a valid deprivation of the court's appellate jurisdiction. Yet this Court said the opposite just two paragraphs before citing *Rettig*. *Tucker*, 959 N.W.2d at 151 ("[t]he new law does not deprive this court of jurisdiction.") Despite this, the Court rejected the challenge.

A second criminal defendant attacked section 814.7 with different constitutional arguments. But his appeal fared little better.

(2) The Court rejects equal-protection and due-process arguments against section 814.7 in *State* v. *Treptow*.

Shortly after deciding *Tucker*, the Court decided *State* v. *Treptow*, 960 N.W.2d 98 (Iowa 2021). Two additional theories were offered why section 814.7 was unconstitutional. Treptow argued that it violated his constitutional right to equal protection of the laws. *Id*. at 104. Yet he could not identify any class of persons who were treated differently under the law. "The statute prohibits any defendant—those convicted following trial and those convicted following a guilty plea—from presenting a claim of ineffective assistance of counsel on direct appeal." *Id.* at 105-06. The lack of a "similarly situated…relevant comparator" was fatal to this argument. *Id.* at 106-07. Treptow's due process argument fared little better. Because "[d]ue process merely

requires an opportunity" to present the claim "in some forum," the statute did not violate his due process rights by directing those claims to collateral review. *Id.* at 108.

As in *Tucker*, the *Treptow* Court looked to the practices of other states to confirm its assertion that an absolute bar on ineffective-assistance-of-counsel claims on direct appeal was a common practice. *Id.* at 107-08. The Court cited a law review article for the proposition that "[i]n the vast majority of states, the defendant must wait to develop and present his claim of ineffective assistance of counsel in postconviction-relief proceedings." *Id.* at 108 (citing Eve Brensike Primus, *Effective Trial Counsel After Martinez v. Ryan: Focusing on the Adequacy of State Procedures*, 122 Yale L.J. 2604, 2613 n. 39 (2013)) (Primus article). This footnote deserves a closer look. Because the Court glossed over what the author said, it is no support for the change caused by the amendment to section 814.7.

The author begins the footnote by stating, "[a] handful of states have established procedures for expanding the record on direct appeal and either require defendants to raise ineffective assistance of trial counsel claims on appeal or give them a choice regarding when to raise the claims." *Id.* After citing cases in support of this point, the author then writes the sentence quoted at page 108 of *Treptow*. But, contrary to what is quoted in *Treptow*, it is not a "vast majority" of states that impose this requirement expressly as done by section 814.7. "A *few* states explicitly require prisoners to raise all ineffective assistance of trial counsel claims in state postconviction proceedings." *Id.* (emphasis added). But then the author adds an important caveat, "[i]n most states, however, the requirement is de facto rather than de jure. *The state*

does not forbid the claims on direct appeal, but it does not provide any mechanism for expanding the record to substantiate the claims." *Id.* (emphasis added).

The assertion that section 814.7 conforms Iowa's law to what a "vast majority" of states do with this issue is incorrect. True, Iowa—like most jurisdictions—does not have a mechanism for additional factfinding during a direct appeal. The record established below is all that the appellate courts review. But on the question of what *arguments* can be made based on that appellate record, the footnote explains that, at most, Iowa has grouped itself with the practices of four states: Arizona, Oregon, Rhode Island, and Virginia. Among these, a closer examination of their case law shows only one has a truly categorical bar and none share this Court's absolute refusal to consider unpreserved errors on direct appeal.

For Arizona, the case cited in *Treptow* and the Primus article is *State* v. *Spreitz*, 39 P.3d 515, 527 (Ariz. 2002). *Spreitz* does not prevent Arizona defendants from raising Sixth Amendment claims on direct appeal. The court simply "mandated that all claims challenging the conduct of trial counsel must be brought in [postconviction] proceedings rather than on direct appeal." *State* v. *Duff*, 453 P.3d 816, 822 (Ariz. Ct. App. 2019). That rule involves "claims that particular decisions, behaviors, or failures of trial counsel rendered their assistance ineffective. *None involved claims that the trial court had erred*." *Id.* (emphasis added).

In any event, Arizona's rule about considering claims of ineffective assistance of counsel must be considered in context with its rule about preservation of error. "Errors or omissions in the giving of instructions which were not raised at trial will not be considered unless the error is so fundamental that it is manifest the defendant did

not receive a fair trial." *State* v. *Coward*, 496 P.2d 131, 132 (Ariz. 1972). Arizona's "fundamental error" rule permits criminal defendants to raise unpreserved issues that (1) went to the foundation of the case, (2) took from the defendant a right essential to his defense, or (3) were so egregious that the defendant did not receive a fair trial. *State* v. *Escalante*, 425 P.3d 1078, 1085 (Ariz. 2018).

Oregon's law is similar. The *Treptow* and the Primus article direct us to *State* v. *Dell*, 967 P.2d 507, 509 (Or. Ct. App. 1998). There, the Oregon Court of Appeals rejected a claim that the defendant wanted to testify but her lawyer refused to let her. *Id.* It said the claim required factual development in a postconviction relief proceeding. *Id.* Yet Oregon has a plain-error exception to preservation rules. *State* v. *Vanorum*, 317 P.3d 889, 897 (Or. 2013).

Rhode Island courts will not consider fact bound ineffective-assistance-of-counsel claims on direct appeal. *State* v. *Brouillard*, 745 A.2d 759, 768 (R.I. 2000). And although its supreme court shies away from the term "plain error," it permits unpreserved errors to be reviewed on appeal "under extraordinary circumstances wherein a defendant has suffered an abridgment of his basic constitutional rights." *State* v. *Williams*, 432 A.2d 667, 670 (R.I. 1981).

Lastly, Virginia requires factual issues about ineffective assistance of counsel to be raised in a collateral habeas action. *Turner* v. *Commonwealth*, 528 S.E.2d 112, 115 (Va. 2000). But its law also "clearly envision[s] that there may be some cases in which the trial record will be sufficient for a determination whether counsel was ineffective and further testimony is not necessary to resolve the issue." *Hill* v. *Commonwealth*, 379 S.E.2d 134, 139 (Va. Ct. App. 1989). And it permits unpreserved

errors to be raised on appeal "when necessary to satisfy the ends of justice." *Redman* v. *Commonwealth*, 487 S.E.2d 269, 272 (Va. Ct. App. 1997).

This Court has steadfastly declined to adopt a plain error or similar standard to consider unpreserved claims on direct appeal. *Treptow*, 960 N.W.2d at 109 ("We have repeatedly rejected plain error review and will not adopt it now.") But *Treptow* does not explain *why* this is. There is no reasoned analysis of the refusal to have a plain-error rule in the case or any of the ones it cites. But setting that aside, the lack of a plain-error rule—for good reasons or not—cannot be separated from the Court's comparison of its jurisprudence with that of other states. A legal practice transplanted from one place to another "brings the old soil with it." *Nahas* v. *Polk County*, 991 N.W.2d 770, 781 (Iowa 2023). The practices of another state that arguably forbids ineffective-assistance-of-counsel claims on direct appeal while permitting unpreserved errors to be considered under limited circumstances cannot buttress this Court's decision in *Treptow*.

Treptow included a dissent by one Justice. *Treptow*, 960 N.W.2d at 110 (Appel, J., dissenting). The dissent noted that in the federal courts and 48 states a plain-error doctrine existed. *Id.* at 117-18. "Iowa and Pennsylvania appear to be the two outliers." *Id.* at 118. Yet this statement was not correct in the context of raising an unpreserved error as a claim of ineffective assistance of counsel on direct appeal. Pennsylvania courts recognize the ability to raise an ineffective-assistance-of-counsel claim on direct appeal where the record is enough to resolve it. *Commonwealth* v. *Grant*, 813 A.2d 726 (Pa. 2002). Rather than enforce a rigid rule against such claims, Pennsylvania case law has modified the error-preservation requirements it had once

imposed that often caused ineffective-assistance-of-counsel claims to be considered waived if not raised on direct appeal. *Commonwealth* v. *Bradley*, 261 A.3d 381 (Pa. 2021) (permitting claims of ineffective assistance by postconviction counsel to be raised in direct appeal of the postconviction action). *Bradley* softened the already relaxed rule created by the Pennsylvania Supreme Court in *Grant* to allow prisoners to avoid defaulting potentially meritorious claims.

Justice Appel's dissent did not adequately explain that Iowa stands truly alone. It is no doubt true that most claims of ineffective assistance of counsel cannot be resolved on direct appeal. A defendant who says his lawyer should have called additional witnesses, was drunk during the trial, or any number of other extra-record claims, needs proof. The accused lawyer deserves her day in court and the state has the right to contest the claim. But some claims (like presented below) rise or fall on the record as it is today.

The effort in *Tucker* and *Treptow* to support section 814.7 with the practices of other states falls flat. The authority cited in the two cases does not hold up to closer examination. But the Court need not overrule them to reach Young's claims. He presents an argument not raised previously to explain why section 814.7 is unconstitutional. A categorical bar on a Sixth Amendment claim supported in the existing record violates the Supremacy Clause of the U.S. Constitution. We turn to this argument next.

(3) Section 814.7 is unconstitutional because the Supremacy Clause requires state judges to apply the Sixth Amendment to the case before them, regardless of any state statute to the contrary.

When the legislature provides a system of practice in Iowa courts, it must do so against the fundamental principle that the U.S. Constitution is the supreme law. U.S. Const. Art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof…shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.") *Gibbons* v. *Ogden*, 9 Wheat. 1, 210-11 (1824).

Ineffective-assistance-of-counsel claims are grounded in the Sixth Amendment's guarantee of the right to counsel in criminal proceedings as incorporated against the States by the Fourteenth Amendment. *Strickland* v. *Wash.*, 466 U.S. 668, 685 (1984) ("The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results.") "The principles governing ineffectiveness claims should apply in federal collateral proceedings as they do on *direct appeal* or in motions for a new trial." *Id.* at 697 (emphasis added). "We do not hold that ineffective-assistance claims must be reserved for collateral review. There may be cases in which trial counsel's ineffectiveness is so apparent from the record that appellate counsel will consider it advisable to raise the issue on direct appeal." *Massaro* v. *United States*, 538 U.S. 500, 508 (2003).

Ineffective assistance of counsel is a label that covers many aspects of a criminal defendant's right to "have the Assistance of Counsel for his defence." U.S. Const., Sixth Amendment. Thus, this right is violated when trial counsel refuses to follow the defendant's direction about whether to admit guilt to avoid the death penalty. *McCoy* v. *La.*, 584 U.S. 414 (2018). Or when trial counsel has an unresolved conflict of interest. *Holloway* v. *Ark*, 435 U.S. 475 (1978). And when a state denies counsel at a critical stage of the proceedings. *Gideon* v. *Wainwright*, 372 U.S. 335 (1963) (denial of counsel to indigent defendant), *Hamilton* v. *Ala.*, 368 U.S. 52 (1961) (no counsel appointed at arraignment at which not guilty by reason of insanity plea must be made or forfeited), *White* v. *Md.*, 373 U.S. 59 (1963) (no counsel appointed for preliminary hearing where the defendant pleaded guilty). Under *Treptow*, none of these claims could be raised on direct appeal.

And while most ineffective-assistance-of-counsel claims require an evidentiary hearing to develop, not all do. If the record is sufficient on direct appeal to resolve the claim, state courts must apply the Sixth Amendment principles involved then and there. States are simply not free to create procedural mechanisms that delay or deny the vindication of federally protected rights. "A State may not…relieve congestion in its courts by declaring a whole category of federal claims to be frivolous. Until it has been proved that the claim has no merit, that judgment is not up to the States to make." *Howlett* v. *Rose*, 496 U.S. 356, 380 (1990).

Thus, when a New York statute purported to limit the availability of damages in civil rights cases against correctional employees, it could not be applied to claims filed in state court under 42 U.S.C. § 1983. *Haywood* v. *Drown*, 556 U.S. 729 (2009).

"This Court has long made clear that federal law is as much the law of the several States as are the laws passed by their legislatures." *Id.* at 734-35. "[S]tate courts as well as federal courts are entrusted with providing a forum for the vindication of federal rights violated by state or local officials acting under color of state law." *Id.* at 735. Because of this responsibility, "a State cannot employ a jurisdictional rule to dissociate itself from federal law because of a disagreement with its content or a refusal to recognize the superior authority of its source." *Id.* (cleaned up). States "retain substantial leeway to establish the contours of their judicial systems [but] lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies." *Id.*

It does not matter that section 814.7's application would bar consideration on direct appeal of an ineffective-assistance-of-counsel claim under both the U.S. and Iowa constitutions. "[E]quality of treatment does not ensure that a state law will be deemed a neutral rule of judicial administration and therefore a valid excuse for refusing to entertain a federal cause of action." *Id.* at 738. And the Iowa legislature's determination that most ineffective-assistance-of-counsel claims are better resolved in collateral proceedings cannot countermand the Sixth Amendment's requirement that states provide indigent defendants with effective representation. "A jurisdictional rule cannot be used as a device to undermine federal law, no matter how even-handed it may appear." *Id.* at 739. Having created a right to direct appeal of criminal convictions, the Iowa legislature cannot "shut the courthouse door to federal claims that it considers at odd with its local policy." *Id.* at 740.

Just as New York's preference for shielding correctional officers from damages liability "is irrelevant," *Id.* at 737, so too is the Iowa legislature's preference to bar consideration of the Sixth Amendment on direct appeal. The Supremacy Clause requires the Justices of this Court to apply the U.S. Constitution whenever it provides the rule of decision for the case before it. *Armstrong* v. *Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015). State procedural rules cannot prevent a judge from considering whether a particular federal law resolves the case before her. "This argument runs headlong into the Constitution." *Haaland* v. *Brackeen*, 599 U.S. 255, 287 (2023).

Although *Haywood* is a case about the application of § 1983 claims in state court, the same result applies when the conflicting federal law is a constitutional provision. In *Espinoza* v. *Mont. Dept. of Revenue*, 591 U.S. 464, 472-73 (2020), the Montana Supreme Court considered a challenge to a state scholarship program that could benefit students attending religious schools. The court held its state constitution's provision prohibiting aid to religious schools required it to forbid implementation of the entire program. *Id.* at 487. It believed the program violated the state constitution's no-aid-to-religious-schools provision and because there was "no mechanism" for preventing this result, ordered the entire scholarship program could not continue. *Id.* at 472-73

This violated the religious neutrality requirements of the First Amendment. *Id.* at 485-87. ("A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious.") The state court was not free to implement a state constitutional provision that

violated the religious neutrality obligations of the Free Exercise Clause. *Id.* at 487-88. ("When the Court was called upon to apply a state law no-aid provision to exclude religious schools from the program, it was obligated by the Federal Constitution to reject the invitation.") "Because the elimination of the program flowed directly from the Montana Supreme Court's failure to follow the dictates of federal law, it cannot be defended as a neutral policy decision, or as resting on adequate and independent state law grounds." *Id.* at 488. The Supremacy Clause "creates a rule of decision directing state courts that they must not give effect to state laws that conflict with federal law." *Id.*

In a contest between the demands of federal law, whether constitutional or statutory, and a conflicting state law, the federal law must always prevail. The Iowa legislature cannot bar a criminal defendant from raising a claim under the Sixth Amendment in a direct appeal. Its policy view that such claims are better presented in collateral proceedings is irrelevant. The Sixth Amendment, as interpreted by the U.S. Supreme Court in *Strickland*, applies on direct appeal. 466 U.S. at 697. The Iowa legislature cannot say differently.

It is, of course, as true today as it was when section 814.7 was amended that most ineffective-assistance-of-counsel claims will require factual development in a collateral proceeding. But this is nothing more than to state the unfairness of permitting section 814.7 to be enforced. Its application will be felt most strongly in the cases where the performance of trial counsel was so plainly inadequate that the claim can be resolved on direct appeal. The Sixth Amendment does not require the Court to

consider claims for which there is an inadequate record. But it does not permit the Court to ignore a claim which is squarely presented.

This is one of those cases. Young's trial counsel failed to object to critically flawed jury instructions. There could be no conceivable basis for this failure to have been a strategic decision. And because the failure prejudiced Young's right to a fair trial, he is entitled to reversal of his convictions. This is exactly the kind of ineffective-assistance-of-counsel claim capable of resolution on direct appeal. *State* v. *Harris*, 891 N.W.2d 182, 188-89 (Iowa 2017) (reversing conviction for going armed with intent when instruction omitted "element of going or moving with specific intent," despite trial counsel's failure to object),

B. Trial counsel provided ineffective assistance of counsel by failing to object to a jury instruction that incorrectly described when the defense of justification is not available.

The district court instructed the jury on Young's defense of justification. D0164, Jury Instructions at 29-37 (9/15/2023). In the marshalling instructions for each offense, the district court properly instructed the jury that the state had the burden to prove the defendant was not acting with justification. *Id.* at 20, 23.

But in Instruction 30 the court told the jury the following:

> If any of the following is true, the defendant's use of force was not justified:
>
> 1. The defendant did not have a reasonable belief that it was necessary to use force to prevent an injury or loss.
>
> 2. The defendant used unreasonable force under the circumstances.

3. The defendant was participating in Willful Injury Causing Serious Injury as defined in Instruction No. 19.

4. The defendant was not lawfully present or was engaged in the illegal activity of Assault as defined in Instruction No. 22 in the place where he used force, he made no effort to retreat, and retreat was a reasonable alternative to using force.

If the State has proved any of these beyond a reasonable doubt, the defendant's use of force was not justified.

Id. at 31.

During a conference on the jury instructions, the district court said the instruction was modeled on Iowa Uniform Criminal Jury Instruction 400.3. D0195 at 152:16.[1] The court drew trial counsel's attention to the phrasing of paragraphs 3 and 4 of the proposed instruction and said he wanted to "make sure you don't have something different you'd want in there or you object to it entirely." *Id.* at 152:17-19. Trial counsel said he had no objection. *Id.* at 153:5, 8. He later confirmed his lack of objection as the instructions were finalized. D0197 at 77:5-9.

This was a terrible mistake. The instruction correctly recited the first two paragraphs of the model instruction. But starting with paragraph 3 the district court went off course:

400.3 Justification – Defense Not Available. If any of the following is true, the defendant's use of force was not justified:

1. The defendant did not have a reasonable belief that it was necessary to use force to prevent an injury or loss.

[1] Because some instructions were later removed from the packet of proposed instructions, at the instruction conference this instruction was referred to as Instruction 33.

2. The defendant used unreasonable force under the circumstances.

3. The defendant was participating in [name of forcible felony]* [a riot] [a duel].

4. The defendant was not [lawfully present] [engaged in illegal activity]** in the place where [he] [she] used force, [he] [she] made no effort to retreat, and retreat was a reasonable alternative to using force.

If the State has proved any of these beyond a reasonable doubt, the defendant's use of force was not justified.

Authority

Iowa Code sections 704.1, 704.3, 704.6, 704.7
State v. Fordyce, 940 N.W.2d 419 (Iowa 2020)
State v. Baltazar, 935 N.W.2d 862 (Iowa 2019)

Comment

Note: Only use those elements that are supported by the evidence.

Note: *If the forcible-felony option is included, include the marshaling instruction for the applicable felony and reference back to this instruction.

Note: **If the engaged-in-illegal-activity option is included, include the marshaling instruction for the applicable crime and reference back to this instruction. The Iowa Supreme Court has left open the question of whether the duty to retreat involves only illegal activities germane to the use of force. State v. Baltazar, 935 N.W.2d 862, 871 (Iowa 2019).

The model jury instruction properly prevents a defendant from using a justification defense when he has used force while committing a *different* crime. Think of the bank robber who shoots a guard. The robber may well be defending himself from the guard, but the law obviously does not call that act justified. *State* v. *Burzette*, 222 N.W. 394, 398 (Iowa 1928) (defendant standing guard while armed while accomplice

burglarized schoolhouse could not claim justification in his shooting of school employee who tried to prevent burglary).

The district court got this all mixed up. It instructed the jury in paragraph 3 that the defense was not available if the defendant was participating in the *very offense for which the defense was asserted*. The court's instructions told the jury that the state had to disprove justification for the willful injury charge but said that justification would not apply if the defendant was participating in that offense. "Participating" means only the defendant had committed one or more acts, even if he were "unsuccessful in committing the offense." Iowa Code § 702.13.

A similar error appears in paragraph 4 of the district court's instruction. The jury was told that the defense was not available if Young was not "lawfully present" or was engaged in the illegal activity of assault as defined as a lesser-included offense of willful injury. Neither alternative was correct.

First, let's consider the district court's suggestion that it could find Young was not lawfully present. The altercation occurred in a public place. Nothing in the record suggests that Young lacked the right to be where he was when he fired the shots. This statement in paragraph 4 told the jury that Young's conduct was unjustified simply because he was standing outside the bar.

Second, the district compounded its error by telling the jury that justification would not apply to assault as a lesser-included offense of the willful injury offense. D0164 at 20, 23, 31. The definition of assault provided by the district court, D0164 at 23, told the jury "[a]n assault is also committed when a person intentionally points any firearm toward another, or displays in a threatening manner any dangerous

weapon toward another." Thus, the district court's instructions told the jury that Young was not justified by simply pointing the firearm at Ayala. Instruction 22 demolished Young's defense of justification.

As recently held by the Court, the very act that is charged in the offense for which justification is asserted "may *not* constitute the 'illegal activity' disqualifying" a defendant from the defense. *State* v. *Johnson*, 7 N.W.3d 504, 2024 WL 2787850, at *6 (Iowa May 31, 2024). "To do so would eviscerate both the defense and the presumption." *Id.* "Every time a defendant invoked the defense or presumption, the State could simply point to the use of deadly force and argue that the defendant was engaged in an assault (an 'illegal activity') in the place where the defendant used force." *Id.*

Jury instructions "must convey the applicable law in such a way that the jury has a clear understanding of the issues." *State* v. *Davis*, 951 N.W.2d 8, 17 (Iowa 2020). "An instruction is misleading or confusing if it is very possible the jury could reasonably have interpreted the instruction incorrectly." *Johnson*, 2024 WL 2787850, at *5 (cleaned up). "Erroneous jury instructions warrant reversal when prejudice results and prejudice results when jury instructions mislead the jury or materially misstate the law." *State* v. *Shorter*, 945 N.W.2d 1, 9 (Iowa 2020) (cleaned up) (conviction for carrying weapons while intoxicated reversed when instructions permitted constructive possession, but law required state to prove actual possession). When a "legally erroneous" option is included that could defeat the defendant's justification defense, the defendant has been prejudiced and reversal is required. *Johnson*, 2024 WL 2787850, at *7.

Trial counsel failed to perform an essential duty in his failure to recognize this problem. Although *Johnson* was decided after his trial, the case should have surprised no one. The Court cited authority for the proposition that jury instructions "must convey the *applicable law* in such a way that the jury has a clear understanding of the issues." *Id.* at *5 (emphasis added). Nothing in *Johnson* says that it was breaking new ground with its explanation of when the defense of justification is unavailable.

The proof of this point appears in model instruction 400.3. The notes instruct the court to "include the applicable marshalling instruction" for the forcible felony for which there is evidence the defendant was participating. But the marshalling instruction for the offense that is charged by the state *should already be in the instructions*. A district court judge doesn't need to be specifically told to give the jury the elements of the crime the prosecutor has charged. The direction to include the "other" crime is obvious: it's not the one for which justification is claimed.

Young was prejudiced by trial counsel's breach of his essential duty to raise this issue at the instruction conference and object to the district court's proposed instructions. Because this violated Young's rights under the Sixth Amendment, section 814.7 cannot be applied to prevent the Court from granting him relief. "The great purpose of our jurisprudence is that law and justice should be synonymous. When they seem to be following divergent paths the wise jurist will re-examine his authorities and his reasoning with the utmost care." *State* v. *Crawford*, 972 N.W.2d 189, 202 (Iowa 2022). Such is this case.

II. The crime of intimidation with a dangerous weapon requires the State to prove that all persons within an assembly of people shot into by a defendant were placed in reasonable apprehension of serious injury. But the State only offered proof that one of those persons had a fear of the consequences of being shot, not the shooting itself. Was there sufficient evidence to convict Young of this offense?

The Court can review a defendant's challenge to the sufficiency of the evidence raised on direct appeal regardless of whether the defendant filed a motion for judgment of acquittal. *Id.* "A defendant's trial and the imposition of sentence following a guilty verdict are sufficient to preserve error with respect to any challenge to the sufficiency of the evidence raised on direct appeal." *Id.* The Court reviews the sufficiency of the evidence for correction of errors at law. *State* v. *Buman*, 955 N.W.2d 215, 219 (Iowa 2021). The same standard applies to issues of statutory interpretation. *State* v. *Copenhaver*, 844 N.W.2d 442, 447 (Iowa 2014).

A. It takes at least two persons to be an "assembly of people" and they must both be placed in reasonable apprehension of serious injury.

"In interpreting a statute, we first consider the plain meaning of the relevant language, read in the context of the entire statute, to determine whether there is ambiguity." *State* v. *Doe*, 903 N.W.2d 347, 351 (Iowa 2017). "If there is no ambiguity, we apply that plain meaning." *Id.* When a term is not defined by the legislature, the Court may look "to prior decisions of this court and others, similar statutes, dictionary definitions, and common usage." *Good* v. *Iowa Dep't of Hum. Servs.*, 924 N.W.2d 853, 860 (Iowa 2019). While the Court will interpret criminal statutes "reasonably

and in such a way as to not defeat their plain purpose…[i]t is not our role to change the meaning of a statute." *State* v. *Middlekauff*, 974 N.W.2d 781, 793 (Iowa 2022).

Iowa Code § 708.6(1) defines the offense of intimidation with a dangerous weapon with intent:

> A person commits a class "C" felony when the person, with the intent to injure or provoke fear or anger in another, shoots…or discharges a dangerous weapon…**within an assembly of people**, and thereby places **the…people in reasonable apprehension** of serious injury or threatens to commit such an act under circumstances raising a reasonable expectation that the threat will be carried out.

(emphasis added). The Court has interpreted the statute to require proof that the shooting happened "into or through two or more persons in the same place." *State* v. *Bush*, 518 N.W.2d 778 (Iowa 1994).

"Thus, there is no single victim involved in committing intimidation with a dangerous weapon with intent…the victim is the assembly of people as a whole." *State* v. *Ross*, 845 N.W.2d 692, 699 (Iowa 2014). While the State does not have to prove that everyone in the vicinity experienced reasonable apprehension of serious injury, "at a minimum the State must prove that when [the defendant] discharged his firearm he placed two persons in the assembly in reasonable fear." *Id.* at 701.

B. At best, the State offered proof that one person experienced reasonable apprehension. But that witness testified his fear was of the aftermath of the shooting, not the shooting itself.

The prosecutor explained to the jury who the State believed constituted the assembly of people. After playing a surveillance video of the shooting he said, "You

also see that there is an assembly, that there is a group of people there. There is the Defendant. There is Ricky Ledesma down there. There is the bouncer that's talked about. There is Willis Brown all there in that area, the sidewalk and the street area." D0203, Tr. Jury Trial Day 3 (afternoon session) at 6:18-22 (9/14/2023).

Brown is the older brother of Young. D0197 at 25:17-18. He was called as a defense witness. *Id.* at 24:23-24. During cross-examination he supported Young's claim of justification. *Id.* at 37:13; 38:3-4; 39:1-4. Despite having every opportunity to do so, the prosecutor never asked Brown if he feared for his safety when his brother fired the shots.

Ayala's brother, Ricky Ledesma, was called as a witness. D0195 at 81:1. The prosecutor never asked Ledesma whether he experienced any fear when the shots were fired. To the contrary, the prosecutor only established Ledesma was "no more than 10, 15 feet" away when the shots were fired. *Id*. at 86:23. The closest the prosecutor got to establishing fear was Ledesma's statement that he "ducked down" when the shots were fired. *Id.* at 87:10.

Ayala was called as a prosecution witness. D0195 at 45:21-22. The prosecutor extracted testimony that he felt fear from *having been shot* but did not specifically ask Ayala about being afraid *because of the shooting*:

A: I remember going to the ground and, yeah, I mean.

Q: Is that at the point that you were shot?

A: Yes.

Q: Okay. As far as being shot, did – does being shot scare you?

A: Yes.

Q: Did being shot scare you?

A: Oh, yeah.

Q: Were you worried that you were going to die?

A: Yes.

Id. at 52:1-10.

On cross-examination, trial counsel got Ayala to admit that he never saw a gun that night. *Id.* at 61:5-6. He did not know Young had a gun. *Id.* at 7-8. No one threatened him with a gun. *Id.* at 9-10. On redirect, perhaps sensitive to the cross-examination about Ayala's lack of knowledge of the gun, the prosecutor established that Ayala was actively fighting with Brown when the shooting happened. *Id.* at 64:9-65:1. The inference from the testimony was clear: Ayala was focused solely on the physical fight with Brown, not Young's approach with the handgun.

This was the extent of the prosecution's evidence about the assembly of people experiencing reasonable apprehension of suffering serious injury. "The bouncer" who was included in the prosecutor's description of the assembly was not called as a witness (or better identified in the transcript). The prosecutor's closing argument about this element only talked about Ayala's fear. D0203 at 18:15-24. He did not argue that anyone else felt fear from the shooting. *Id.* The State's proof on this point was therefore insufficient. Because the State did not prove each element of the offense beyond a reasonable doubt, the conviction on Count II must be reversed with instructions to the district court to dismiss. Iowa Code § 701.3, *In re Winship*, 397 U.S. 358 (1970), *State* v. *Robertson*, 351 N.W.2d 790, 791 (Iowa 1984).

C. The jury instruction failed to track the language of the statute by not requiring the State to show that each person in the assembly of people was placed in reasonable apprehension of serious injury. Because Young received ineffective assistance of counsel by failing to object to the instruction, the law-of-the-case doctrine cannot save the State's failure of proof.

The jury instruction only required the State to prove that "Joseph Ayala actually experienced fear of serious injury and his fear was reasonable under the circumstances." D0164 at 25.[2] This definition does not track the language in Iowa Code § 708.6(1) and is inconsistent with the Court's holding in *Ross* that at least two people must suffer the reasonable apprehension of serious injury. Trial counsel did not object to this instruction. D0195 at 150:15-18.

Ordinarily, unless there is a timely objection, "jury instructions become the law of the case for purposes of [the Court's] review of the record for sufficiency of the evidence." *State* v. *Canal*, 773 N.W.2d 528, 530 (Iowa 2009). Thus, the Court will review the evidence for sufficiency against the law as given to the jury. *Id.* at 531 ("[T]he instructions, as given, allow the jury to determine the contemporary community standards with respect to what is suitable material for minors.") But this rule does not apply when the defendant raises a claim of ineffective assistance of counsel in asserting the instructions were deficient. *Id.* at 530.

[2] The district court's instruction was drawn from Iowa Uniform Criminal Jury Instruction 800.13 which reads for this element, "(Victim) actually experienced fear of serious injury and [his/her] fear was reasonable under the existing circumstances."

The Court has not considered whether the amendments to section 814.7 prevent a defendant who argues there is insufficient evidence to sustain his conviction from raising an ineffective-assistance-of-counsel claim targeted solely at the law-of-the-case doctrine. In other words, is *Crawford* an exception to *Treptow*? After all, a defendant hardly needs to develop the record in postconviction relief proceedings to show that the jury instructions reduced the State's burden of proof. But this is an academic point, at best. The same rationale that permits, under the Supremacy Clause, a defendant to raise ineffective-assistance-of-counsel claims on direct appeal must also permit a defendant to avoid the law-of-the-case doctrine. The law-of-the-case doctrine cannot save a faulty jury instruction which would permit a defendant to be convicted without proof he committed each element of the offense charged. *Davis*, 951 N.W.2d at 17 (failure to object to marshalling instruction that omitted insanity defense was categorically ineffective assistance of counsel), *Cf.*, *State* v. *Murray*, 796 N.W.2d 907 (Iowa 2011) (affirming conviction for specific-intent offenses where jury was also given definition of general intent; defendant's failure to object to instruction on lesser-included offense of assault as a general intent offense did not cause prejudice).

III. When sentencing a first-time offender under Iowa Code § 902.7 for use of a dangerous weapon in a forcible felony, the district court has discretion to impose less than the five-year mandatory minimum sentence. Here, the district court did not explain why it found there were insufficient mitigating circumstances or show awareness it had such discretion. Should Young be resentenced?

Sentencing challenges are not subject to error preservation requirements. *State* v. *Cooley*, 578 N.W.2d 752, 754 (Iowa 1998). Review of the district court's sentencing decision is for an abuse of discretion. *State* v. *Bentley*, 757 N.W.2d 257, 262 (Iowa 2008). "A district court abuses its discretion when it exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable." *State* v. *Hill*, 878 N.W.2d 269, 272 (Iowa 2016). A "ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law." *Id.*

"The court shall state on the record its reason for selecting the particular sentence and shall particularly state the reason for imposition of any consecutive sentence." Iowa R. Crim. P. 2.23(2)(g). The rule "serves two purposes in our view. First, it ensures defendants are well aware of the consequences of their criminal actions. Second, it affords our appellate courts the opportunity to review the discretion of the sentencing court." *State* v. *Luke*, 4 N.W.3d 450, 456 (Iowa 2024) (cleaned up).

A. The district court had discretion to impose less than the five-year mandatory minimum for use of a dangerous weapon while participating in a forcible felony.

Young's criminal history was limited. He had a deferred judgment for theft in the third degree and a handful of simple misdemeanor convictions. D0199, Tr. Sent. at 10:16-18 (11/13/2023). Because he had not previously been convicted of a violation of Iowa Code § 902.7, the district could have, "at its discretion" sentenced Young "to a term less than provided by the statute if mitigating circumstances exist and those circumstances are stated specifically in the record." Iowa Code § 901.10. But nothing in the sentencing hearing transcript shows that the district court was aware of this discretion.

B. The prosecutor spoke of the five-year minimum term as "mandatory," and the district court said nothing about considering whether to impose less than that term. Precedent requires resentencing Young.

During the prosecutor's sentencing recommendation, he described the firearm enhancement as "mandatory" on three occasions. D0199 at 8:25, 9:11, 11:4. Defense counsel emphasized the many factors in mitigation, including that the shooting victim had started the violence by striking Young in the face, was fighting Young's brother when the shots were fired, Young's lack of violent history, and his family circumstances. *Id.* at 11:20, 12:2-4, 12:9, 12:24-13:10. Counsel then made a misguided request for a reduced sentence by asking the district court to impose an illegal sentence of an indeterminate term of not to exceed seven years. *Id.* at 14:4.

The district court then clarified with the prosecutor the State's recommendation. He stated the State recommended "ten-year sentences with five-year minimums on both consecutive." *Id.* at 18:1-2. The district court granted this request. After stating it was imposing prison sentences on each count, the court stated, "I further find a five-year minimum is applicable to both Counts I and II." *Id.* at 19:11-13. The district court never discussed its authority under section 901.10 to impose something less than a five-year mandatory minimum sentence on each count.

In *State* v. *Moore*, 936 N.W.2d 436, 439 (Iowa 2019), the Court considered the district court's obligation to "exercise its discretion when a sentence is not mandatory" when sentencing a defendant convicted under section 902.7. The district court was presented with mitigating circumstances at the sentencing hearing. The defendant was "a veteran, and he did serve in…a battlefield situation [and] has PTSD, anxiety, depression, a traumatic brain injury, and [was] on some pretty heavy medications." *Id.* at 438 (cleaned up). Defense counsel said there wasn't "too much wiggle room here" when describing the district court's sentencing option. "Neither the State nor defense counsel cited" section 901.10(1)'s grant of authority to the district court to impose a lesser sentence for the firearm enhancement. *Id.* at 439. The defendant argued he should be resentenced because the district court "failed to exercise its discretion." *Id.* at 440.

The Court noted there were two relevant precedents. In *State* v. *Russian*, 441 N.W.2d 374, 375 (Iowa 1989), the Court held that a sentencing court "is not required to note the absence of mitigating circumstances every time it declines to apply section 901.10." But in *State* v. *Ayers*, 590 N.W.2d 25, 29 (Iowa 1999), the Court

remanded for resentencing because "the record here is clear the sentencing court incorrectly believed it had no discretion as to the five-year mandatory minimum sentence requirement in section 902.7." "Based on our review of this record, we conclude this is an *Ayers*-type case." *Moore*, 936 N.W.2d at 440.

So, too, is Young's. As with *Ayers* and *Moore*, the discussion of the sentencing options before the district court were solely in the context of being mandatory. In *Ayers*, the district court described the weapon enhancement in mandatory terms. "Secondly, under the jury's finding under [the willful injury count] of the use of a dangerous weapon the Court *has* to impose a *mandatory* minimum term of no more than five years." *Ayers*, 590 N.W.2d at 27. This, and the "no wiggle room" statement in *Moore* are functionally no different from the district court's statement to Young that "I further find a five-year minimum is applicable to both Counts I and II." D0199 at 19:11-13.

Young's case is even more unlike *Russian* than *Moore* was. In *Russian*, the defendant "pleaded guilty to four charges: theft in the second degree, failure to appear, carrying weapons, and possession of heroin with intent to deliver." *Russian*, 441 N.W.2d at 374. "The State agreed [in the plea agreement] not to prosecute a charge of possession of cocaine with intent to deliver, and also agreed not to seek a habitual offender sentence." *Id.* The district court imposed the agreed-to sentence, running the sentence for the heroin charge consecutively to the concurrent prison sentences on the first three offenses. *Id.* The district court "did not invoke, nor even mention, section 901.10" when imposing the sentence on the heroin trafficking offense. *Id.*

The Court held the district court was not required to specifically say there were no mitigating circumstances. *Id.* at 375. The district court had given reasons for imposing sentences of imprisonment and added, "[c]onsecutive sentence is justified in these cases because of defendant's absolute and utter disregard for the law from the time defendant turned 18 in 1968. She has possibly seven or eight prior felonies, parole revocations and a poor incarceration record." *Id.* "This statement amply demonstrates the district court exercised its discretion when sentencing Russian." *Id.*

The district court's thorough explanation why it found no mitigating circumstances in *Russian* gave the Court confidence to affirm the sentence despite the failure to mention section 901.10. But the same confidence doesn't exist here. Because "the district court was unaware that it had discretion under section 901.10 to reduce section 902.7's five-year minimum term," Young must be resentenced. *Moore*, 936 N.W.2d at 440.

CONCLUSION

Under Count I, the Court should reverse Young's conviction and remand for new trial with instructions that the district court properly instruct the jury on Young's defense of justification. Under Count II, the Court should reverse and remand for entry of a judgment of acquittal. In the alternative, the Court should reverse and remand for a new sentencing hearing with instructions that the district court consider whether there are mitigating circumstances to justify not imposing the mandatory minimum sentence under Iowa Code § 902.7.

REQUEST FOR ORAL SUBMISSION

Young requests that this appeal be submitted for oral argument.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains **9,197** words, excluding parts of the brief exempted by that rule.

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