

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**State of Iowa,
Plaintiff,**

Vs.

**Sera Virilinda Alexander,
Defendant.**

Case No. FECR 305566

**RULING ON ADJUDICATION
OF LAW POINTS**

I

Anthony Hartmann was shot and killed on May 8, 2017. The State charged the Defendant with murder the next day. The trial information was filed on June 16, 2017. On July 11, 2017, Defendant gave notice of her intent to rely on the "stand your ground" amendments to Iowa justification law. The case is scheduled for trial in December 2017.

On April 13, 2017, Governor Branstad signed into law amendments to Iowa Chapter 704, the defense of justification in Iowa.

Defendant filed a motion for adjudication of law points asking the Court to hold that the defense can be raised in a criminal case pending prior to the effective date of the statute.

Defendant notes the amended law expands her right to use deadly force. The State resists.

The effective date of the pertinent amendments is not stated in the act, i.e. silent as to the effective date for the remainder of its provisions. The Iowa Constitution provides that "an act of the general assembly passed at a regular session of a general assembly shall take effect on July 1 following its passage unless a different effective date is stated in an act of the general assembly." Art. 3, § 26. Iowa Code Section 4.5 provides: "A statute is presumed to be prospective in its operation unless expressly made retrospective."

Defendant argues that application of the amendment should be retrospective because of the "ameliorative amendment clause." Iowa Code § 4.13(2) states, "If the penalty, forfeiture, or

punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended."

Defendant contends the amendments' liberalization of the use of deadly force and granting of immunity decriminalizes certain conduct and therefore does not merely reduce punishment, but could under some circumstances eliminate punishment altogether. Defendant notes claims "[s]ection 4.13 should apply whether the reduction in punishment is accomplished directly or indirectly." *State v. Chrisman*, 514 N.W.2d 57, 62 (Iowa 1994).

Iowa Code Chapter 704, as amended, expands the right to use deadly force by eliminating "alternative course of action" language from the law of justification. It allows the use of deadly force even if the user is wrong in perceiving the danger faced, so long as the belief is reasonable. It strips from Iowa law the duty to retreat if lawfully in a place when the threat arises. And it indicates that pointing a firearm at another is not the use of deadly force. The new law also grants criminal and civil immunity to the person exercising the deadly force.

II

Does Iowa Code Section 704.13 apply to the trial of a murder that took place prior to Section 704.13 becoming law? The law grants immunity from criminal prosecution for an individual who is "justified in using reasonable force against an aggressor in defense of oneself, another person, or property."¹ Defendant claims that the Court should retroactively apply the law because it modifies the punishment or sentence of the defendant.² Alternatively, she states

¹ Iowa Code § 704.13.

² Iowa Code § 4.13.

that retroactive justification is justified because the law is procedural or remedial.³ Neither claim has merit.

Iowa Code Section 4.13 is inapplicable to the current case. The Code section states that, “[t]he reenactment, revision, amendment, or repeal of a statute does not affect . . . [a]ny violation of the statute.”⁴ The defense has argued that subsection 2 of the statute dictates that the immunity from Section 704.13 should apply.⁵ She relies on *State v. Chrisman*, where the Iowa Supreme Court noted that modifications to a law that reduce penalties apply to cases still pending.⁶

Chrisman only applies “once the legislature has determined that certain conduct warrants a less severe punishment.”⁷ The legislature did not change the range of punishments available for 1st degree murder or change the elements of the crime.⁸ Nor does the amendment “reenact[], revis[e], or amend[]” Iowa Code Section 704.13, which is a new law that came into being for the first time on July 1, 2017.⁹ The Court agrees with the State that the broadening of circumstances under which justification is a defense to a criminal charge is not tantamount to a reduction in punishment.

Legislative intent controls whether or not a law applies retrospectively or prospectively.¹⁰ Laws are assumed to apply prospectively unless “expressly made retroactive.”¹¹ This presumption in favor of prospective application does not apply to procedural or remedial laws.¹²

³ *Dindinger v. Allsteel, Inc.*, 860 N.W.2d 557, 563 (Iowa 2015).

⁴ Iowa Code § 4.13(1).

⁵ *Id.* (“If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment if not already imposed shall be imposed according to the statute as amended.”).

⁶ 514 N.W.2d 57, 62 (Iowa 1994).

⁷ *Id.*

⁸ *Id.* (noting that these are the considerations used to determine legislative intent for retroactive application).

⁹ Iowa Code § 4.13.

¹⁰ *Iowa Beta Chapter of Phi Delta Theta Fraternity v. State*, 763 N.W.2d 250, 266 (Iowa 2009).

¹¹ Iowa Code § 4.5; *See also Anderson Fin. Servs., LLC v. Miller*, 769 N.W.2d 575, 578 (Iowa 2009) (discussing the requirement for “express language or . . . necessary and unavoidable implication”).

¹² *City of Waterloo v. Bainbridge*, 749 N.W.2d 245, 249 (Iowa 2008) (“remedial or procedural statutes are exceptions to this rule and *may be applied retrospectively*”) (emphasis added).

If laws are procedural or remedial, courts may apply them retrospectively.¹³ Remedial laws provide or modify a private remedy for a party to address a wrong or harm.¹⁴ Since section 704.13 provides immunity from prosecution rather than grant a party a remedy, it does not qualify as a remedial law. Procedural laws “afford[] the practice, method, procedure, or legal machinery by which a person may enforce the substantive law.”¹⁵

Unlike procedural or remedial laws, substantive law “creates, defines, and regulates rights” or destroys previously existing rights.¹⁶ Substantive law may not be applied retroactively. The mere fact that a substantive statute includes (or by their absence would require the Court to fashion) procedures for vindicating a new right does not defeat this distinction.¹⁷ If a law as applied would make a new right or destroy a previously existing one, it only applies prospectively.¹⁸

Iowa Code Section 704.13 grants individuals using reasonable force immunity from “criminal or civil liability” for damages to an initial aggressor.¹⁹ This section grants defendants a privilege against prosecution that did not exist prior to July 1, 2017. The immunity contained in Section 704.13 is independent of any other defenses based on reasonable force, such as those in Iowa Code Section 704.3.²⁰ Unlike an affirmative defense, which is an excuse offered at trial that acts as a defense against conviction, immunity functions as a separate defense against

¹³ *Id.*

¹⁴ *Dindinger*, 860 N.W.2d at 563 (quoting *Anderson*, 769 N.W.2d at 578).

¹⁵ *Bainbridge*, 749 N.W.2d at 249.

¹⁶ *Id.*; *Dindinger*, 860 N.W.2d at 563 (noting that a substantive statute “creates new rights or obligations”).

¹⁷ *Secrest v. Galloway Co.*, 239 Iowa 168, 172, 30 N.W.2d 793, 796 (1948) (where a statute providing for statutes of limitation was found to be substantive), *Bainbridge*, 749 N.W.2d at 249 (identifying Iowa Code Section 657A.10A(5) as substantive, despite containing provisions for filing times and procedure), *Phi Delta Theta Fraternity*, 763 N.W.2d at 266 (finding a civil immunity statute to be substantive despite containing procedural provisions).

¹⁸ *Dindinger*, 860 N.W.2d at 563.

¹⁹ Iowa Code § 704.13.

²⁰ Iowa Code § 704.3 (Defense of Self or Another).

prosecution at all.²¹ Such a protection did not exist when the defendant was charged with murder.²²

That the grant of immunity is independent from any other existing right is also clear from legislative history. In the same act the Iowa Legislature used to create Section 704.13, they modified the text of the existing self-defense statute for using deadly force.²³ The legislature chose to add the separate privilege of immunity at the same time they made their desired modifications to the affirmative self-defense statute. The legislature constructed a new law. This choice to add a section to the existing code manifested an intent to create a new and separate right rather than merely modifying procedure.

III

The “stand your ground” defense and grant of immunity in Section 704.13 is substantive law. The fact that the Court would have to craft a procedure for implementing this new right does not transform the code amendments into a procedural statute.²⁴ The Iowa Supreme Court has applied statutes that contain procedural rules for implementing their substantive law prospectively.²⁵ Because “stand your ground” and the immunity granted in Section 704.13 accord substantive rights and did not exist at the time of the defendant’s alleged actions, they are inapplicable in this case.

²¹ See Jennifer Randolph, How to Get Away With Murder: Criminal And Civil Immunity Provisions in “Stand Your Ground” Legislation, 44 SETON HALL L. REV. 599, 608 (2014) (distinguishing affirmative defenses from immunity); See also Black’s Law Dictionary 817 (9th ed. 2009), Immunity (defining immunity as “any exemption from a duty, liability, or service of process”).

²² Iowa Code § 704.13 became effective July 1, 2017. The events leading to the death of the alleged victim took place two months prior (June 2015). See Criminal Complaint, FECR305566.

²³ See 2017 (87 G.A.) H.F. 517, § 41, eff. July 1, 2017.

²⁴ *Bainbridge*, 749 N.W.2d at 249; *Phi Delta Theta Fraternity*, 763 N.W.2d at 266.

²⁵ *Id.*

While Chapter 704, as amended, does not apply in this case, several potential infirmities in the law were evidenced during counsels' argument.

IV

It is the statute's reference to immunity that raises the spectre of potential problems. See *People v. Guenther*, 740 P.2d 971, 978 (Colo. 1987), where the Colorado Supreme Court held that the stand-your-ground statute created a need for a pretrial determination of a defendant's immunity from prosecution. The immunity provision of Iowa's new law reads "[a] person who is justified in using reasonable force against an aggressor in defense of oneself...is immune from criminal or civil liability for all damages incurred by the aggressor pursuant to the application of reasonable force." Iowa Code 704.13 (2017).

The immunity provision in Iowa's law, not unlike that in similar statutes recently passed in other states, raises constitutional issues also attending those of other states' laws.

Defendant claims that the ambiguity of the statute's immunity provision implicates the rule of lenity, the rule "which directs that criminal statutes are to be strictly construed in favor of the accused." *State v. Hearn*, 797 N.W.2d 577, 586 (Iowa 2011). Defendant contends she should be allowed the stand-your-ground defense in this case because the immunity provision is ambiguous.

The immunity provision of Iowa's statute raises questions but provides no answers. Immunity is a term well known to the law. "Immunity" is a bar to prosecution or freedom from or exemption from the legal process of criminal prosecution. This is a judicial decision made before conviction, and most often before trial. But what "criminal...damages incurred by the aggressor" are subject to this immunity? Court costs associated with the prosecution? Fines? Restitution amounts? Or, the act of prosecution itself?

How would the immunity be determined? In a pretrial hearing, such as that utilized in Colorado? What burden of proof must be met to permit immunity from "criminal...liabilities" or "criminal damages"? Who carries the burden of proof? What is the burden of proof?

The immunity provision accords rights and evidentiary presumptions to a defendant with no procedural means of protecting those rights or evaluating those presumptions.

This is more than ambiguity. A basic component of due process of law is to prohibit the enforcement of vague statutes. A statute is constitutionally vague if it does not give a person of ordinary understanding fair notice of conduct that is prohibited. Due process also requires that authorities have sufficient guidance to prevent them from exercising their power in an arbitrary or discriminating manner. A statute cannot sweep so broadly as to prohibit substantial amounts of constitutionally protected activities. *State v. Nail*, 743 N.W.2d 535, 539.

Suffice to say, no procedural component is described in this statute by which a court could make a preliminary decision relating to immunity from prosecution.

A number of statutes have recently enacted "stand your ground" laws. Some have included immunity provisions; some have not. Those that have included the provision, like Iowa, have not defined the procedure for courts to use in identifying under what circumstances a person would be found to be immune from prosecution.

The different states that have addressed this question have taken varying approaches. These differing procedures are well-described in the law review article included with defendant's brief, *How to Get Away With Murder: Criminal and Civil Immunity Provisions in "Stand Your Ground" Legislation*, 44 Seton Hall L. Rev. 599 (2014).

When faced with a claim that a statute is unconstitutionally vague, the Court presumes the law is constitutional and gives it "any reasonable construction" to uphold it. *State v. Nail* at

539. Courts must work to save a statute from a void-for-vagueness infirmity. This is to be done on the basis of other "statutes and pertinent case law, rather than the subjective expectations of particular defendants based on incomplete legal knowledge." *Nail* at 540.

Here, the legislature has accorded criminal defendants new rights and limited the State's authority to charge, arrest, try, and punish its citizens. The legislature has also created evidentiary benefits for those citizens as it relates to those rights.

What the statute does not do, however, is identify the legal procedure by which those rights are protected, nor how the relevant evidence concerning those rights is to be adjudged.

For a Court to create such a procedure, dictate burdens of proof, and assign those burdens among the parties would be unwise, constitutionally impermissible, and a failure to exercise judicial restraint.

Perhaps another judge addressing this issue would design a different procedure, or accord different burdens of proof between the parties. The net result would be a "stand your ground" law subject to the exercise of judicial authority that could be inconsistent, arbitrary, and discriminating in its application.

As written, the amendment to Iowa Code Section 704, commonly referred to as the "stand your ground" law, appears to be void for vagueness and violation of due process of law.

The immunity provision, in the absence of defined terms, procedural safeguards, and evidentiary burdens of proof, prevents the courts from determining under what circumstances this defense can be utilized in a criminal case and under what circumstances a court can grant immunity from prosecution. This procedural component is necessary to the fair operation of this statute, and the defense cannot be fairly utilized in our courts in its absence.

V.

The defendant in this case may not rely on the amended Iowa Code Chapter 704 "stand your ground" defense because that law was prospective in nature. The Court takes no position with regard to the constitutionality of the new law, as such a finding is not necessary to the resolution of the issue at bar.

SO ORDERED.

Robert J. Blink, Judge



State of Iowa Courts

Type: OTHER ORDER

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FECR305566 STATE VS SERA VIRLINDA ALEXANDER

So Ordered

A handwritten signature in black ink, appearing to read "R. J. Blink". The signature is written in a cursive style and is positioned above a horizontal line.

Robert J. Blink, District Court Judge,
Fifth Judicial District of Iowa