
LEGAL UPDATE

Legal Services Division



Ground Floor, State Capitol Building

Des Moines, Iowa 50319

515.281.3566

IOWA SUPREME COURT DECISION — PRIVILEGE AGAINST SELF-INCRIMINATION AND STAND-YOUR-GROUND LEGISLATION

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

State v. Gibbs
Filed April 17, 2020
No. 18-1298

www.iowacourts.gov/iowa-courts/supreme-court/supreme-court-opinions/case/18-1298

Factual and Procedural Background. On September 3, 2017, Levi Gibbs III shot and killed Shane Wessels during a fight involving several other individuals, including Gibbs's sister, Latricia Roby. It was reported that Gibbs left the fight to retrieve a gun from his car. Wessels continued to be attacked by other individuals present. Wessels was knocked to the ground. He then got up and said he was done with the fight and began to retreat. Gibbs returned with the gun and shot Wessels. Wessels died at the scene from a single gunshot wound.

A law enforcement digital camera located near the scene captured the shooting, and a call to 911 identified Gibbs as the shooter. There were also many eyewitnesses to the shooting. Despite the evidence, Gibbs repeatedly denied that he had shot Wessels.

Despite the denials, Gibbs asserted a justification defense and maintained that he was acting in defense of his sister, Roby. Without objection, the state presented evidence regarding Gibbs's flight from the scene; his failures to report his use of deadly force, to produce his clothing from the night of the shooting, and to produce his gun from the shooting; his repeated denials of shooting Wessels; and his recorded interviews with law enforcement. Further, several eyewitnesses confirmed that Gibbs shot Wessels as he was standing unarmed and backing away from the confrontation.

Over Gibbs's objection, the district court gave a jury instruction that paraphrased Iowa Code section 704.2B. The instruction read: "A person using deadly force is required to notify or cause another to notify a law enforcement agency about his use of deadly force within a reasonable time period after the use of the deadly force, if the Defendant or another person is capable of providing such notification. A person using deadly force is also required to not intentionally destroy, alter, conceal, or disguise physical evidence relating to the person's use of deadly force, and a person using deadly force cannot intentionally intimidate witnesses into refusing to cooperate with any investigation relating to the use of such deadly force or induce another person to alter testimony about the use of such deadly force." Gibbs contended that this jury instruction violated his rights under the Iowa Constitution and the Fifth and Fourteenth Amendments to the United States Constitution, or if the jury instruction were to be given, it should have included language that the failure to notify law enforcement did not bar Gibbs's justification defense. The jury instruction was given without any modification.

The jury found Gibbs guilty of the lesser-included offense of murder in the second degree. Gibbs was sentenced to 50 years in prison. Gibbs appealed that decision to the Iowa Supreme Court (Court) and argued that Iowa Code section 704.2B on its face violates the privilege against self-incrimination; that the district court's jury instruction paraphrasing Iowa Code section 704.2B was improper; and that, at a minimum, the district court should have included his requested language in the jury instruction that failure to notify law enforcement does not bar a justification defense.

Issues.

1. Whether Iowa Code section 704.2B(1) on its face improperly penalizes a homicide defendant's silence?
2. Whether giving a jury instruction based on Iowa Code section 704.2B improperly penalizes a homicide defendant's silence?
3. Whether any error that occurred was harmless beyond a reasonable doubt?

Holding. The Court held that instructing the jury that a homicide defendant is required to notify a law enforcement agency of the defendant's use of deadly force violates the defendant's Fifth Amendment privilege against compulsory self-incrimination. However, in this case, any error was harmless beyond a reasonable doubt because the evidence of the defendant's guilt was overwhelming and the evidence of the defendant's justification was weak.

Analysis. The Fifth Amendment to the United States Constitution provides that no person shall be compelled in any criminal case to be a witness against the person's self. The Fifth Amendment privilege against compulsory self-incrimination is applicable to the states through the Fourteenth Amendment to the United States Constitution. The Iowa Supreme Court (Court) has held that the right to be free from compulsory self-incrimination is protected by the Due Process Clause of the Iowa Constitution.

The United States Supreme Court has found that the Fifth Amendment can be violated even without the government directly coercing testimony from a defendant. It also forbids the use of a penalty that may compel a defendant to offer testimony against the defendant's self. The Court also reviewed and analyzed Court cases which have addressed failure-to-report laws that criminalize a defendant's silence in certain situations. The Court has found that the willful refusal to file a tax return as required by the Internal Revenue Service was not protected by the Fifth Amendment; that requirements that United States citizens who are members of the Communist Party must register with the Subversive Activities Control Board violate the Fifth Amendment; and failure to remain at the scene of an accident because of the fear that it may lead to a criminal charge is not protected. The state argued that Gibbs's case was different because failure to comply with Iowa Code section 704.2B does not carry a criminal penalty. The Court agreed with the state and, therefore, did not decide whether Iowa Code section 704.2B, on its face, violates the Fifth Amendment.

The Court then looked at how Iowa Code section 704.2B was used in the jury instruction in Gibbs's case. The first paragraph of the jury instruction read as follows: "A person using deadly force is required to notify or cause another to notify a law enforcement agency about his use of deadly force within a reasonable time period after the use of the deadly force, if the Defendant or another person is capable of providing such notification." The use of this jury instruction creates a dilemma for a defendant who has used deadly force. The Court stated that, in the case of a defendant who used deadly force, the jury instruction puts the defendant in the position of having to give up the defendant's right to remain silent, or, in a subsequent prosecution, facing a jury informed that the defendant violated the law in not informing law enforcement about the defendant's use of deadly force. The Court held that the jury instruction imposed an improper penalty on the exercise of the defendant's constitutional right to remain silent.

The Court then turned to the issue of whether, given that such a constitutional violation occurred, any error was harmless beyond a reasonable doubt. The Court found that the evidence of guilt in this case was overwhelming. The murder was captured on video which showed Gibbs shooting the victim, who was backing up and withdrawing, and eyewitnesses corroborated the evidence in the video.

Concurrence. Justice McDonald filed a special concurrence in which he concluded the defendant failed to establish a violation of his constitutional rights, but would affirm the defendant's conviction. He argued that the Court should end the practice of allowing counsel to allege a violation of the Iowa Constitution and the United States Constitution and then discuss only the federal standard under the assumption that the standards are the same. He noted that the textual differences between the United States Constitution and the Iowa Constitution regarding the compulsory privilege against self-incrimination have resulted in different doctrines. He stated that the Iowa Constitution does not prohibit the district court from instructing the jury that it may draw an adverse inference from the defendant's silence at trial, but federal constitutional law prohibits this practice. Further, the Iowa Constitution does not prohibit the district court from instructing the jury that it may draw an adverse inference from the defendant's pretrial silence, but federal constitutional law on this issue appears unsettled.

Justice McDonald also disagreed with the majority's conclusion finding that the jury instruction, standing alone, creates an unconstitutional penalty on the exercise of the defendant's right to remain silent. He noted that the defendant had numerous communications with the police prior to his arrest including phone calls, text messages, and two voluntary interviews, and at no point did the defendant invoke his privilege against self-incrimination which should have defeated the defendant's Fifth Amendment claim.

LSA Staff Contact: Adrienne Seusy, 515.281.3444 or adrienne.seusy@legis.iowa.gov

Doc ID 1138208