

IN THE COURT OF APPEALS OF IOWA

No. 7-102 / 96-889

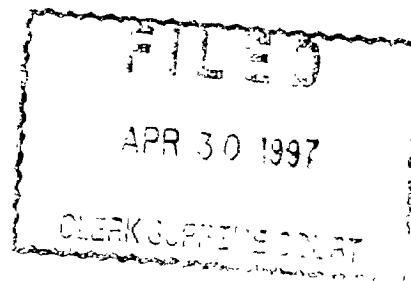
STATE OF IOWA,

Appellee,

vs.

JOHN L. BROWN,

Appellant.



Appeal from the Iowa District Court for Polk County, Matthew M. McEniry,
Judge.

Defendant appeals from judgment and sentence entered, following jury trial,
upon his conviction of domestic abuse assault. **AFFIRMED.**

Carole L. Hunt of Rosenberg Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney
General, John P. Sarcone, County Attorney, and Mark J. Sandon, Assistant County
Attorney, for appellee.

Considered by Sackett, P.J., Cady, and Vogel, JJ.

PER CURIAM.

This is an appeal by a defendant challenging his conviction for domestic abuse assault, in violation of Iowa Code section 708.2A(3)(b) (1995). We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On January 20, 1996, John Brown went to the Casa Bella Adult Motel with Mary Booker. Brown struck Booker several times. When Brown and Booker went to a nearby convenience store to get more beer, Booker whispered to the store clerk she had been beaten. Later, Booker was able to get to a telephone to call 911. Before she could talk to anyone, Brown dragged her back to the room. Police officers were able to trace the call and rescue Booker.

Brown was charged with domestic abuse assault. He relied on the defenses of intoxication and self-defense. A jury found Brown guilty of the crime charged. He now appeals.

Brown claims the district court violated his due process rights when it denied his request to amend the jury instruction on self-defense. He believes the uniform instruction on self-defense, Uniform Iowa Criminal Jury Instruction 400.2, incorrectly and incompletely stated the applicable law pertaining to self-defense. The uniform instruction states:

A person is justified in using reasonable force if he reasonably believes the force is necessary to defend himself from any immediate use of unlawful force.

If the State has proved any one of the following elements, the defendant was not justified:

- 1) The defendant started or continued the incident which resulted in injury.
- 2) An alternative course of action was available to the defendant.
- 3) The defendant did not believe he was in imminent danger of death or injury and the use of force was not necessary to save him.
- 4) The defendant did not have reasonable grounds for the belief.
- 5) The force used by the defendant was unreasonable.

Iowa Criminal Jury Instructions No. 400.2 (1988).

He asserts the court should have given this proposed instruction:

A person is justified in using reasonable force if he reasonably believes that force is necessary to defend himself against the immediate use of unlawful force. However, a person must use no more force than appears reasonably necessary in the circumstances.

We review the failure to give a requested instruction for an abuse of discretion.

State v. Holtz, 548 N.W.2d 162, 164 (Iowa App. 1996). Moreover, any error in jury instructions must be prejudicial to warrant reversal. *Id.* We are generally reluctant to disapprove uniform jury instructions. *State v. Beets*, 528 N.W.2d 521, 523 (Iowa 1995).

We find no abuse of discretion in the present case. The uniform instruction adequately sets forth the law in this area. The uniform instruction is more specific than defendant's proposed instruction.

Brown also raises an argument that the jury instruction should have contained a provision that he was not required to retreat from his dwelling place. Brown states that because he paid for the motel room, it should be considered his dwelling place. We do not believe Brown preserved error on this argument because it is not contained in his proposed jury instruction. Even if Brown had preserved error on this issue, we do not believe his room at the Casa Bella should be considered his dwelling place.

We affirm Brown's conviction for domestic abuse assault. Costs of this appeal are assessed to Brown.

AFFIRMED.