

SUPREME COURT
STATE OF COLORADO

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On Certiorari to the Colorado Court of
Appeals
Court of Appeals Case No. 2013CA1604

Petitioner,

THE PEOPLE OF THE STATE OF
COLORADO,

v.

Respondent,

SHEILA RENEE MONROE.

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Case No. 2018SC708

PEOPLE'S REPLY BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

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It contains 870 words (principal brief does not exceed 9500 words; reply brief does not exceed 5700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Matthew S. Holman

Signature of attorney or party

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ARGUMENT

I. Colorado’s “no duty to retreat” rule is not so broad that it precludes consideration of the defendant’s ability to leave when evaluating a claim of self-defense.

The defendant contends that, because Colorado follows the “no duty to retreat” rule, jurors cannot consider whether a defendant has an available avenue to leave in assessing whether the defendant acted in self-defense. However, the “no duty to retreat” rule is not so broad that it abrogates consideration of an ability to leave, and a jury properly considers the ability to leave – or an inability to leave – in determining whether a defendant acted in self-defense under the totality of the circumstances.

Both Colorado’s self-defense statute and case law demonstrate that the “no duty to retreat” rule does not abrogate or circumscribe consideration of the defendant and victim’s physical proximity, the presence or absence of available avenues of egress, or an ability or inability to leave in determining whether the defendant reasonably believed that she was faced with an imminent use of unlawful physical

force and that she used a degree of force she reasonable believed necessary to defend herself. Section 18-1-704(1), C.R.S. (2019).

While Colorado follows the “no duty to retreat” rule, and Colorado’s self-defense statute codifies the common law, the statute in no manner precludes or limits consideration of the defendant’s ability to leave in determining whether she reasonably believed she needed to act in self-defense. *See*, §18-1-704(1); *People v. Toler*, 9 P.3d 341, 348-349 (Colo. 2000); *Idrogo v. People*, 818 P.2d 752, 754-755 (Colo. 1991).

The “no duty to retreat” rule simply provides that a defendant need not first retreat to the wall before acting in self-defense. In other words, retreat is not a precondition to self-defense. The English common law required a person to “retreat to the wall” before using deadly force in self-defense. “Under the ‘retreat to the wall’ doctrine, a person is entitled to employ deadly force in self-defense only if the person demonstrated that no reasonable means of escape existed at the time he killed his assailant.” *Toler*. 9 P.3d at 347. “Colorado does not impose a duty to retreat before a person may use physical force in self-defense.” *Toler*, 9 P.3d at 348.

The “no duty to retreat” rule does not restrict the requirement that the defendant’s act of self-defense be reasonable.

The long-established rule in Colorado is that an innocent victim of assault need not retreat before using deadly force if the victim believes the use of such force is necessary for self-protection and the belief is based on reasonable grounds. This rule remains the majority view in this country. *Brown v. United States*, 256 U.S. 335, 41 S.Ct. 501, 65 L.Ed. 961 (1921); *People v. Gonzales*, 71 Cal. 569, 12 P. 783 (1887); *Runyan v. State*, 57 Ind. 80 (1877); *Haynes v. State*, 451 So.2d 227 (Miss.1984); *Voight v. State*, 53 Tex. Crim. 268, 109 S.W. 205 (1908); *People v. Johnson*, 75 Mich. App. 337, 254 N.W.2d 667 (1977).

Idrogo, 818 P.2d at 756-757. Simply because a defendant need not retreat before acting in self-defense does not excuse her from the requirement that her belief in the need to act in self-defense be reasonable. As set forth in the People’s opening brief, courts in this jurisdiction and in others have recognized the relevance of an ability to leave in the context of self-defense. *See, e.g., People v. Martinez*, 224 P.3d 1026 (Colo. App. 2009), *aff’d on other grounds, Martinez v. People*, 244 P.3d 135 (Colo. 2010); *People v. McGee*, 287 Ill. App. 3d 1049, 679

N.E.2d 796, 800 (Ill. App. Ct. 1997); *People v. Crow*, 128 Mich. App. 477, 340 N.W.2d 838, 844 (Mich. Ct. App. 1983).

It is difficult to envision how a jury could assess the reasonableness of a defendant's belief that she needed to act in self-defense without considering the ability or inability to leave an encounter, the physical proximity of the defendant and the victim, or the movement toward or away from one another. In this case, the defendant holding a knife, got out of her seat, stood over the seated victim, and moved toward him before stabbing him in the neck.

The prosecutor argued that the surrounding circumstances, including the ability to move away from the encounter rather than move toward the victim, demonstrated that the defendant was not in fear for her safety and that she was not acting in self-defense. The defense, on the other hand, argued that the surrounding circumstances, including that it was a crowded, moving bus and that the defendant did not have a lot of places to go, supported her claim of self-defense. All of these circumstances are properly considered in determining whether a

defendant acted in self-defense, and the “no duty to retreat” rule does not prevent their consideration.

As set forth in the People’s opening brief, the prosecutor’s arguments were proper, and the trial court’s instructions correctly informed the jury that the defendant had no duty to retreat and of the limited purpose of the prosecution’s arguments.

CONCLUSION

For the foregoing reasons and authorities, and those in the Opening Brief, the decision of the court of appeals should be reversed and the judgment of conviction and sentence should be affirmed.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **REPLY BRIEF** upon **ANNE T. AMICARELLA** via Colorado Courts E-filing System (CCES) on January 10, 2020.

/s/ Tiffiny Kallina
