

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

STATE OF IOWA,	)	
	)	
<i>Plaintiff,</i>	)	<b>NO. FECR116476</b>
	)	
vs.	)	
	)	
LAMAR CHEYEENE WILSON,	)	<b>RULING</b>
	)	
<i>Defendant.</i>	)	

By Ruling entered November 3, 2017, this Court reserved for later ruling the issue of Defendant's reliance on Iowa Code § 704.13 to argue that he is immune from prosecution and that the criminal charges against him should be dismissed. § 704.13 provides: "A person who is justified in using reasonable force against an aggressor in defense of oneself, another person, or property pursuant to Section 704.4 is immune from criminal or civil liability for all damages incurred by the aggressor pursuant to the application of reasonable force."

In general, Defendant contends that his testimony along with that of Ronnay Creed, Iamani Smith, and Donte Taylor establishes, by a preponderance of the evidence, that he was justified in using reasonable force in this situation.

In response, the State contends Defendant has failed to meet his burden of proof based upon the testimony of Nathaniel Whirl, Xavier Hicks, D'Andre Hicks, Donte Taylor and Maxwell Woods.

In support of their respective positions, both parties filed summaries of witness testimony from the trial (State's Summary of Witness Testimony filed for were 19, 2018; Defendant's Summary of Testimony for Hearing filed February 20, 2018) which I have read and considered.

The evidence presented clearly establishes a history of ill will and some violence between two groups - one from Iowa City and the other from Cedar Rapids- who were involved in the shooting on the Iowa City ped mall on August 27, 2017. Lamar Wilson was a member of the Iowa City group, also known as ABK. Some of the people present from Cedar Rapids were members of the MAC group, which formed after the shooting and murder of Tasha Roundtree in Cedar Rapids. Following her murder, Daquan Jefferson (Cutthroat) posted a derogatory video about her. On or about August 26, Daquan Jefferson died in a car accident prompting a derogatory Facebook message by Donte Taylor. The two groups then ran into each other in the early morning hours of August 27 on the ped mall.

The following testimony has been considered by the Court in reaching its conclusions:

1. Defendant, Lamar Wilson, gave a video recorded statement to the Iowa City Police Department following the shooting. The statement was admitted into evidence at trial and is, therefore, considered evidence the same as if Defendant Wilson testified at trial. Wilson testified he had two guns on him that night and has a license to carry. He acknowledged shooting his gun and indicated he hit the “dark-skinned guy with dreads” only because he had a gun. Wilson also saw another guy with dreads who had a gun in his pocket the whole time.

Wilson testified that the look in the other man’s eyes told him he was going to start shooting. When asked if these individuals said anything to him as they walked by, Wilson responded “subliminal.” He also said “and once he -- once he seen me, I was pointing, he seen I’m going to reach for it.” When asked if the other individual pulled out his gun, Wilson responded “Yeah. Like he -- probably. When I saw it, I think it dropped. I heard some metal hit the ground. He had it right in his palm.”

2. Iamani Smith testified that she is Lamar Wilson’s sister, and that they were living together at 2220 Arizona Avenue, Iowa City prior to August 27, 2017. She was present on the Iowa City ped mall that evening. She saw a man (from the Cedar Rapids group) standing outside Brothers holding a gun in his shirt - “I saw him holding the gun. It was like in his shirt, kind of, but I saw the handle.” She admits to not previously telling anyone during her police interview or her previous deposition about seeing the handle of a gun being held by the man in front of Brothers.

She then moved over to the tunnel and heard Lamar Wilson give a warning. She described a person with a gun having shoulder-length dreads, light T-shirt, dark-colored jeans and a white coat. She identified this person as Donte Taylor from subsequent news accounts. She saw him point a gun at Lamar Wilson and also the crowd. When she saw this, she was standing right next to Lamar Wilson.

3. Ronnay Creed testified that she has been Lamar Wilson’s girlfriend since approximately February 2017, and was also present on the mall the early morning hours of August 27, 2017. She saw a man wearing a white jacket (white and black jacket) pointing a gun at Lamar Wilson. She cannot describe his hair nor would she recognize him again if she saw him. She did not see anyone get shot. During August 26, 2017, while present at a vigil for Daquan Jefferson, she smoked marijuana with Iamani Smith.
4. Nathaniel Whirl testified he was downtown Iowa City on the ped mall the evening of August 26 and the early morning hours of August 27. He was standing by the taco cart, right across from the walkway (tunnel) by the Sheraton, when he heard gunfire.

Prior to that, he observed multiple people arguing in the breezeway. He heard escalating voices and was concerned there was going to be a fight. He identified Defendant Wilson as Big Man, having seen him before. When he initially saw Defendant, he did not have a gun in his hand. He then saw Defendant with a gun in his hand shooting through the walkway towards Dubuque Street approximately six times. He observed a man wearing red get shot and crumble to the ground. He did not see anyone else with guns. After Defendant shot multiple times, he saw Defendant run towards the Iowa City Library.

5. Xavier Hicks was also on the ped mall in Iowa City that evening. He went there with a group of people who had been watching a boxing match in Cedar Rapids including Kaleek Jones, Dunte Blair, Donte Taylor, D'Andre Hicks, and Maxwell Woods. Several females came over to his group and started an aggressive conversation concerning the death of Daquan Jefferson (Cutthroat). Kaleek Jones stepped in between the females and Dunte Blair, and everybody seemed to cool down. The discussion ended with several females hugging Kaleek and leaving.

Xavier's group decided to leave and walk towards the tunnel. Defendant's group was near the tunnel, and this witness heard Defendant Wilson ask his group "Who said fuck Cutthroat?" Xavier's group had passed Defendant Wilson but turned around at that statement, and D'Andre Hicks and Defendant started talking. He then saw Defendant pull out a gun and with no hesitation, shoot D'Andre. This witness was then shot in the chest. He continues to suffer nerve damage in his hand from being shot. He did not see either D'Andre Hicks or Kaleek Jones with a weapon that night. Xavier did not possess a weapon that night. At some point in the sequence of events prior to Xavier's group trying to leave the ped mall, this witness did see Defendant Wilson and Kaleek Jones shake hands. He did not notice any animosity between them.

6. D'Andre Hicks was also present on the ped mall when a group of girls came over to his group on the ped mall, with one of the girls repeatedly asking about Cutthroat. She seemed to be angry. He did not know these women nor did he know a person nicknamed Cutthroat. His group decided to leave the ped mall in order to avoid a potential situation. They were leaving through the same tunnel they entered the ped mall when a man asked them "Who said fuck Cutthroat?" His group turned around to say they did not know this person, words were exchanged, and he then saw Defendant reach in his jacket, pull out a gun, and he was shot three times, once in the side and twice in the leg. This all happened pretty fast. At the time he was shot, he was standing with his hands in his pocket. He did not possess a weapon. He did not know Defendant and had only seen him once before, approximately two to three weeks before at Kaleek Jones's birthday party. There was no animosity between Defendant and him. This witness was not associated with either the Cedar Rapids group (MAC) or the Iowa City group (ABK).

7. Donte Taylor is a convicted felon. His cousin, Tasha Roundtree, was shot and killed in Cedar Rapids in 2012. Daquan Jefferson, Cutthroat, posted a derogatory video about her that greatly upset Donte Taylor and his family. Taylor is a member of the MAC group from Cedar Rapids and Jefferson was a member of the ABK group from Iowa City. The posting of this video created more animosity between the two groups.

On August 26, Daquan Jefferson was killed in a car accident resulting in several postings on Facebook and some back and forth derogatory comments between some members of the two groups. In response to what he thought was a threat from Daquan Jefferson's sister, Donte posted that he was "war ready." He spent the day drinking and taking a large amount of ecstasy. He illegally possessed a (stolen) gun that day and evening.

After his group was approached by the women from the other group, his group decided to leave. They walked through the tunnel and by the Defendant who specifically said to this witness "Aren't you the guy who said fuck my dead homie?" Defendant then drew his gun from his coat and pointed it at this witness. He started to move away from the Defendant, and then Kaleek Jones walked past the Defendant who shot Kaleek in the head. He admitted to drawing his gun, holding it to his side, and pointing it at the ground but never pointing it at anyone. At this time, Defendant had his gun out and was pointing it at someone. This witness ran away from the police and tried to get rid of his gun. He did not fire his weapon that night. While watching the boxing match at Maxwell Woods' house, he was aware that both Woods and Dunte Blair (who had licenses to carry) had guns because they placed them on the table as did he.

8. Maxwell Woods hosted the boxing match party at his house in Cedar Rapids and was also at the ped mall that evening. He had a gun that evening and a permit to carry. He also heard the females approach his group and say to Dunte Blair "Did you say fuck Cutthroat?" Neither he nor Dunte knew who they were talking about. Prior to that night, he did not know who Lamar Wilson was. As his group was leaving the ped mall and walking through the tunnel, Defendant Wilson approached his group again asking about Cutthroat. He heard D'Andre Hicks respond saying he did not know what Wilson was talking about. While D'Andre was talking to Wilson, he saw Wilson reach into his jacket, pull out a black gun with an extended magazine, and start shooting into his group of friends. This witness turned and ran and then fired two shots high up hoping to scare the other group. He stated he shot in self-defense. The police found the gun he shot in his trunk. The police found a second gun in his backpack; he could not explain how it got there.
9. Nelson Nunez was at Brothers on the ped mall watching the boxing match. When it

ended approximately 1:15 a.m., he went into the tunnel/breezeway by the Sheraton to have a cigarette, as it is the only location around the ped mall where smoking is allowed. There were a lot of people in the tunnel at that time. He did not know either of the groups involved in this incident. He remembers some people walking through the tunnel who stopped and came back and then become involved in an argument. Someone pulled a gun, and he heard approximately six shots. He ran out of the alley when he saw the gun. The person he saw had dreadlocks, but he cannot give any other description.

10. Dr. Hans House, board-certified in internal medicine and emergency medicine, was on duty as an emergency room physician at the University of Iowa Hospitals on the night of August 26 and early morning hours of August 27. He provided direct care to both D'Andre Hicks and Xavier Hicks.

Upon arrival at the hospital, Xavier Hicks was in critical condition. He had been shot in the chest in the upper right shoulder and was gasping for breath. He had a collapsed lung and was starting to suffocate. His injuries were life-threatening.

Upon arrival at the hospital, D'Andre Hicks was conscious and alert. He had been shot three times - once to the right side of his belly, once in his left flank and once in his right thigh. His injuries were life-threatening.

Upon arrival at the hospital, Kaleek Jones was unconscious but still breathing. His heart stopped beating, and the physician team cracked his chest to relieve pressure on his heart. They were able to restart his heart. An assessment of his injuries found an entrance wound in the back of the right shoulder without an exit wound. A subsequent CAT scan found a bullet lodged in the high part of his neck (high part of his cervical spine) at the base of the brain. All the nerve connections from the brain to the body had been cut off by the bullet. An injury of this type is not survivable. He was placed on a breathing machine. Subsequently, he was removed from the breathing machine and died immediately.

11. Department of Criminal Investigation ballistic laboratory reports and testimony from witness Vic Murillo showed six firearms and seven bullet casings were recovered for analysis. The bullet removed from the body of Kaleek Jones was fired from the Smithfield XD which was identified as belonging to Lamar Wilson. Five of the bullet casings were also identified as being fired by the Smithfield. Two of the bullet casings were identified as being fired by a 9mm belonging to Maxwell Woods.

In considering the immunity provision in § 704.13 as applied in this case, the Court, as stated in the November 3, 2017, Ruling, applies a preponderance of the evidence standard as the burden of proof on the immunity issue. Defendant has not proven, by a preponderance of

the evidence, that he is entitled to the protection of immunity, as set forth in § 704.13.

The Court first finds that the evidence that has been presented at trial and the offers of proof do not support a conclusion that Defendant was justified in the force he used in this incident, or that the force he used was reasonable force.

The undisputed evidence and testimony presented at trial and through the offers of proof clearly establishes that Defendant indiscriminately discharged a dangerous weapon (a device or instrument designed primarily for use in inflicting death or injury, and when used in its designed manner is capable of inflicting death) five times into a crowd or assembly of people on the busy and crowded downtown Iowa City pedestrian mall (first weekend that college students returned for U of I fall semester) striking three unarmed individuals, including Kaleek Jones, who was shot in the back and subsequently died from his gunshot wounds. Notably, Lamar Wilson never testified that any individual pointed a firearm at him before he fired (as opposed to his sister's and girlfriend's testimony).

Beyond this finding, the Court has considered the constitutionality of § 704.13. “When parts of a statute or ordinance are constitutionally valid, but other discrete and identifiable parts are infirm, we may sever the offending portion from the enactment and leave the remainder intact.” *Breeden v. Iowa Dept. of Corrections*, 887 N.W.2d 602, 608 (Iowa 2016) (citing *Am. Dog Owner's Ass'n, Inc. v. City of Des Moines*, 469 N.W.2d 416, 418 (Iowa 1991)). “We must do our best ‘to save as much of the statute as possible, eliminating only that which is necessary to make it constitutionally sound.’” *Id.* (citing *Clark v. Miller*, 502 N.W.2d 422, 425 (Iowa 1993)). “Severance of unconstitutional provisions from constitutional portions of a statute is appropriate if it does not substantially impair legislative purpose, the enactment remains capable of fulfilling the apparent legislative intent, and the remaining portion of the enactment can be given effect without the invalid provision.” *Id.* These legal conclusions of the Iowa Supreme Court permit this Court to sever any portion of the immunity statute the Court finds to be unconstitutional.

§ 704.13 was signed into law in 2017, as part of a larger set of amendments to Iowa Code Chapter 704, which governs the defense of justification in Iowa. In the jury instructions for this case, the Court approved the use of certain provisions of Chapter 704 by Defendant, and the Court finds no issue with the constitutionality of the other provisions of Chapter 704 that have been utilized by Defendant in this action. However, pursuant to the law regarding severance as stated by the *Breeden* Court, this Court may consider the constitutionality of § 704.13 without interfering with the legislative intent behind the enactment of all of the amendments to Chapter 704, including the other sections of Chapter 704 that have been applied in this case. The immunity provided by § 704.13 is independent of the other defenses in Chapter 704 based on reasonable force. This is demonstrated by the fact that § 704.13 sets forth a privilege of immunity, while § 704.3 modified the affirmative self-defense law in Iowa. Thus, the Court turns to consideration of the constitutionality of § 704.13.

A statute may not be enforced if it is void for vagueness. The Iowa Supreme Court has held:

“Among other things, the Due Process Clause prohibits enforcement of vague statutes under the void-for-vagueness doctrine.” *State v. Nail*, 743 N.W.2d 535, 539 (Iowa 2007). A similar prohibition has been recognized under the Iowa due process clause found in article I, section 9 of the Iowa Constitution. *State v. Todd*, 468 N.W.2d 462, 465 (Iowa 1991). As we recently noted, There are three generally cited underpinnings of the void-for-vagueness doctrine. First, a statute cannot be so vague that it does not give persons of ordinary understanding fair notice that certain conduct is prohibited. Second, due process requires that statutes provide those clothed with authority sufficient guidance to prevent the exercise of power in an arbitrary or discriminatory fashion. Third, a statute cannot sweep so broadly as to prohibit substantial amounts of constitutionally-protected activities, such as speech protected under the First Amendment. *Nail*, 743 N.W.2d at 539. In assessing whether a statute is void-for-vagueness this court employs a presumption of constitutionality and will give the statute ‘any reasonable’ construction to uphold it.” *State v. Millsap*, 704 N.W.2d 426, 436 (Iowa 2005) (quoting *State v. Hunter*, 550 N.W.2d 460, 462 (Iowa 1996), *overruled on other grounds by State v. Robinson*, 618 N.W.2d 306, 311-12 (Iowa 2000)).

*Formaro v. Polk County*, 773 N.W.2d 834, 840-41 (Iowa 2009).

There are numerous problems with § 704.13 that have led this Court to conclude that the statute is void for vagueness. Decisions regarding a party’s immunity regularly are made before trial. However, § 704.13 does not specifically provide that an individual is immune from prosecution; it states that a person is “immune from criminal or civil liability for all damages incurred by the aggressor pursuant to the application of reasonable force.” § 704.13 does not define what “criminal damages incurred by the aggressor” are subject to immunity. Under the language of the statute, the immunity referred to therein could be anything from court costs associated with prosecution, to fines, to restitution, to simply being prosecuted at all. As the Court found in its November 3, 2017, Ruling, other jurisdictions have handled similar immunity statutes in various ways, and in Iowa, § 704.13 offers no guidance to be used regarding application of the immunity provision therein, nor does it discuss how the burden of proof is to be applied in cases involving § 704.13. The statute does not set forth a legal procedure, one that is known to both prosecutors and defense attorneys, by which the right to immunity is protected, or how evidence is to be considered in either a jury trial or a trial to the Court. The statute also does not clarify how the immunity provision is expected to interact with a speedy trial demand, such as that made by Defendant in this case, or how an evidentiary record is to be developed in a manner sufficient for the Court to apply immunity.<sup>1</sup>

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<sup>1</sup> The Trial Information was filed 9/7/17. Defendant’s not guilty plea and speedy trial demand was entered 9/18/17. Jury trial was set for 11/7/17. Defendant’s Motion to Dismiss and Notice of Statutory Immunity was filed 10/20/17. On 10/30/17, this Court reset the trial for 11/27/17 (still within the speedy trial deadline). A massive amount of discovery was underway including production of 15,000 pages of written discovery, numerous videos, years of taped phone conversations;

In the November 3, 2017, Ruling, this Court set forth the procedure it has determined will be utilized in this case. However, the procedure adopted by this Court in this case may not be the same procedure that would be adopted by another Court in another case, including with regard to when the Court would consider the immunity issue and what burdens of proof would be applied. The lack of clarity and specificity in the statute subjects the law to differing interpretations by Courts, and could result in inconsistent, arbitrary, and discriminatory application of § 704.13.

There is no reasonable construction of § 704.13 that permits the Court to uphold the statute in this case. As the *Formaro* Court stated, due process requires that statutes provide those clothed with authority sufficient guidance to prevent the exercise of power in an arbitrary or discriminatory fashion. As written, § 704.13 does not provide sufficient guidance to Courts, prosecutors, or defense attorneys, and leads to the application of the statute in an arbitrary or discriminatory fashion. There can be no fair application of the statute as it is written. Therefore, the Court finds § 704.13 to be void for vagueness, and the statute cannot be enforced in this case. Defendant's reliance on § 704.13 as a basis for immunity in this case fails.

Clerk to notify.

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no depositions had yet been taken, and no witness lists provided by Defendant. Defendant's counsel complained several times about the large amounts of data, video and document "dumps" by the county attorney interfering with his ability to complete depositions or prepare for trial.

Hearing on the Motion to Dismiss and Notice of Statutory Immunity was held on 11/2/17. Defendant requested a pretrial evidentiary hearing indicating he had approximately 20 witnesses. The State of Iowa indicated they could have 40 witnesses (38 State witnesses testified at trial). This Court entered its Ruling on 11/3/17 indicating the procedure that it intended to follow. It was not feasible, in light of the speedy trial demand, large number of witnesses the parties intended to present and the fact the Defendant lacked time to adequately review the discovery furnished by the State, to conduct a lengthy pretrial evidentiary hearing lasting five or more days.

On 11/6/17, Defendant waived speedy trial, but re-demanded on 11/9/17. Trial then was set within the new speedy trial deadline for 1/22/18. Starting approximately December 10-12/17 and continuing through the week preceding the 1/22/18 trial date, the parties conducted 60 witness depositions. Discovery continued up to and during trial. Neither side suggested a procedure to narrow down the scope of the requested pretrial evidentiary hearing, such as concluding all discovery and depositions first and then submitting only relevant deposition transcripts on the events at the ped mall to the Court for a pretrial ruling.





State of Iowa Courts

**Type:** OTHER ORDER

**Case Number**            **Case Title**  
FECR116476            STATE OF IOWA VS WILSON, LAMAR C \*SEALED DOCS\*

So Ordered

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Paul D. Miller, District Court Judge,  
Sixth Judicial District of Iowa