

IN THE COURT OF APPEALS OF IOWA

No. 3-1036 / 12-1554
Filed December 18, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JENNIFER WASSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Dallas County, Virginia Cobb,
District Associate Judge.

The defendant appeals the decision of the district court, which affirmed a
decision of a magistrate, finding she was guilty of speeding. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, Wayne M. Reisetter, County Attorney, and Brody Flint, Intern, for
appellee.

Considered by Danilson, C.J., Vaitheswaran, J., and Miller, S.J.*

Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MILLER, S.J.**I. Background Facts & Proceedings**

At about midnight on December 22, 2011, Sergeant Ryan Bowers of the Dallas County Sheriff's Office was driving east on a county road in an unmarked vehicle. After he passed a private road to a liquor establishment, Beach Girls, he saw a car turn onto the road behind him. After a short distance, the car made a U-turn and proceeded west on the road at a high rate of speed, going more than sixty miles per hour in a forty-five miles per hour zone. Sergeant Bowers turned around, and in an effort to catch up to the vehicle, reached speeds of 130 to 135 miles per hour. When he got close to the vehicle his radar indicated the vehicle was traveling at ninety-nine miles per hour in a fifty-five miles per hour zone.

Sergeant Bowers activated his lights and stopped the vehicle near Booneville, Iowa, in Dallas County. The driver was Jennifer Wasson. She stated she worked at Beach Girls as a dancer and had been speeding because she was afraid her ex-boyfriend or a customer was stalking her. Sergeant Bowers gave Wasson a citation for speeding, in violation of Iowa Code section 321.285 (2011), a simple misdemeanor.

Wasson requested a hearing, and a magistrate heard the case on April 4, 2012. Sergeant Bowers testified as outlined above. Wasson testified that when she saw headlights behind her she got scared. She stated, "So, you know, I sped up. I bet I probably did speed up to about 60, 65. And then I noticed they were getting closer and closer, and so I just went a lot faster and a lot faster, and they were coming closer, closer, closer." Wasson stated she thought someone

was chasing her; “I was in fear for my life, and I was just trying to get to a safe place as fast as I could.”

Wasson’s attorney argued, “I think that the evidence here shows that there was an emergency and/or necessity defense that was established based upon the circumstances that Ms. Wasson reasonably believed that she was under some sort of a personal danger on that evening due to her occupation and profession.” The magistrate found an emergency or necessity defense had not been established. The magistrate determined Wasson would be required to pay a fine of \$362.

Wasson appealed, pursuant to Iowa Rule of Criminal Procedure 2.73(1). The district associate judge found, “Defendant attempts to latch a justification/self-defense claim to the doctrine of legal excuse. It simply doesn’t fit.” The judge went on to state, “This claim fails both factually and legally.” The judge affirmed the decision of the magistrate.

Wasson sought discretionary review of the judge’s decision. Iowa Code § 814.6(2)(d); Iowa R. Crim. P. 2.73(6). The Iowa Supreme Court granted the request for discretionary review. See Iowa R. App. P. 6.106(2); *State v. Frazer*, 402 N.W.2d 446, 447 (Iowa 1987) (noting the Iowa Supreme Court has the authority to grant or deny an application for discretionary review of a simple misdemeanor conviction).

II. Standard of Review

We will review a challenge to the sufficiency of the evidence for the correction of errors at law. *State v. Serrato*, 787 N.W.2d 462, 465 (Iowa 2010).

In reviewing challenges to the sufficiency of the evidence we give consideration to all the evidence, not just that supporting the verdict, and view the evidence in the light most favorable to the State. *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000).

III. Merits

A. On appeal, Wasson asserts she raised a defense of justification which was not fully considered by the judge or the magistrate. Wasson did not raise the defense of justification before the magistrate. Under rule 2.73, a defendant who appeals a case to a district associate judge is not entitled to try the case anew. *State v. Butler*, 419 N.W.2d 362, 364 (Iowa 1988). In general, issues that have not been presented at the original trial may not be raised on appeal. See *City of Sergeant Bluff v. Chicago & N. W. Transp. Co.*, 383 N.W.2d 561, 563 (Iowa 1986) (discussing an appeal of a simple misdemeanor conviction). We believe this issue has not been preserved for our review. See *State v. Jefferson*, 574 N.W.2d 268, 278 (Iowa 1997) (noting issues must be presented to and ruled upon by the district court before they may be raised on appeal).

Furthermore, even if the issue had been preserved, the defense of justification would not be applicable in this case. The defense of justification under section 704.3 involves the use of reasonable force to defend against the imminent use of unlawful force. *State v. Frei*, 831 N.W.2d 70, 74 (Iowa 2013). This case does not involve the use of reasonable force by Wasson against anyone, or the imminent use of unlawful force against her.

B. Wasson did raise a defense based on emergency and/or necessity. The magistrate considered her defense and found it had not been established. The magistrate determined Wasson's actions were not reasonable, stating, "You don't speed up to 99 miles an hour to preserve your own safety." While the district associate judge questioned whether the legal excuse doctrine was applicable, the judge also determined Wasson's defense had not been factually established. On appeal, Wasson asserts she has presented a legal excuse for her action of exceeding the speed limit.

"The legal excuse doctrine allows a person to avoid the consequences of a particular act or type of conduct by showing justification for acts that otherwise would be considered negligent." *Rowling v. Sims*, 732 N.W.2d 882, 885 (Iowa 2007). One type of legal excuse is an emergency, not of the driver's own making, and because of the emergency, a driver fails to obey a statute. *Jones v. Blair*, 387 N.W.2d 349, 352 (Iowa 1986); see also *State v. Harrison*, 473 N.W.2d 242, 243 (Iowa Ct. App. 1991) (noting defendant raised an issue on the defense of the legal excuse of necessity).

The defense of necessity arises "in emergency situations where the threatened harm is immediate and the threatened disaster imminent." *State v. Walton*, 311 N.W.2d 113, 115 (Iowa 1981); *State v. Walker*, 671 N.W.2d 30, 35 n.2 (Iowa Ct. App. 2003). "The defendant must be stripped of options by which he or she might avoid *both* evils." *Walton*, 311 N.W.2d at 115. "The rationale of the necessity defense lies in defendant being required to choose the lesser of two evils and thus avoiding a greater harm by bringing about a lesser harm." *Id.*

A defendant has the burden of generating a fact question on the defense, including establishing that an emergency situation existed. *Harrison*, 473 N.W.2d at 244. The State then has the burden to disprove the defense of necessity beyond a reasonable doubt. *State v. Reese*, 272 N.W.2d 863, 867 (Iowa 1978).

In *City of Des Moines v. Davis*, 214 N.W.2d 199, 200 (Iowa 1974), the defendant was charged with speeding under a city ordinance. The defendant stated he had been placed in a situation where he needed to either exceed the speed limit or face the prospect of being in a collision. *City of Des Moines*, 214 N.W.2d at 201. The court found the defendant could have avoided the emergency by taking advance precautions, such as slowing down. *Id.* The court concluded the defendant's driving of his vehicle above the legal speed limit was not a reaction to an emergency situation, and thus, he had not established a sufficient factual basis for a necessity defense. *Id.*

Likewise, a defendant who drove while barred did not establish a factual basis for a necessity defense when he decided to drive, although he knew he did not have a license, based on his statement that he wanted to prevent his cousin from driving while intoxicated. *Harrison*, 473 N.W.2d at 242-43. We determined the defendant failed to establish an emergency situation existed because there was no evidence of an immediate threatened harm. *Id.* at 244. We stated that "fears of future injuries do not excuse an offense," and "[a] threat of future injury is not enough." *Id.*

We determine there is substantial evidence in the record to support the conclusions of the magistrate and the district associate judge that Wasson did

not establish a factual basis for a necessity defense. Wasson did not show she was in an emergency situation “where the threatened harm is immediate and the threatened disaster imminent.” *Walton*, 311 N.W.2d at 115. In fact, there was no emergency at all. We note Sergeant Bowers testified Wasson was exceeding the speed limit after she made a U-turn and was driving away from him. The deputy stated he had to turn around and speed up in order to catch up to Wasson. This evidence raises serious questions about Wasson’s claim that she was speeding only because she believed someone was following her.

Even if we were to accept Wasson’s claim that she was speeding only due to her fear someone was following her, there is no substantial evidence she was in immediate danger. Furthermore, the evidence would not support a finding that there were no other options open to her other than speeding. For instance, she could have used the cell phone she acknowledged having to call for help, or perhaps she could have returned to her place of employment to seek assistance. *See Walton*, 311 N.W.2d at 115-16 (noting that for a necessity defense a defendant must present evidence the defendant was in immediate danger and there were no other options available to avoid the possibility of harm).

We affirm the judgment of the district associate judge affirming the magistrate’s decision finding Wasson guilty of speeding.

AFFIRMED.