



IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD D. MARTIN,	)	
	)	
Defendant-Below,	)	
Appellant	)	
	)	
v.	)	No. 121, 2025
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

Santino Ceccotti, Esquire [#4993]
Office of the Public Defender
Carvel State Building
820 N. French St.
Wilmington, Delaware 19801
(302) 577-5150

Attorneys for Appellant

DATE: May 26, 2026

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I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ITS REFUSAL TO PERMIT AN INSTRUCTION ON SELF-DEFENSE (11 DEL.C. §464) AS A POTENTIAL DEFENSE FOR JURY CONSIDERATION.

The State's Answering Brief ultimately rests on a flawed premise: that the trial court was permitted to weigh, reject, and discredit Martin's evidence when determining whether the jury should receive a justification instruction. Delaware law does not permit that result. The governing standard is whether "some credible evidence" supported the requested defense and whether the defense was "within the realm of possibility."¹ At the instruction stage, the trial court was required to view the evidence in the light most favorable to Martin and assume the truth of his testimony. Instead, the Superior Court resolved factual disputes against Martin and invaded the province of the jury. The State's attempt to recast those factual disputes as purely legal disqualifications under 11 *Del. C.* § 464(e) is inconsistent with Delaware precedent and with the jury's constitutional role as factfinder.

The State argues that Martin's federal due process claim was not raised below and therefore is subject only to plain error review. Ans. Br. at 16. That characterization is overly narrow. Martin repeatedly argued in the Superior Court that he was entitled to present his theory of defense to the jury because there was at least "some credible evidence" supporting justification. A438-439; A445. The

¹ *Gutierrez v. State*, 842 A.2d 650, 653 (Del. 2004).

substance of the constitutional claim was therefore fairly presented even if the precise phrase “Due Process Clause” was not invoked. The trial court was squarely alerted to the argument that refusing the instruction prevented the jury from considering Martin’s claim of self-defense.

Even assuming plain error review applies, the denial of a legally supported defense instruction in a homicide case affects the fundamental fairness and integrity of the proceedings. Self-defense was not collateral to the case—it was Martin’s central theory. The State attempts to minimize the constitutional implications by arguing that justification does not alter the State’s burden of proof. Ans. Br. at 16. However, that argument misses the point. Martin does not contend that § 464 improperly shifts burdens. Rather, Martin argues that once some credible evidence supported justification, the Constitution required the jury—not the judge—to determine whether the State disproved self-defense beyond a reasonable doubt.²

Defense counsel requested a jury instruction on self-defense at the prayer conference held on October 23, 2024. A438-439. The instruction colloquy itself underscores the extent to which the trial court departed from the limited inquiry required under § 303(a) and *Gutierrez*. During the discussion of jury instructions,

² *Martin v. Ohio*, 480 U.S. 228, 233–34 (1987); *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) (“Few rights are more fundamental than that of an accused to present witnesses in his [or her] own defense”); *Demby v. State*, 695 A.2d 1152, 1160 (Del. 1997).

the State initially represented that it “doesn’t oppose” the justification instruction before the court immediately redirected the discussion and emphasized that justification “has to meet all the elements.” A439. This exchange is significant for two reasons. First, it demonstrates that the purported disqualification of the defense under § 464(e) was not initially viewed as self-evident even by the prosecution. Second, the colloquy reflects the court’s focus on whether Martin had established the elements of justification rather than whether “some credible evidence” supported submission of the defense to the jury. The record further reflects that the court effectively assumed an adversarial role during the instruction colloquy by independently redirecting the discussion toward disqualifying justification.³ The colloquy itself demonstrates the court was resolving disputed inferences against the defense instead of leaving those questions for the jury.

At the instruction stage, the court was not permitted to weigh competing inferences, assess the persuasiveness of Martin’s testimony, or determine whether justification should ultimately prevail. Those determinations belonged to the jury. The sole question was whether a reasonable juror could credit Martin’s evidence and find justification applicable. The colloquy thus demonstrates that the court instead undertook a merits-based evaluation of the defense itself.

³ *Los v. Los*, 595 A.2d 381, 385 (Del. 1991).

The State's reliance on *Echols v. Ricci*⁴ is misplaced. Ans. Br. at 17. An alibi instruction is fundamentally different from justification. Alibi merely disputes identity or presence. Justification, by contrast, is a complete defense to criminal liability expressly recognized by Delaware statute. Once sufficiently supported by evidence, it becomes a question for the jury. Likewise, *Patterson v. New York*⁵ and *State v. Moyer*⁶ do not resolve the issue presented here. Ans. Br. 16-17. Martin is not challenging Delaware's authority to define affirmative defenses or mitigating circumstances. The issue is whether the trial court improperly withheld a defense instruction despite the existence of evidence that would permit a reasonable juror to find justification.

The State also incorrectly argues that the jury was still able to consider Martin's theory because Martin testified and the jury received reasonable doubt instructions. Ans. Br. at 18. That reasoning conflates general credibility determinations with a specific legal defense. Without a justification instruction, the jury was never told: [1] that Martin had a legal right to use deadly force if he reasonably believed it was immediately necessary to protect himself from deadly force; [2] that the State bore the burden to disprove justification beyond a reasonable doubt; or [3] how to evaluate Martin's actions under Delaware's justification statute.

⁴ 492 Fed. Appx. 310 (3d. Cir. 2012).

⁵ 432 U.S. 197 (1977).

⁶ 387 A.2d 194 (Del. 1978).

Thus, the absence of the instruction materially altered the framework through which the jury evaluated the evidence.

The State also improperly asks this Court to weigh the evidence rather than apply the “some credible evidence” standard. The State’s answering brief repeatedly emphasizes facts favorable to the prosecution, including that no weapon was found on Arrick Richards and that other witnesses did not perceive a threat. Ans. Br. at 13; 23. But those arguments are directed toward whether the jury should ultimately believe Martin—not whether the jury was entitled to consider justification in the first place. Under *Gutierrez*, the threshold for a defense instruction is intentionally low. The defendant need only present some credible evidence supporting the defense.⁷ The trial court does not decide whether the defendant’s fear was actually correct, whether the evidence was persuasive, or whether competing evidence was stronger.

The record reflects that Martin testified that he believed Richards either possessed or was reaching for a firearm and that Martin feared imminent deadly force. A285. The defense further presented evidence regarding:

- the rapidly escalating confrontation. A315; A320-321;
- the crowded and chaotic environment. A318-319;
- Martin’s perception of threatening behavior. A285; A316;
- the presence of another firearm in the bar. A91; A287;
- Martin’s heightened fear response. A36-37; and
- expert testimony concerning Martin’s perceptions and reactions. A376-377; A419-420.

⁷ *Gutierrez*, 842 A.2d at 653.

Whether those perceptions were mistaken is not dispositive. Self-defense law turns on reasonable belief, not perfect accuracy. The State repeatedly emphasizes that Richards was ultimately unarmed. But the relevant inquiry is whether Martin reasonably believed deadly force was imminent at the moment he fired. A defendant need not wait to confirm the existence of a weapon before defending himself. Indeed, the State acknowledges that Martin testified he believed Richards was about to use a gun. Ans. Br. at 13. That testimony alone constitutes evidence supporting justification and required submission of the issue to the jury unless § 464(e) conclusively barred the defense as a matter of law.

Moreover, the State fails to establish that § 464(e) barred the defense as a matter of law. The State principally argues that Martin was categorically barred from asserting justification because he both provoked the encounter and failed to retreat. Ans. Br. at 22. Neither conclusion can be resolved as a matter of law on this record. Whether Martin provoked the use of force was a jury question. Section 464(e)(1) bars justification only where “[t]he defendant, with the purpose of causing death or serious physical injury, provoked the use of force against the defendant in the same encounter.”⁸

⁸ 11 *Del. C.* § 464(e).

The State's argument ignores the statute's specific intent requirement. At most, the evidence showed a verbal exchange and mutual escalation between strangers inside a bar shortly before closing time. The testimony established that Richards participated in the exchange, that both men exchanged words, and that tensions escalated rapidly. But the statute does not eliminate justification merely because a defendant participated in an argument or approached another person. The State was required to show that Martin acted with the purpose of causing death or serious physical injury when provoking the encounter. That factual determination belonged to the jury.

The State points to Martin walking toward Richards and displaying the firearm before the shot. Yet those same facts could also support Martin's claim that he perceived an imminent threat and reacted defensively in a rapidly developing situation. Importantly, the State's own factual recitation confirms that:

- multiple people moved between the men. Ans. Br. at 6;
- tensions escalated quickly. Ans. Br. at 6;
- Richards continued exchanging words with Martin. Ans. Br. at 5;
- Martin claimed he was attempting to observe Richards' hands; and
- the incident unfolded in seconds. Ans. Br. at 6.

These are classic jury issues. Moreover, the State's reliance on *White v. State*⁹ and *Spence v. State*¹⁰ is misplaced because those cases involved materially different facts

⁹ 2008 WL 4107980 (Del. Sept. 5, 2008).

¹⁰ 129 A.3d 212 (Del. 2015).

and do not authorize a trial judge to resolve disputed factual inferences against the defendant.

Whether Martin could retreat with complete safety was also a jury question. The State similarly overstates the retreat evidence. Section 464(e)(2) applies only where “the defendant knows that the necessity of using deadly force can be avoided with complete safety by retreating.” The statutory language is exacting. The issue is not whether retreat was theoretically possible in hindsight. The issue is whether Martin knew he could avoid the danger with complete safety under rapidly unfolding circumstances.

The State repeatedly relies on Martin’s acknowledgment that exits existed and that he physically could have walked away earlier in the encounter. Ans. Br. at 19; 24-25. But the availability of exits does not conclusively establish that Martin subjectively knew retreat could be accomplished with complete safety at the moment he perceived deadly force. A person who reasonably believes another individual may be reaching for a firearm is not required to gamble on whether retreat can be safely accomplished before being shot. The State’s argument improperly converts factual disputes into legal certainties. The jury could reasonably have concluded that:

- the confrontation escalated too quickly;
- Martin perceived an imminent deadly threat;
- Martin believed Richards was reaching for a weapon;
- Martin feared turning away or retreating would expose him to gunfire; and
- Martin therefore did not believe retreat could be accomplished with complete safety.

Under *Gutierrez* and § 303(a), those factual disputes required submission of the defense to the jury.

Contrary to the State’s contention, *Spence* does not control this case. Like the Superior Court below, the State’s reliance on *Spence* is overstated. Ans. Br. at 24. *Spence* did not hold that any opportunity to leave automatically bars justification as a matter of law. Nor did *Spence* establish that a defendant forfeits self-defense merely by approaching another individual during a tense encounter. More importantly, *Spence* arose in the context of prosecutorial misconduct review—not direct review of whether a justification instruction should have been given under the “some credible evidence” standard.¹¹ Unlike in *Spence*, Martin’s case involved a direct request for a justification instruction supported by testimony concerning Martin’s fear, perceptions, and interpretation of Richards’ conduct. The trial court was therefore required to determine only whether some credible evidence supported the defense—not whether the court itself believed Martin should prevail.

Finally, the Jury’s verdict does not render the error harmless. The State contends the jury’s verdict demonstrates that the jury “fully considered Martin’s defense” because it convicted him of Murder Second Degree instead of intentional murder. Ans. Br. at 20. That argument is speculative and incorrect. The jury’s

¹¹ *Spence*, 129 A.3d at 218.

rejection of intentional murder says nothing about whether it would have rejected self-defense had it been properly instructed. The jury may have concluded:

- Martin did not intentionally kill Richards;
- Martin acted recklessly;
- Martin acted under fear or panic; or
- Martin perceived some threat but reacted unreasonably.

Without a justification instruction, however, the jury had no legal framework for acquitting Martin based on self-defense. The omission therefore cannot be deemed harmless. This Court cannot assume the jury would have rejected justification when the jury was never permitted to consider the defense under proper legal instructions. The State's reading of *Spence* would effectively permit trial courts to deny justification instructions whenever conflicting evidence exists. That is not Delaware law. Thus, reversal is now required.

CONCLUSION

For the reasons and upon the authorities cited herein, the undersigned counsel respectfully submits that Edward Martin's convictions and sentences must be reversed.

Respectfully submitted,

/s/ Santino Ceccotti
Santino Ceccotti [#4993]
Office of Public Defender
Carvel State Building
820 North French Street
Wilmington, DE 19801

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