

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 22-0089

THE STATE OF IOWA,

Plaintiff-Appellee,

vs.

**JOHNNY BLAHNIK CHURCH,
f/k/a DREW ALAN BLAHNIK,**

Defendant-Appellant.

APPEAL FROM IOWA DISTRICT COURT FOR LINN COUNTY
CASE NO. FECR133722
HONORABLE CHRISTOPHER L. BRUNS
SIXTH JUDICIAL DISTRICT OF IOWA

***APPELLANT'S FINAL BRIEF
AND
REQUEST FOR ORAL ARGUMENT***

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. DID THE DISTRICT COURT ERR IN GIVING THE DEADLOCKED JURY A SUPPLEMENTAL VERDICT-URGING INSTRUCTION?

Alcala v. Marriott Intern, Inc., 880 N.W.2d 699, 707 (Iowa 2016)

Allen v. United States, 164 U.S. 492, 500-02, 17 S. Ct. 154, 41 L.Ed.2d 528 (1896)

Antonio, “Stress and the Capital Jury: How Male and Female Jurors React to Serving on a Murder Trial,” 29 *The Justice System Journal* 396, 399-400, 404 (2008)

Reichelt, “Standing Alone: Conformity, Coercion, and the Protection of the Holdout Juror,” 40 *U. Mich. J. L. Reform* 569, 570, 610-611 (2007)

Smalls v. Batista, 191 F.3d 272, 280-81 (2nd Cir. 1999)

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State v. Davis, 975 N.W.2d 1, 18 (Iowa 2022)

State v. Hanes, 790 N.W.2d 545, 551 (Iowa 2010)

State v. Piper, 663 N.W.2d 894, 912 (Iowa 2003)

State v. Williams, 929 N.W.2d 621, 633 (Iowa 2009)

Tucker v. Catoe, 221 F.3d 600 (4th Cir. 2000)

United States v. Burgos, 55 F.3d 933 (4th Cir. 1995)

ROUTING STATEMENT

In accordance with Iowa R. App. P. 6.1101(3)(a), Appellant contends that this case involves the application of existing legal principles and may be transferred to the Court of Appeals.

STATEMENT OF THE CASE

Nature of the Case.

Appellant Johnny Blahnik Church appeals following his jury trial from a judgment of conviction and sentence for the crime of murder in the second degree, in violation of Iowa Code §707.3; obstructing prosecution, in violation of Iowa Code §719.3; and abuse of a corpse, in violation of Iowa Code §708.14(1)(b). The Honorable Christopher Bruns, judge of the Sixth Judicial District of Iowa, presided at his trial and sentencing.

Course of Proceedings.

On October 30, 2019, the grand jury indicted Church with murder in the first degree, obstructing prosecution, and abuse of a corpse, alleging that on December 14, 2018, Church murdered Christopher Bagley and buried the body to conceal the crime, in violation of Iowa Code §707.1 and 707.2(1)(a), §719.3(1), and §708.14(1)(b) (Indictment; App. 4). Following his plea of not guilty, trial was set for February 3, 2020. (Order Setting Jury Trial and

Case Management Conference; App. 7). Trial was continued on May 11, 2020, and January 26, 2021, with trial finally being set for July 13, 2021. Trial began on July 16, 2021, and on July 29, 2021, the jury returned a verdict finding Church guilty of murder in the second degree, obstructing prosecution, and abuse of a corpse (Verdict; App. 15). On September 10, 2021, Church filed a motion for a new trial (Motion for New Trial; App. 17). Following hearing on the motions, the district court on December 8, 2021, overruled the Defendant's new trial motion (Ruling on Motion for New Trial; App. 45). On December 17, 2021, Church was sentenced to an indeterminate term not to exceed fifty years on Count 1, two years on Count 2, and five years on Count 3 (Judgment and Sentence; App. 70).

On January 13, 2022, Church filed his notice of appeal (Notice of Appeal; App. 74).

STATEMENT OF THE FACTS

Testimony at trial revealed that Chris Bagley was married but had moved out of his home and begun a romantic relationship with another woman. (TTr. V.1 27:11-19; 29:3-22). His wife learned that he had been using and selling drugs, and had become increasingly paranoid and nervous, telling her that a man named Andy Shaw had put a hit out on him. (TTr. V.1

30:16-24). In late October and early November 2018, Shaw had been driving by the Bagley home. (TTr. V.1 33:1-13). Bagley's wife last saw him on December 13, 2018, when he left their home with Lydia Oline carrying a square duffle bag. (TTr. V.1 34:8-9, 36:5-8).

Local law enforcement officers had earlier in October 2018 investigated a report by Shaw that he had been assaulted by Bagley at Shaw's business, the door to which appeared to have been forced open and had a bullet hole in it. (TTr. V.1 50:16-22, 54:3-55:10, 56:5-13).

Investigators also learned that another person with Bagley had tried to choke Shaw. (TTr. V.1 63:25-64:4). Investigators also investigated a road rage incident on November 30, 2018, in which Bagley tried to force a vehicle driven by Shaw off the road and struck Shaw's car with what appeared to be a gun. (TTr. V.1 68:7-69:12).

During the late night of December 13 to the early morning hours of December 14, 2018, Corissa Marti saw Bagley at a trailer owned by Paul Hoff. Marti had met Hoff toward the end of 2018, when he became her drug dealer and with whom she developed an intimate relationship. (TTr. V.1 82:12-83:20, 85:2-86:7). Bagley was with Lydia Oline and both of them were "riled up" using methamphetamine with Hoff and Marti, and talking about some guys that they could "go and get." (TTr. V.1 93:15-22, 94:11-

21). Marti described Bagley as really high and trying to get Hoff “amped up” to do a robbery. (TTr. V.1 111:22-112:9, 113:9-24). In Hoff’s trailer, Bagley produced a silver semiautomatic pistol and handed it to Hoff while trying to recruit him. (TTr. V.1 95:4-5). Marti further testified that after smoking methamphetamine with Bagley, she left to take care of her children, and while she was in the trailer she observed knives on top of an L-shaped bar in the trailer, including fixed-blade knives. (TTr. V.1 100:4-101:15, 106:12-107:14). Lydia Oline also testified that she and Bagley were high on methamphetamine, and that Bagley was paranoid and afraid to drive his own car en route to Hoff’s trailer in Cedar Rapids. (TTr. V.1 130:7-19, 132:20-134:2). Oline was of the impression that Bagley planned to pick up Hoff to commit a robbery. (TTr. V.1 158:6-11).

At Hoff’s trailer, Bagley and Hoff talked about robberies that Bagley was considering. (TTr. V.1 139:15-25, 157:21-25). Oline also saw a fixed-blade knife on the bar in a sheath. (TTr. V.1 147:6-16, 158:18-21). After spending time in Hoff’s trailer, Oline and Bagley left, returned to Oline’s car where Bagley retrieved a hatchet and a black duffle bag. (TTr. V.1 142:11-20). Oline, strung out and paranoid, stopped at a gas station where she fell asleep in her car. (TTr. V.1 144:3-145:3).

State’s witness, Drew Wagner, was charged with the same crimes as

Church, but pursuant to a plea agreement pled guilty to voluntary manslaughter using a deadly weapon, assault while participating in a felony, conspiracy to commit a forcible felony, abuse of a corpse, and obstruction of prosecution. The agreement called for him to testify against Church. (TTr. V.2 13:4-15:18, 17:16-19). Wagner had been sporadic friends with Church since high school and good friends since 2014. (TTr. V.2 18:23-19:16). Wagner was also friends with Shaw, a large-scale marijuana trafficker from whom Wagner obtained marijuana and sold it in the Cedar Rapids area. (TTr. V.2 20:2-21:1). Wagner was aware of Shaw being robbed of drugs in October and November 2018 in an incident involving Hoff and Bagley. Wagner estimated that the value of everything taken from Shaw (including drugs, cash, and equipment) was between \$278,000 and \$358,000. (TTr. V.2 22:13-23:11, 25:8-17).

In mid- to late-November 2018, Wagner allegedly heard Shaw ask Church to kill Bagley for some thousands of dollars, to which Church reportedly laughed and said it would cost way more. (TTr. V.2 43:1-24).

According to Wagner, the night of Bagley's death, Church went to Wagner's home and there was another conversation about killing Bagley. (TTr. V.2 46:15-18). Church asked Wagner if he had talked to Hoff or Bagley, and said Shaw wanted him to kill Bagley. (TTr. V.2 48:6-24).

Church also reportedly said that he had been told that Bagley and Hoff were going to be together that night. (TTr. V.2 49:4-20). Wagner knew the approximate location of Hoff's trailer, and he and Church left in Wagner's Chevy Silverado to try and find Bagley. (TTr. V.2 51:13-19). Wagner and Church drove to a trailer park off Mount Vernon Road in Cedar Rapids but did not see Bagley's truck or Hoff's vehicle and returned to Wagner's home. (TTr. V.2 55:3-23). Once there, Church allegedly asked Wagner to call Hoff, and Wagner reluctantly agreed. (TTr. V.2 61:18-62:9). When Wagner called Hoff, he learned that Hoff was with Bagley; Wagner told Hoff he was with Church and that Wagner needed to speak with Hoff. Hoff was told that they would be on their way shortly. (TTr. V.2 62:14-63:21). According to Wagner, Church told Wagner that once at Hoff's trailer, Wagner was to take Hoff aside, let him know they were there about the Shaw robberies, and Church would handle it one-on-one. If Hoff was not agreeable, Wagner was to come out and they would jump Bagley and "just beat him up." (TTr. V.2 63:22-64:22).

Once at Hoff's trailer, Wagner and Church walked in with Church (again according to Wagner) wearing a knife on his hip. Bagley was at an L-shaped counter with his back to the door. (TTr. V.2 69:22-70:19). Bagley had a black knapsack and a gun in his hand that he set down on a stool at

one point. Bagley spoke with Church while Wagner spoke with Hoff. (TTr. V.2 73:6-19). Wagner could tell that Bagley was on methamphetamine and Hoff was high as well. (TTr. V.3 19:14-16, 18:20-22).

It looked to Wagner that the gun was not loaded and that Bagley was cleaning it. (TTr. V.2 74:7-12). To Wagner it appeared that Bagley was probably “suiting up” to go on robberies. (TTr. V.3 19:17-22).

Wagner testified that he told Hoff that Church was going to “fuck Chris up,” although he had earlier told prosecutors that the purpose of going to Hoff’s trailer was for Church to kill Bagley. (TTr. V.2 75:8-17, 100:10-21). Wagner also testified that it was *his* intention that Bagley be killed. (TTr. V.2 195:5-21, V.3 9:22-25).

When Wagner came out of Hoff’s back room, Bagley had put the gun away. (TTr. V.3 20:2-8). Bagley began talking about a robbery he hoped to pull off. Wagner told him it was stupid, and an argument ensued. Bagley got more aggressive, Wagner stood up and Bagley pushed him. (TTr. V.2 79:18-81:3). Bagley told Wagner, “I’ll kill you, you motherfucker.” (TTr. V.3 22:10-23). Wagner backed up, Bagley pushed him again and Wagner then pushed Bagley and pinned him against a wall. (TTr. V.2 82:8-83:21). According to Wagner, once he got Bagley in a bear hug he yelled to Church to “fuck him up.” (TTr. V.2 99:2-12). Wagner knew at this point that

stabbing Bagley was an option. (TTr. V.2 99:17-25). Wagner heard Church yell “gun, gun” but did not see Bagley pull a gun until he saw the gun on the floor. (TTr. V.2 84:4-85:7). Wagner conceded that it was possible that Bagley reached down to his waistband and grabbed the gun, (TTr. V.3 26:20-27:1, 28:1-3), and that Church may have yelled “gun” before the gun fell to the floor. (TTr. V.3 38:16-19). Wagner tried to turn Bagley away from the gun. (TTr. V.3 27:23-25). While struggling with Bagley, Wagner felt Church behind him, and then stepped away and saw Church stabbing Bagley in the neck. (TTr. V.2 86:2-87:3). Wagner testified that he did not consider Bagley to be a threat, nor did he feel that the gun was a threat (TTr. V.2 87:16-24, 178:23-179:4), even though he told prosecutors earlier that he saw Bagley bend down and grab the gun. (TTr. V.3 44:16-22).

The knife Church used was on the top of the bar in Hoff’s trailer. (TTr. V.2 91:3-17). According to Wagner, Hoff and Church wrapped Bagley’s body in plastic and carried it out a back window. (TTr. V.2 94:21-95:18). Wagner backed his truck to the back of the trailer, Bagley’s body was lifted through a window into the truck, and then covered with a piece of plywood. (TTr. V.2 101:11-102:24).

According to Wagner, Church then got into the truck and Wagner drove to Wagner’s home leaving Hoff at the trailer. (TTr. V.2 103:1-9).

Bagley's gun was left at the trailer. (TTr. V.2 104:14-17). On their way to Wagner's house, Church apologized and said, "[i]t shouldn't have went down like that." (TTr. V.2 109:12-21). Wagner later drove a different truck to Hoff's trailer with some tools Hoff had requested; Church had pulled Wagner's truck with the body in it into Wagner's garage and then left. (TTr. V.2 112:22-113:8, 114:9-20, 115:5-9). At Hoff's trailer, Wagner helped remove flooring that had blood on it and then took it to a dump trailer at his home. (TTr. V.2 119:6-15, 120:2-11). Wagner later contacted Shaw and met Shaw at Shaw's shop and told Shaw what had happened. (TTr. V.2 120:12-121:22, 133:12-134:12). Shaw gave Wagner cash, marijuana extract, and THC cartridges to allegedly be delivered to Church. Shortly thereafter, Wagner delivered the cash to Church who then gave some of the cash to Dan Kascel. (TTr. V.2 136:12-137:7). According to Wagner, Church later communicated with him and said he would take care of Bagley's body. Church picked up Wagner's truck the night of December 14 and said he was going to take the body to Wisconsin and bury it. (TTr. V.2 139:1-8, 139:22-25, 140:4-22).

The following weekend, Wagner found Church and Hoff in the back of his house where he was told by Church that Hoff wanted to kill him, but that Wagner could live by having the body buried at his house. (TTr. V.2

145:2-146:13).

In late February 2019, law enforcement officers executed a search warrant at Wagner's home and questioned him about Bagley's disappearance. Wagner told police that he was at the scene of the killing that night and that Church had stabbed Bagley in self-defense. (TTr. V.2 170:25-171:24). He did not tell authorities that the body was buried in his backyard. (TTr. V.2 173:25-174:6). It was not until his third interview with authorities that he revealed the location of the body. (TTr. V.2 175:6-176:8). After being indicted for first degree murder, Wagner proffered again in an effort to help himself. (TTr. V.2 177:16-178:6). Wagner acknowledged that in his guilty plea he admitted that he assaulted Bagley as a result of an irresistible passion provoked by Bagley. (TTr. V.2 191:12-18).

Paul Hoff testified that he met Bagley in May or June of 2018 and that they primarily sold drugs to one another. (TTr. V.3 81:22-23; 82:5-19). Around September 2018 they began to hang out together and would see one another almost daily with Bagley getting meth from Hoff. (TTr. V.3 87:1-9). On October 27, 2018, Bagley asked Hoff to go to a shop he had rented from Andy Shaw in an effort to recover tools that Shaw was refusing to let Bagley reclaim because of money Bagley owed Shaw. (TTr. V.3 89:1-91:3). Hoff was also aware of other burglaries in which Bagley had stolen from

Shaw. (TTr. V.3 105:10-24).

On December 13, 2018, Corissa Marti showed up at Hoff's trailer at about two or three in the morning, and Bagley and Lydia Oline showed up at approximately 3:00 a.m. (TTr. V.3 142:12-144:9). Bagley was "hyped up," wanting Hoff to go with him and Oline to commit a robbery. Hoff knew that Bagley could come up with good robberies, but was not interested in committing one that night. (TTr. V.3 144:19-145:19, 146:19-147:12). Oline and Bagley left the trailer, but Bagley returned after about 20 minutes. (TTr. V.3 149:15-24). At about 4:00 a.m., Hoff received a call from Wagner asking if Bagley was there and stating that Wagner would be there in a minute. (TTr. V.3 153:15-154:10). Wagner arrived with Church and informed Hoff that Bagley had been "fucking up business" and hitting Shaw's shops. According to Hoff, Wagner said, "I'm going to fuck him up." Wagner and Hoff left the back room where they had been speaking and returned to where Bagley and Church were at. Wagner confronted Bagley and they started pushing one another. (TTr. V.3 159:20-160:22). According to Hoff, Wagner and Bagley fell up against a wall, and Church stood up and pulled a knife from the back of his pants, stepped toward Wagner and Bagley, and stabbed Bagley in the side. (TTr. V.3 160:23-161:10, 164:2-23). Hoff recalled that Wagner told Church to "kill this motherfucker."

(TTr. V.3 167:6-9). Hoff also described the incident as both him and Wagner panicking, and Church screaming like a maniac. (TTr. V.4 40:11-25). In the course of the melee, Wagner was stabbed in the hand, let go of Bagley who was then stabbed four times in the neck. (TTr. V.3 168:2-18). According to Hoff, Wagner then jumped up and said, “This was self-defense.” (TTr. V.3 170:11-15). Thereafter, Hoff and Wagner rolled Bagley’s body into a tarp, Wagner retrieved his truck and drove it to the back of the trailer where Hoff and Church carried the body to a window. (TTr. V.3 172:3-174:22).

Hoff testified that he did not see Bagley with a gun that night, and no one yelled “gun.” (TTr. V.3 178:9-179:8). Wagner returned later in the morning to help remove bloodstained debris, but did not tell Hoff until weeks later that Bagley’s body was buried in his yard. (TTr. V.3 182:2-23; V.4 16:22-17:3).

Although Church did not testify at trial, the prosecution introduced recorded interviews of him conducted on February 25, 2019, by agents from the Iowa Division of Criminal Investigation and FBI, as well as detectives from the Linn County Sheriff’s Office.¹ The prosecution also introduced

¹ The jury was permitted to read transcripts of the interviews while the audio and video portions were played. The transcript of the first law enforcement interview, Court Exhibit 157, is hereafter referred to as CE 157, and the

portions of Church's testimony before the grand jury on October 30, 2019 [hereafter referred to as GJ]. A native of the Cedar Rapids area, Church was an army infantry veteran having served two tours in Afghanistan with the 101st Airborne Division (CE 157 1930-1938, 2037-2038, 2063-2064; GJ 411:10-412:16). Church also went to Ranger school, served in a special operations unit, and "lost a lot of buddies." (CE 157 2068-2084; GJ 413:1-11).

In December 2018, he considered Chris Bagley an acquaintance, and did not know Paul Hoff before then. (GJ 414:14-17, 416:13-15). The night of December 13 and early morning of December 14, Church was working in Wagner's basement doing remodeling work, and asked Wagner where he could get some tools that Church needed to continue work. Wagner said they could go to Hoff's and Wagner also wanted to get something from Hoff, likely methamphetamine. (CE 158 4689; GJ 421:18-422:10; 424:8-12; 425:3-4). Church was not armed with a knife when they left. (GJ 435:10-14).

Church did not know that Bagley was at Hoff's trailer until they arrived. (GJ 427:13-17). When Wagner returned from a back room after

transcript of the second law enforcement interview, CE 158. Numbers after the exhibit number refer to the line number.

speaking with Hoff, Wagner and Bagley got into an argument over something, perhaps guns that Wagner had sold to Bagley. (CE 158 91; GJ 433:15-21). Bagley pushed Wagner and they ended up getting into something of a wrestling match. (CE 158 93-94; GJ 431:22-432:7). At one point Bagley reached for a gun, reaching for his back pocket or waistband. (CE 158 94, 157-58; GJ 437:4-7, 437:25-438:4). Bagley was grabbing the butt of the gun, trying to bring it up and was on the way to pointing it at Church. (GJ 439:15-25, 506:6-9). When Bagley grabbed for his gun, Wagner yelled “gun” while trying to keep Bagley’s arm down as Bagley was trying to bring it up. (CE 158 95, 288; GJ 445:21-25, 480:17-20, 520:21-25). Church, standing a couple feet away, attempted to protect Wagner as Bagley was reaching for the gun. (CE 158 96; GJ 442:21-23, 448:4-12). As Church told the grand jurors, he felt safer using a knife to try and incapacitate Bagley than reaching for his gun. (GJ 443:10-25).

The knife Church grabbed was in a sheath on the glass table in Hoff’s trailer. (CE 158 271; GJ 433:18-21, 441:1-2). Church felt it was a matter of self-defense. (CE 158 97; GJ 454:4-8). As Church also told the grand jurors, “I was trying to stop him. In my head I wasn’t thinking, I’m going to kill this guy, absolutely not.” (GJ 449:8-10). Church does not know how many times he stabbed Bagley, and thought it was only three or four times

until he learned differently. (CE 158 292; GJ 447:22-25). Referring to the influence of his combat experience, Church told grand jurors, “I wasn’t thinking at the time. That was just muscle memory kicking in basically.” (GJ 448:13-16).

After the stabbing, Hoff ordered Wagner to get the truck and said, “Let’s just fucking get him out of here.” (CE 158 98-99; GJ 455:13-19). Bagley was loaded into Wagner’s truck through a window in the back bedroom. (GJ 456:20-457:2, 458:1-7, 497:21-498:8). Hoff was worried about his methamphetamine and when Church suggested they should call the police, Hoff said they were not going to call the cops: “I’ve got too much shit in my place.” (CE 158 115; GJ 453:3-15). Wagner drove the truck from Hoff’s trailer back to his home with Hoff in the passenger seat and Church in the back seat behind Wagner. (CE 158 119-120; GJ 463:21-22, 460:7-13). Wagner and Hoff dropped Church off at Wagner’s home. According to Church, they were supposed to take care of the rest because Church was “freaking out.” (CE 158 143-144). At Wagner’s house, Hoff made Church take everything off and give his clothes to Hoff. Hoff was armed with a gun and Church was frightened. (CE 158 360, 479; GJ 493:12-22). Hoff was threatening to kill Church “to keep his mouth shut.” (CE 158 212-214, 477; GJ 464:4-19, 467:1-9, 469:15-21, 494:22-495:3).

Church never returned to Hoff's trailer. (CE 158 335-336). Other than what he heard on the news Church did not know what happened to Bagley's body. (GJ 465:19-22).

Linn County Deputy Sheriff Dave Beuter testified that a search of Hoff's trailer revealed bloodstained flooring containing evidence of Bagley's DNA. (TTr. V.4 70:24-71:12). Knives seized from Church's residence contained no evidence connecting them to the death of Bagley. (TTr. V.4 94:17-95:13; V.5 73:6-19). Beuter also testified about the process used for recovering Bagley's body at Wagner's residence beginning on February 28, 2019. (TTr. V.5 20:24-21:3). Associate State Medical Examiner Kelly Kruse testified that Bagley died of multiple sharp-force injuries. (TTr. V.5 128:21-129:8). Importantly, forensic toxicology assessment of Bagley's blood showed a blood concentration of methamphetamine several times greater than levels reported in abusers who exhibit violent or irrational behavior. (TTr. V.5 134:11-136:9).

Further facts will be developed in the course of Church's argument.

ARGUMENT

I. THE DISTRICT COURT ERRED IN GIVING THE DEADLOCKED JURY A SUPPLEMENTAL VERDICT-URGING INSTRUCTION.

A. Preservation of Error. Error was preserved by the district court's submission of the additional verdict-urging instruction over Church's timely objection. (TTr. V.9 19:10-25). He renewed his objection in his motion for new trial (Motion for New Trial ¶13, App. 17).

B. Standard of Review. Challenges to jury instructions are generally reviewed for correction of errors at law, and if the giving of an instruction is discretionary rather than mandatory, review is instead for an abuse of discretion. *Alcala v. Marriott Intern, Inc.*, 880 N.W.2d 699, 707 (Iowa 2016); *State v. Williams*, 929 N.W.2d 621, 633 (Iowa 2009); *State v. Campbell*, 294 N.W.2d 803, 808-09 (Iowa 1980). Preserved instructional error requires reversal unless the prosecution can prove the error was harmless. *State v. Hanes*, 790 N.W.2d 545, 556 (Iowa 2010).

C. Discussion. After receiving the court's final instructions and after closing arguments, Church's jury retired to deliberate on July 26, 2021, shortly after 4:00 p.m. (TTr. V.7 97:23-25). Having resumed deliberations on July 28 after deliberating all day July 27, the jury sent a written question seeking details about Church's post-arrest testimony (mistakenly described by the jury as "grand jury" testimony). (TTr. V.8 3:2-11). At 2:17 p.m. on July 28, the jury again sent a written question, this time seeking guidance about two jury instructions (Instructions Nos. 45 and 46). (TTr. V.8 8:19-

10:19). On July 29, 2021, after two full days of deliberation, the jury sent a note to the court at 10:06 a.m. that, “A juror is failing to follow specific rules set forth by you in the rule packet provided. In regards to 45+52.” (TTr. V.9 3:2-5:20). Instruction 45 dealt with the defense of self-defense, and Instruction 52 regarded the person claiming self-defense not to destroy evidence.

The trial court proposed to respond by asking the jury if the jury was deadlocked and, if so, it needed to report to the court that it was deadlocked, “[b]ecause based on this instruction [sic], I think they are deadlocked.” (TTr. V.9 3:21-4:3).

At 11:15 a.m. on July 29, the court reported that the court attendant had been orally informed by the jury that they were deadlocked. Several minutes later, the jury conveyed the following communication:

We have a juror that is refusing to follow certain rules set forth by you. We took a vote to whether or not we felt this person was deliberately not following a rule. The vote was 11 to 1. We have gone over this rule numerous times with this juror. The response has been “I don’t care, I’m not changing my opinion.” Signed, Foreperson.

In response, the court proposed to ask if the jury believed further deliberations would be fruitful, “[b]ecause they have not told me in writing, per se, that they are deadlocked, but I believe that is what they’re communicating to us.” (TTr. V.9 6:22-7:1). The State requested a verdict-

urging instruction to which Church objected, responding that the jurors had already been instructed to consult with one another, to deliberate with a view of reaching a verdict, and of their duty to re-examine their positions. (TTr. V.9 7:3-9:22). The court denied the request for an *Allen* instruction:

[N]or do I have any hope whatsoever that it would cause the jury to reach a jury verdict that is consistent with the Defendant's constitutional rights because the jury has basically told me we have a single holdout and we cannot convince that holdout. ... But with the information I have, I would not deem it appropriate to give the *Allen* charge.

(TTr. V.9 10:18-12:12). In response to the most recent note, the court responded at 11:25 a.m. by asking the jury if further deliberations would be fruitful. At 11:37 a.m. in response to the court's inquiry, the jury reported, "No, we feel that because the rules set forth by this court are not being followed by a single juror that deliberations would not be fruitful. Signed, Foreperson." (TTr. V.9 12:13-13:3).

The prosecution again requested a verdict-urging instruction (TTr. V.9 13:6-15:1), to which the defense resisted on grounds that the court having been informed by the foreperson that one person was adamant about his or her position, a verdict-urging instruction would single out that juror as being incorrect. Moreover, the defense contended that the instruction would be coercive, would not initiate a new train of real deliberations, and would deprive Church of his state and federal constitutional rights to due process.

(TTr. V.9 15:3-16:11).

At 11:56 a.m., the trial court again reiterated, “I am not entirely convinced that an *Allen* charge is appropriate here,” but decided to issue one anyway. (TTr. V.9 17:23-18:15). Church again objected that the proposed instruction “is going to be inherently and explicitly coercive” as to the one holdout juror and would again violate Church’s fair trial and due process rights. (TTr. V.9 19:10-25).

The trial court at 12:08 p.m. instructed the jury as follows:

You have been deliberating upon this case for a considerable period of time, and the Court deems it proper to advise you further in regard to the desirability of agreement, if possible.

The case has been exhaustively and carefully tried by both sides and has been submitted to you for decision and verdict, if possible. It is the law that a unanimous verdict is required. While this verdict must be the conclusion of each juror and not a mere acquiescence of the jurors in order to reach an agreement, it is still necessary for all of the jurors to examine the issues and questions submitted to them with candor and fairness and with a proper regard for, and deference to, the opinion of each other. A proper regard for the judgment of others will greatly aid us in forming our own judgment.

Each juror should listen to the arguments of other jurors with a disposition to be convinced by them; and if the members of the jury differ in their views of the evidence, such difference of opinion should cause them all to scrutinize the evidence more closely and to reexamine the grounds of their problem. Your duty is to decide the issues of fact which have been submitted to you, if you can conscientiously do so. In conferring, you should lay aside all mere pride of opinion and should bear in mind that the jury room is no place for espousing and maintaining, in a spirit of controversy, either side of a case. The aim ever to be kept in view is the truth as it appears

from the evidence, examined in light of the instructions of the Court.

At 3:39 p.m., the court was informed that the jury had reached a verdict. (TTr. V.9 21:10-22:9).

D. Iowa Caselaw. Although the Supreme Court has questioned the propriety of giving a verdict-urging instruction, it has never held an *Allen* charge² to be per se error. *State v. Campbell*, 294 N.W.2d 803, 808-09 (Iowa 1980). Most recently in *State v. Davis*, 975 N.W.2d 1, 18 (Iowa 2022), the Court summarized the test for gauging the propriety of an *Allen* charge:

When reviewing an *Allen* charge, we look at “whether the instruction improperly coerced or helped coerce a verdict or merely initiated a new train of real deliberation which terminated the disagreement.” [*Campbell* at 808]. According to *Campbell*, “each case is to be decided on its own circumstances” and the court “has considerable discretion in determining whether [a] verdict-urging instruction [] should be given.” *Id.* at 808-09. Only in cases where prejudice has been demonstrated by surrounding circumstances will the trial court be reversed. *Id.*

As the Court also demonstrated in *Davis*, factors to be considered in determining whether coercion existed under the circumstances include the content of the verdict-urging instruction, the timing surrounding the verdict, and responses from juror polling following return of the verdict. 975 N.W.2d

² An “*Allen* charge” is common parlance for a verdict-urging instruction, having originated from *Allen v. United States*, 164 U.S. 492, 500-02, 17 S. Ct. 154, 41 L.Ed.2d 528 (1896).

at 18. Additionally, a factor that might suggest a coercive effect includes “an inquiry into the jury’s numerical division.” *State v. Piper*, 663 N.W.2d 894, 912 (Iowa 2003), *overruled on other grounds by State v. Hanes*, 790 N.W.2d 545, 551 (Iowa 2010).

E. Unique Pressures on Holdout Jurors. Sociologic research has demonstrated that “[t]he natural desire to fit in, to avoid the stigma of being labeled an outsider or outcast, and the impetus to go along with the majority as a means of earning social acceptance” is acutely felt by a holdout juror in the face of pressure from fellow jurors as well as from the court.

As the holdout juror becomes more and more isolated, his participation in the deliberation process decreases in direct proportion. In the case where “a lone holdout opposed a majority of 11 ... the holdout was strongly isolated from all deliberation processes. Research has shown that although juries tend to vote in secret towards the beginning of deliberation, they begin using more public voting methods when they encounter difficulty reaching agreement and one or more holdouts have been identified. At the point where the majority numbers ten, its members “reject, ridicule, and punish individuals who frustrate a common goal by adhering to a deviant position.” Even when the holdout juror attempts to express his or her position to the fellow members of the jury, “hostile reactions send him back into his protective shroud of silence.” (Internal citations omitted).

Reichelt, “Standing Alone: Conformity, Coercion, and the Protection of the Holdout Juror,” 40 *U. Mich. J. L. Reform* 569, 570, 610-611 (2007).

Other courts have also recognized the unique pressures brought to bear on

a holdout juror and the impact of *Allen* charges on the integrity of any resulting verdict. In *United States v. Burgos*, 55 F.3d 933, 940 (4th Cir. 1995), in reversing a conviction and remanding for new trial based on a coercive *Allen* charge, the court observed,

While no one member of a jury deadlock at a vote of 6-6 may be particularly susceptible to the subtle coercion inherent in the court's remarks, where only one or two jurors have taken a position contrary to that of the majority, comments about "backing away from an opinion" and "pride" could be interpreted by the jury, and the dissenting jurors, in particular, as being directed at them.

Likewise, in *Smalls v. Batista*, 191 F.3d 272, 280-81 (2nd Cir. 1999), in holding an *Allen* charge coercive, the Second Circuit gave substantial weight to the charge's effect on the minority jurors.

The necessity for such cautionary language [which would discourage jurors from surrendering their own conscientiously held beliefs] is highlighted in this case because, as the trial judge was well aware, the jury was divided eleven to one when the supplemental instructions were given. Although the state argues that the charge was proper because the judge never singled out either the minority or the majority, it is from the position of a minority juror that a suspect *Allen* charge is analyzed. ... Here, the juror in the minority was not made aware of the possibility that, if he or she was not convinced by the views of the majority, he or she should hold on to his or her own conscientiously held beliefs. The absence of that option might lead minority jurors to believe that unless they are able to convince the majority, they should abandon their own conscientiously held position. (Internal citations omitted).

Similarly, in *Tucker v. Catoe*, 221 F.3d 600 (4th Cir. 2000), a federal habeas review of a state death sentence, the court found important that in

the jury's note to the court, it expressed that it was "hopelessly deadlocked at 11-1 for the death penalty. I do not feel we will ever get a unanimous decision." Because the "expression of deadlock was emphatic and unequivocal," and did not "request further instruction" the court of appeals found the *Allen* charge to be coercive. 221 F.3d at 612.

F. Analysis. While the trial court's verdict-urging instruction did not include any "problematic content" tending to cast blame on a holdout juror in the event a verdict was not reached, *Campbell*, 294 N.W.2d at 18-19, the circumstances and context prompting the instruction and its aftermath clearly demonstrate that the instruction was improperly coercive.

Jury Question No. 2 revealed that by the afternoon of July 28 – after a day and a half of deliberation – questions had arisen about Instructions 45 and 46.³ By the morning of July 29 the court was aware that *one* juror had been identified by the jury as "failing to follow specific rules" concerning Instructions 45 and 52 – the self-defense instructions. At that point, the court clearly believed that the jury was deadlocked. That belief was confirmed moments later when the court was informed by the court

³ Instruction 45 defined justification in using reasonable force in self-defense. Instruction 46 described circumstances under which a defendant's use of force is not justified.

attendant and in a note that the jury was at a stalemate. Aware that under those circumstances an *Allen* charge would be inappropriate and injurious to Church's trial rights, the court denied the State's request for the instruction: "[N]or do I have any hope whatsoever that it would cause the jury to reach a jury verdict that is consistent with the Defendant's constitutional rights because the jury has basically told me we have a single holdout and we cannot convince that holdout." (TTr. V.9 11:12-21). Based on the previous communications from the jury, the court also correctly concluded, "And it is quite obvious that they have a dispute as to certain basic concepts they've been instructed on in this case and that that dispute is not going to be resolved by me giving them an instruction that urges them to please reach a verdict because we have invested lots of resources in this case." (TTr. V.9 11:22-12:2).

Thereafter, the court asked if further deliberations would be fruitful and was *again* informed that there was a single holdout on the jury. At that point, the court learned that the jurors were so upset that they had voted eleven to one on whether the holdout was "deliberately not following the rules." (Jury Note No. 4). In the face of evidence that one juror, despite continuous pressure from the other eleven jurors, was unwilling to relent ("I don't care, I'm not changing my mind,"), any verdict urging instruction

would clearly target the holdout and add to the pressure the juror had already been undergoing. Moreover, there was no indication, direct or otherwise, that the court's eventual *Allen* charge had served as a catalyst for any meaningful deliberations. Especially noteworthy is that there were no follow-up requests for additional guidance on any substantive instructions or, as happened earlier in the deliberations, clarification of witness testimony.

At the time the court issued its *Allen* charge, the jury had been deliberating more than 18 hours over the course of at least two and a half days. While the timing surrounding the verdict after the *Allen* charge is ordinarily deemed an important factor in whether or not the instruction was coercive, *Davis*, 975 N.W.2d at 19, Church contends – as stated above – that there is no indication that the jury's verdict was the product of adequate reconsideration but instead the result of further pressure on and eventual capitulation by the holdout juror. Jury service in a hotly contested murder trial is stressful enough.⁴ The length of time during which the holdout

⁴ Research has shown that all jurors who serve on murder cases may experience significant stress and extreme emotional setbacks because of their jury service. 77% of female and 23% of male jurors in capital murder cases report fear of reprisal from the defendant, the defendant's family or friends, or the victim's family or friends. Jurors returning a verdict of life-rather-than-death feared reprisal from the victim's friends. Antonio, "Stress

withstood documented criticism from the other jurors, compared to the relatively short time following the *Allen* charge in which the verdict was reached, buttresses the conclusion that the instruction caused the holdout to succumb. Under these circumstances the court abused its discretion.

G. Prejudice. The evidence against the Defendant was not overwhelming, and rested almost wholly on the testimony of alleged accomplices. With the exception of Hoff, everyone in his trailer on the night of the killing verified that Bagley was armed with a gun, “riled up” by dangerous levels of methamphetamine, and spoiling for the opportunity to commit an armed robbery. His explosive reaction to Wagner gave credence to Church’s apprehension of a deadly threat and to his instinctive reaction to incapacitate Bagley. The jury telegraphed early on that the issue apparently actuating the split in the vote on the murder count was self-defense – a split between guilty and not guilty. Given the actual and inherent pressures imposed upon the holdout juror in this case, Church respectfully asserts that little confidence can be placed in the polling of the jury after return of the verdicts. Far from a nudge to engage in meaningful deliberation, the court’s *Allen* charge led not to a verdict in which faith can be placed but rather one

and the Capital Jury: How Male and Female Jurors React to Serving on a Murder Trial,” 29 *The Justice System Journal*, 396, 399-400, 404 (2008).

prompted by surrender.

CONCLUSION

While no criminal defendant – Johnny Church included – is entitled to a perfect trial, he is without question entitled to a fair trial. Johnny Blahnik Church respectfully asserts that the error detailed above so deprived him of fundamental fairness that he is entitled to a new trial.

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REQUEST FOR ORAL ARGUMENT

Upon submission of this matter to the Court, counsel for Appellant Johnny Blahnik Church requests that he be permitted to be heard in oral argument.

CERTIFICATE OF FILING AND PROOF OF SERVICE

I certify that on September 26, 2022, I electronically filed the foregoing proof brief with the Clerk of the Supreme Court of Iowa using the Electronic Data Management System (EDMS). Participants in the case who are registered EDMS users will be served by the EDMS system. The proof brief was scanned for viruses using Security Manager AV Defender.

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CERTIFICATE OF COST

The undersigned certifies that the actual cost of producing the foregoing Appellant’s Proof Brief was \$0.00.

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**CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION, TYPEFACE
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This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 6,882 words, excluding the parts of the brief exempted by Iowa R. App. P.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14.

September 26, 2022
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