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 REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

RULES

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

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

State v. Davis, 975 N.W.2d 1, 18 (Iowa 2022)
State v. Piper, 663 N.W.2d 894, 912 (Iowa 2003)

ARGUMENT

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

Discussion.

The State contends that the timing between the court giving the jury a verdict-urging instruction and their return of the verdict "helps establish that the instruction did not coerce jurors into abdicating their own judgment." (Appellee's Brief, p. 14). Unlike *State v. Davis*, 975 N.W.2d 1 (Iowa 2022), in which the Court found that four and a half hours of post-deliberation was "enough to show the jury adequately reconsidered the case," *Id. Davis*, 975 N.W.2d at 20, it is important to note that the Davis jury had only been deliberating for seven hours prior to the verdict-urging instruction, and the court was at that point only aware that the jury *may* have been deadlocked. *Davis*, 975 N.W.2d at 16. Here, the jury had been deliberating for two full days and the court was informed on at least three occasions that a single juror was holding out.[1] At the time the court received a communication

[1] The State in its brief argues that "[t]he facts of the underlying offense are not relevant to the challenge raised in this appeal." (Appellee's Brief, p. 6). The facts are in fact very much relevant. The fighting issue in the case was whether or not Church acted in self-defense in inflicting the fatal injuries to Chris Bagley. During the first day of deliberations and in subsequent communications with the court, the jury indicated that the holdout juror's

from the jury at 10:06 a.m. on July 29, 2021, that "*a* juror is failing to follow specific rules" (TTr. V.9 3:2 – 5:20), the court believed that the jury was deadlocked. Again at 11:15 a.m. the court attendant had informed the court orally that the jury was deadlocked, followed by a jury note that the jury was split eleven to one with one juror again "not following a rule" and indicating that he or she was not going to change his or her opinion. (TTr. V.9 5:24 – 6:17). Repeat communication from the jury at 11:37 a.m. again indicated that a single juror was resolute in not "following the rules," and that it was the foreperson's opinion that further deliberations would be fruitless. (TTr. V.9 12:13 - 24).

While the State argued that the trial court's awareness of the jury split would not make a verdict-urging instruction coercive (Appellee's Brief, p. 16-17), here *repeated* juror notes blaming a single juror for the impasse in deliberations clearly focused pressure on the holdout juror. Unlike the situation in *State v. Piper*, 663 N.W.2d 694, 912 (Iowa 2003), in which the Court found important that the trial court did not inquire into the voting breakdown, although that information was volunteered by the foreperson in notes to the court, here both the trial judge and the jury itself knew that the

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intransigence centered on the instructions pertaining to self-defense. (TTr. V.8 8:19-10:19; TTr. V.9 3:2-5:20).

"issue" was concentrated on a lone holdout.

The very length of deliberations after the jury was re-instructed in *Piper* also distinguishes the impact of the verdict-urging instruction here. In *Piper*, the court merely reread the general instruction regarding jurors' duties during deliberation, 663 N.W.2d at 911, n. 3, whereas here the jurors were given an instruction on reexamining their positions. Also unlike *Piper*, in which the foreperson informed the court that there was a vote for ten guilty and two not guilty or "not sure," 663 N.W.2d at 911, here there was a single juror holding back the tide of the other eleven jurors. In *Piper*, the jurors deliberated an additional ten to eleven hours, including lunch breaks, 663 N.W.2d at 912, whereas here the jurors deliberated for a mere three and a half hours, including lunch.

While the propriety of a verdict-urging instruction is tested by whether or not the instruction constituted an abuse of discretion, here it is significant that the trial judge himself twice expressed reluctance to give such an instruction. The court first concluded that it had no "hope whatsoever that [a verdict-urging instruction] would cause the jury to reach a jury verdict consistent with the Defendant's constitutional rights (TTr. V.9 11:12-21). The court again expressing misgivings minutes before the instruction was issued (TTr. V.9 18:1-17)

Finally, the fact that when the jurors were being polled after the verdict none expressed disagreement with the verdicts should, under the circumstances of this case, yield little confidence in a conclusion that the lone holdout was not pressured to acquiesce. The prosecution and trial were highly publicized, the trial was subject to expanded media coverage and evoked intense emotions throughout the course of trial. Even when the jurors were preparing to announce their verdict, the court cautioned both the media and members of the audience to refrain from identifying the jurors and expressing emotional outbursts. (TTr. V.9 21:13-22:25). It should come as no surprise that the lone holdout juror, subjected to pressure during deliberations, highlighted by an inherently coercive instruction, would be reluctant to express his or her disagreement in open court. Finally, Iowa Rule of Evidence 5.606(b) barred Church from introducing evidence from the holdout juror about the effect of the instruction or the pressure brought to bear on the juror's participation as a result of the instruction.

CONCLUSION

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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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 REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 1,107 words, excluding the parts of the brief exempted by Iowa R. App. P.

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September 26, 2022
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