IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. WONETAH EINFELDT, Defendant-Appellant.	)))))))))	S.CT. NO. 16-0955

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR DALLAS COUNTY
HONORABLE RANDY HEFNER, JUDGE (JURY TRIAL AND SENTENCING)

APPELLANT'S REPLY BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On August 22, 2017, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Wonetah Einfeldt, 611 SW 62nd St., Des Moines, IA 50312.

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STATEMENT OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's brief filed on August 1, 2017. While the Defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I. THE DISTRICT COURT ERRED IN FAILING TO SUSPEND THE PROCEEDINGS AND ORDER A CHAPTER 812 COMPETENCY EVALUATION.

This issue is not addressed in the reply brief.

II. THE DISTRICT COURT ERRED IN EXCLUDING EVIDENCE OF VINSON'S (1) PRIOR CONVICTIONS FOR WEAPON-RELATED OR ASSAULTIVE CRIMES, (2) THREATS AGAINST LACEY CHICOINE, AND (3) INVOLVEMENT IN A SUBSEQUENT SHOTS FIRED INCIDENT AT EINFELDT'S APARTMENT COMPLEX.

The State argues that State v. Dunson, 433 N.W.2d 676, 680-681 (Iowa 1988) was inconsistent with other Iowa precedent preceding State v. Jacoby, 260 N.W.2d 828, 838 (Iowa 1977), namely the civil case of Klaes v. Scholl, 375

N.W.2d 671, 676 (Iowa 1985). See (State's Br. p.36). But, like Jacoby itself, Klaes was also brought to the Supreme Court's attention by the State's appellate brief in Dunson. See Brief for Plaintiff-Appellee State of Iowa, State v. Dunson, No. 87-1412, at p.14 (filed June 30, 1988). Nevertheless, the Court in Dunson determined that specific acts are admissible under Rule 405(b) to prove the victim's aggressive and violent character at the time of the crime. See Dunson, 433 N.W.2d at 680-681.

The Dunson rule was subsequently reaffirmed by our Supreme Court in State v. Douglas, 485 N.W.2d 619, 621 (Iowa 1992). That case involved a defendant who claimed that he was acting in self-defense when he injured the victim, a police officer. On appeal, he argued that he should have been permitted to introduce, in support of his self-defense claim, evidence about an incident of aggressive behavior demonstrated by local police toward another individual which took place several days after the incident involving defendant. The Supreme Court reiterated: "In State v. Dunson, 433

N.W.2d 676, 679-81 (Iowa 1988), we adopted the rule allowing evidence of subsequent conduct as well as prior conduct to show character traits." Douglas, 485 N.W.2d at 621. But the Court ruled that the subsequent conduct at issue there was properly excluded as not relevant in that only one of the police officers involved in the subsequent conduct was also involved in the incident involving the defendant, and the prejudicial effect of the evidence therefore substantially outweighed the probative value under then-Rule 403.

The Dunson rule as applied to prior specific acts of the victim was also discussed by the Iowa Court of Appeals in its published decisions in State v. Clay, 455 N.W.2d 272, 273-274 (Iowa Ct. App. 1990) and State v. Blanks, 479 N.W.2d 601, 607 (Iowa 1992). In Clay, a defendant asserting self-defense argued that the district court erred in excluding evidence that the assault victim had on previous occasions threatened the defendant with a knife and had almost killed another man. The Court of Appeals stated: "Our supreme court has recognized Iowa Rule of Evidence 405(b) is not limited to past

instances of conduct, but may encompass the admissibility of subsequent conduct as well. State v. Dunson, 433 N.W.2d 676, 680 (Iowa 1988)." Clay, 455 N.W.2d 273. Having already granted retrial on another ground, the Court of Appeals held that "evidence of [the victim's] violent or threatening behavior is admissible pursuant to Iowa Rule of Evidence 404(a)(2) and 405(b)", though it remained for the trial court on remand to engage in Rule 403 balancing. Clay, 455 N.W.2d at 274.

In Blanks, a defendant raised an appellate claim that the trial court should have allowed evidence of the assault victim's earlier violent conduct against him. The Court of Appeals stated: "Our rules of evidence clearly allow such evidence, subject to the trial court's discretion. [...] Our supreme court has allowed evidence concerning individual incidents of the victim's violent character toward the accused which occurred *after* the incident for which the defendant is charged. State v. Dunson, 433 N.W.2d 676, 679-81 (Iowa 1988)." Blanks, 479 N.W.2d at 607 (citations omitted; emphasis in original). The Court of Appeals had already ordered a new trial on other

grounds, but directed that "on remand, the court is to allow this evidence if Blanks relies on similar defenses." Blanks, 479 N.W.2d at 607.

In addition to Douglas, Clay, and Blanks, the rule that specific instances of a victim's conduct are admissible to show the victim was the first aggressor was also applied by our Supreme Court in State v. Webster, 865 N.W.2d 223, 243 (Iowa 2015), already cited in Defendant's initial brief. See (Def.'s Br. p.62).

Finally, while it may not be the majority approach, Iowa is not alone in concluding that the character of the victim on the first aggressor issue is an essential element of the defense of self-defense, rendering specific acts admissible under language similar to Iowa Rule of Evidence 5.405(b). See e.g., State v. Lewchuck, 539 N.W.2d 847, 853-855 (Neb. Ct. App. 1995); Heidel v. State, 587 So.2d 835, 846 (Miss. 1991).

CONCLUSION

For the reasons stated in her original Brief and Argument as well as the above Reply, Defendant-Appellant Einfeldt

respectfully requests that this Court reverse her conviction and remand for a new trial.

ATTORNEY'S COST CERTIFICATE

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Reply Brief and Argument was $__0__, and that amount has been paid in full by the State Appellate Defender.

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VIDHYA K. REDDY
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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 878 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Vidhya K. Reddy Dated: *8/22/17*

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