IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. ANTOINE WILLIAMS, Defendant-Appellant.	)	S.CT. NO. 17-1989

APPEAL FROM THE IOWA DISTRICT COURT
FOR FLOYD COUNTY
HONROABLE RUSTIN DAVENPORT, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 30th day of August, 2018, 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 Antoine Williams, No. 6620033, Anamosa State Penitentiary, 406 North High Street, Anamosa, IA 52205.

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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 proof brief filed on or about July 27, 2018. 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. WILLIAMS' JURY POOL WAS NOT A FAIR CROSS-SECTION OF THE COMMUNITY, AND THEREFORE, A DENIAL OF HIS RIGHT TO AN UNBIASED JURY UNDER THE FEDERAL AND STATE CONSTITUTIONS.

The State's calculations and proposed tests acknowledge and highlight the problem facing rural counties with small African-American populations. "Whenever 75 people are summoned for service in Floyd County, where 2.3% of eligible jurors are African-American, that jury pool has a 17.4% chance of containing zero African-Americans." (State's Br. p. 40). So under the State's proposed test, no underrepresentation can be substantial, and a defendant in Floyd County, or any other county with less than 3% African-American population, can

successfully challenge his jury pool as underrepresentative, "even if the exclusion of African-Americans was total and systematic." State v. Plain, 898 N.W.2d 801, 825 (Iowa 2017). This was precisely the reason the court abandoned reliance solely on absolute disparity. The result is that in ninety of Iowa's ninety-nine counties, a defendant does not have right to a fair cross-section in his jury pool. See Iowa Black Population Percentage, 2013 by County, https://www.indexmundi.com/facts/united-states/quick-facts/iowa/black-population-percentage#chart. This result certainly would not satisfy the concerns voiced in Plain: the test for underrepresentation "must provide meaningful protections of the right to an impartial jury." Plain, 898 N.W.2d at 826.

Plain recommended "a flexible approach for determining when a racial disparity rises to the level of a constitutional violation is warranted." Plain, 898 N.W.2d at 827. Thus, it is appropriate to consider the historical data when determining if a defendant has met the second prong and shown substantial underrepresentation. Even considering the State's estimation

that any particular jury pool in Floyd County has a 17.4% chance of including zero African-Americans, there is only a 3% chance of two jury pools in row including no African-Americans. The likelihood of it happening three times in a row is only .5%. In the jury reports provided by Floyd County, fourteen out of 25 jury pools contained no identifiable African-Americans. This does not occur randomly, and the court should consider it when assessing Williams claim of substantial underrepresentation.

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY REFUSING TO ALLOW WILLIAMS TO INDIVIDUALLY VOIR DIRE THE JURY POOL ABOUT RACE ISSUES?

Williams was prejudiced by the district court's denial of his request to individually voir dire the jurors about race.

Only one witness, Shawn Biehl, testified he heard a gap in the shots. However, Biehl was inside a nearby apartment building watching television when he heard the shots. Importantly, his original statement to police varied in critical respects from his testimony. He originally told police that he heard one shot, looked out the window and saw Williams dragging Fleming out of the car. However, his court testimony

was that he heard two shots, looked out the window and saw Williams fire three more shots into the car, then drag Fleming from the car. (Trial Tr. vol III p. 14 L. 10 – p. 21 L. 6; p 40 L. 17 – p. 43 L. 20).

No other witness testified about hearing a gap in the shots. The other person in the apartment with Biehl testified she heard three shots and saw Williams standing over Fleming's body when she looked out the window. (Trial Tr. vol. III p. 55 L. 10 – p. 58 L. 17; p. 66 L. 17-24). Tracy Hagen and her husband had just entered the apartment building when they heard shots. She described the shots as sounding like firecrackers: "you just light them and they just pop, pop, pop, pop, pop, pop. Kind of like that." She testified she heard six or seven shots "for sure." (Trial Tr. vol. III, p. 101 L. 6 – p. 102 L. 10). Seven-year-old Damiyah Williams, who was inside her apartment at the time, heard "sparkles," like fireworks. She looked out her window and saw someone getting into a red car. (Trial Tr. vol. III, p. 223 L. 15 – p. 224 L. 15). Chris Vierkant, who had walked by moments before the shots were fired, "saw a

flash and heard two bangs." When asked if there was any gap between the bangs, he said, "It was bang, bang." He assumed it was fireworks. (Trial Tr. vol. III, p. 252 L. 4 – p. 253 L. 21).

As well, the medical evidence did not contradict, and could be interpreted to support Williams' claim. Dr. Dennis Klein testified Fleming suffered four bullet wounds, and his description of the path of the bullets could have been consistent with either Williams' or the State's version of events. The shooter was to Fleming's left. If Fleming were sitting upright, then the bullets would have been traveling downward. However, some wounds had upward trajectories which would be consistent with Fleming leaning or slumping to the right when he was shot. (Trial Tr. vol. III, p. 210 L. 11 – p. 211 L. 19). Williams testified he shot Fleming when he saw him lean and reach to the right, in a manner Williams believed showed he was reaching for a weapon. (Trial Tr. vol. VI, p. 56 L. 16 – p. 67 L. 14). Thus, the bullet wounds are consistent with Williams' version of events.

And Williams' statements during his interview with Agent Turbit, describing how he felt "triggered" by Fleming do not directly undermine his legal claim of self-defense. And the State's reference to Agent Turbett's recollection that Williams went to the parking lot to shoot Fleming does not provide context to the statement. (State's Br. p. 52). Agent Turbett testified he asked Williams during the interview in Chicago why he came back to the parking lot and walked up to Nate that night, and Turbett's recollection of what Williams' said was, "He said, 'To see if he'd shoot me? I don't know'—or he said, 'To see if he'd pull a gun on me. I don't know, to shoot him, I guess.' " (Trial Tr. vol. IV, p. 112 L. 23 – p. 113 L. 4). Williams did present a credible claim of self-defense, and the district court's refusal to allow Williams to individually voir dire the potential jurors prejudiced him.

III. WHETHER THE DISTRICT COURT ERRED IN EXCLUDING EVIDENCE OF FLEMING'S PRIOR CONVICTIONS FOR WEAPON-RELATED OR ASSAULTIVE CRIMES AND PRIOR ACTS OF VIOLENCE NOT NECESSARILY KNOWN BY WILLIAMS?

This argument is not addressed in this reply brief.

IV. THE DISTRICT COURT ERRED IN REFUSING TO GIVE WILLIAMS' REQUESTED JURY INSTRUCTION ON IMPLICIT BIAS.

Whether Williams requested the proposed AIJ jury instruction or a different instruction more focused on race-switching, the State makes no claim that either instruction is a misstatement of the law. See ABA, Achieving an Impartial Jury Toolbox, at 17-20; 21-22. (found at https://www.americanbar.org/content/dam/aba/administrative/american_jury/2016_juryprinciple_resolution.authcheckdam.pdf). The district court's reason denying the instruction was an abuse of discretion. Plain, 898 N.W.2d at 816.

The court's error was not harmless. As addressed in section II above, Williams had a credible justification defense, and the medical evidence did not contradict his version of events. It is precisely in these cases, when the jury must

assess and resolve conflicting evidence, that an instruction on implicit bias is critical to ensuring a fair result for the defendant.

V. BECAUSE THE RELEVANT PROVISIONS OF HOUSE FILE 517 (STAND YOUR GROUND) ARE AMELORIATIVE AND PROCEDURAL, DISTRICT COURT ERRED IN CONCLUDING THEY DID NOT APPLY TO WILLIAMS' CASE?

The argument made in this appeal that HF 517 applies to Williams' case is the same as the argument made below in substance, if not in form. Williams argued below that the Stand Your Ground provisions applied because he was charged after the law went into effect and at one point defense counsel seems to concede that the law is not "retrospective." (Trial Tr. vol. IV p. 117 L. 1-7). However, the heart of the argument the defense relied upon below is the same as the argument on appeal: Because the proceedings against Williams were taking place after the statute went into the effect, the changes in the law should apply to him. This is clearly the state of the law. See Iowa Code § 4.5 (2017). Notably, the State's response and the court's ruling both focused on the timing of shooting vs. the

timing of the criminal proceedings. (Trial Tr. vol. IV p. 117 L. 8 – 22; p. 118 L. 17 – p. 119 L. 22). Even if the argument was not articulated as precisely as it could have been, it was sufficient to preserve error.

"Error preservation does not turn... on the thoroughness of [trial] counsel's research and briefing so long as the nature of the error has been timely brought to the attention of the district court" at a time when corrective action could have been taken by the court. Summy v. City of Des Moines, 708 N.W.2d 333, 338 (Iowa 2006). All that is necessary is that the "objection [be] sufficient to alert the court to the error that the defendant now raises on appeal...." Summy, 708 N.W.2d at 338. In Summy, the Iowa Supreme Court concluded that the City's "object[ion] to the [trial] court's exclusion of Des Moines property owners from the jury panel" was sufficient to preserve error despite the fact that "the City's motion did not identify the two statutes that the City now claims prohibited the exclusion of Des Moines property owners from the jury panel." Id. at 337-38. Though "[c]ertainly it would have been helpful to the

trial court had the City provided that court with the same legal authorities in support of its position that it has brought to the attention of this court on appeal," failure to reference the particular legal authorities did not render the error unpreserved since "the nature of the error ha[d] been timely brought to the attention of the district court." Id. at 338.

Accordingly, error was preserved.

CONCLUSION

For the reasons argued above and in his opening brief, Williams' conviction should be vacated and his case remanded for a new trial.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Reply Brief and Argument was $1.44, and that amount has been paid in full by the Office of the Appellate Defender.

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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:

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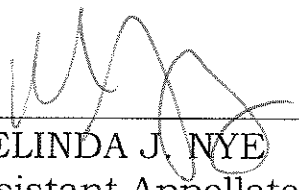

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