7-19-2017

State v. Williams Respondent's Brief Dckt. 44300

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 44300**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR-FE-2015-12724**
	)	
KENT GLEN WILLIAMS,	)	
	)	
Defendant-Appellant.	)	
	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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STATEMENT OF THE CASE

Nature Of The Case

Kent Glen Williams appeals from his convictions for two counts of robbery and one count of felon in possession of a firearm, with enhancements for use of a firearm in the commission of a felony and being a persistent violator of the law.

Statement Of The Facts And Course Of The Proceedings

A grand jury indicted Williams for (1) a bank robbery committed on April 14, 2015, (2) being a felon in possession of a firearm, and (3) a bank robbery committed on July 22, 2015; with a firearm enhancement on the second robbery. (R., pp. 87-88, 314-15.) The state also charged a persistent violator enhancement. (R., pp. 62-63.) Williams moved to sever the robbery charges for separate trials. (R., pp. 122-32.) The state objected to the motion for severance. (R., pp. 134-44.) The district court denied the motion. (Tr., p. 52, L. 6 – p. 64, L. 14.[1])

The case proceeded to trial, at the conclusion of which the jury returned guilty verdicts on all charges and enhancements. (R., pp. 372-74.) Williams filed a notice of appeal timely from the entry of judgment. (R., pp. 394, 399.)

[1] Citations to the "Tr." are to the transcript containing the trial and most of the pre-trial hearings. Additional transcripts are referenced either by date of hearing, *e.g.*, "02/05/16 Tr.," or by proceeding, *e.g.*, "G.J. Tr." for grand jury proceedings.

ISSUES

Williams states the issues on appeal as:

I. Did the district court abuse its discretion by denying Mr. Williams's motion for relief from the prejudicial joinder of both bank robbery charges?

II. Did the prosecutor commit misconduct by disparaging defense counsel and vouching for the police during closing arguments?

(Appellant's brief, p. 4.) Williams further raises the following issues in his supplemental brief:

I. Does the Idaho Constitution, Article I, section 13 bestow to a criminal defendant the right to co-counsel or "hybrid" representation?

II. Were the restraints placed on Mr. Williams at pre-trial hearings so excessive and prejudicial that it violated his right to a fair trial; and was his right to be present at all court proceedings violated?

III. Did the trial court error on not granting Mr. William's multiple requests for a continuance to appoint new counsel; and not declaring a mistrial, sua sponte, when the record reflected Mr. Williams was not receiving adequate or competent representation?

IV. Was Mr. William's 6th Amendment right to self representation violated by the restrictions put in place by the court if he was to represent himself at trial?

V. Was the arrest of Mr. Williams and warrant to search his motel room illegal, and should the evidence "obtained" as a result be suppressed?

(Supplemental brief, p. 1 (some capitalization and spelling corrected).)

The state rephrases the issues as:

1. Has Williams failed to show any abuse of discretion in the district court's determination that, because most of the evidence applicable to either robbery charge would be admissible to prove the other robbery charge, there would be no insurmountable prejudice from trying the robbery charges in a single trial?

2. Has Williams failed to show prosecutorial misconduct in closing argument, much less fundamental error?

3. Has Williams failed to show error in the supplemental briefing?

ARGUMENT

I.
Williams Has Failed To Show Any Abuse Of Discretion In The District Court's Determination That There Would Be No Insurmountable Prejudice From Trying The Robbery Charges In A Single Trial

A. Introduction

The district court denied Williams' motion to sever the robbery counts. (Tr., p. 52, L. 6 – p. 64, L. 14.) The district court specifically found there was "a common scheme present sufficient to allow joinder under Rule 8." (Tr., p. 59, Ls. 10-11.) The district court also found that "severance wouldn't provide relief" because under I.R.E. 404(b) "the evidence of one crime would be admissible in the case of the other to prove identity, and so the defense would be facing the same evidence in any event." (Tr., p. 61, L. 22 – p. 62, L. 3.) In making its I.R.E. 404(b) ruling and addressing potential prejudice from a joint trial, the district court stated:

> The court is convinced that the evidence of one robbery would be admissible in the trial of the other under 404(b). The evidence is very compelling, identity or signature evidence. While any one of the common facts might be coincidental or common to the crime of bank robbery, the commonality all taken together make a compelling case that the same person committed each robbery.
>
> Further, much of the evidence found upon execution of the search warrants is relevant to both of the robberies. Trying the cases together is a proper allocation and preservation of judicial resources and any prejudice or confusion can be addressed with appropriate jury instructions.

(Tr., p. 63, L. 24 – p. 64, L. 12.)

Williams claims the district court abused its discretion because "the evidence of one robbery would not be admissible pursuant to I.R.E. 404(b) in the

trial of the other." (Appellant's brief, p. 8.[2]) Review, however, shows this argument to be without merit because Williams has failed to show any error in the district court's analysis that the evidence strongly suggested that the robber in both incidents was the same person, and therefore the evidence was admissible under I.R.E. 404(b) to show identity.

B. Standard Of Review

"[A]n abuse of discretion standard is applied when reviewing the denial of a motion to sever joinder pursuant to I.C.R. 14." State v. Field, 144 Idaho 559, 564, 165 P.3d 273, 278 (2007). Rulings under I.R.E. 404(b) are reviewed under a bifurcated standard: whether the evidence is admissible for a purpose other than propensity is given free review while the determination of whether the probative value of the evidence is substantially outweighed by its potential for unfair prejudice is reviewed for an abuse of discretion. State v. Grist, 147 Idaho 49, 51, 205 P.3d 1185, 1187 (2009).

C. Williams Has Shown No Error In The District Court's Ruling That Because Most Of The Evidence Of Either Robbery Would Be Admissible To Prove The Other Williams Suffered Minimal Prejudice From A Joint Trial

Idaho Criminal Rule 14 governs motions to sever and provides, in relevant part:

[2] Williams does not concede that the district court correctly determined that joinder was proper because both robberies were part of a common scheme, but does not challenge that ruling either. (Appellant's brief, p. 6, n. 3.) Because Williams bears the burden of establishing error on appeal, that ruling must be presumed correct. State v. Willoughby, 147 Idaho 482, 488, 211 P.3d 91, 97 (2009) ("This Court will not presume error on appeal, and an appellant bears the burden of demonstrating error through the record.").

> If it appears that a defendant or the state is prejudiced by a joinder of offenses … in a complaint, indictment or information or by such joinder for trial together, the court may … grant separate trials of counts ….

"When reviewing an order denying a severance motion, the inquiry on appeal is whether the defendant has presented facts demonstrating that unfair prejudice resulted from a joint trial." State v. Tankovich, 155 Idaho 221, 227, 307 P.3d 1247, 1253 (Ct. App. 2013). The district court will not be deemed to have abused its discretion "[i]n the absence of some specific showing of prejudice." State v. Dambrell, 120 Idaho 532, 538, 817 P.2d 646, 652 (1991). In this case the district court found no unfair prejudice that could not be adequately addressed through instructions. (Tr., p. 63, Ls. 24 – p. 64, L. 12.) Review supports the district court's analysis and conclusion.

The district court first held that unfair prejudice was minimal because "the evidence of one robbery would be admissible in the trial of the other under 404(b)." (Tr., p. 63, L. 24 – p. 64, L. 1.) Application of the relevant law supports this analysis.

"Evidence of other crimes, wrongs, or acts is not admissible to prove a defendant's criminal propensity. However, such evidence may be admissible for a purpose other than that prohibited by I.R.E. 404(b)." State v. Truman, 150 Idaho 714, 249 P.3d 1169 (Ct. App. 2011) (citations omitted). Under I.R.E. 404(b), evidence of prior wrongs or acts may be admitted to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. I.R.E. 404(b); State v. Phillips, 123 Idaho 178, 845 P.2d 1211 (1993). "Under the rule, the evidence is only excluded if the probative value is

substantially outweighed by the danger of unfair prejudice. The rule suggests a strong preference for admissibility of relevant evidence." State v. Martin, 118 Idaho 334, 340 n.3, 796 P.2d 1007, 1013 n.3 (1990) (emphasis in original).

The district court relied on 15 similarities between the April and July bank robberies in its analysis and conclusion that the commonality of the facts of the robberies "taken together make a compelling case that the same person committed each robbery" (Tr., p. 64, Ls. 1-6):

1. The robberies were "relatively close in time, separated by three months approximately" (Tr., p. 54, Ls. 16-19);
2. "the perpetrator in each was a Caucasian male somewhere between 5'8" and 6-foot or just over 6-foot" (Tr., p. 54, Ls. 19-21);
3. the perpetrator in each robbery was described as "having a similar general appearance" (Tr., p. 54, Ls. 21-22);
4. "both banks were local Boise branches of Key Bank" (Tr., p. 54, Ls. 22-23);
5. both robberies occurred "very shortly after the bank opened at 9:00 a.m. before 9:30" (Tr., p. 54, Ls. 23-25);
6. in both "the perpetrator was wearing a billed dark cap with a long-sleeved jacket" (Tr., p. 54, L. 25 – p. 55, L. 1);
7. "in both cases the perpetrator, upon entering the bank, pulled up a handkerchief over his mouth and nose covering most of his face" (Tr., p. 55, Ls. 1-4);
8. the perpetrator in each robbery wore "mirrored navigator sunglasses" that matched surveillance photos (Tr., p. 55, Ls. 4-7);
9. in both cases the long-sleeved jacket and handkerchief mask were "color-coordinated" (Tr., p. 55, Ls. 7-10);
10. the perpetrator in each robbery had "some sort of binding system" to hold the handkerchief up and over the face; in the July robbery a teller saw "a handsewn-in elastic band" which was consistent with what may have been used in the April robbery (Tr., p. 55, Ls. 10-17);
11. the perpetrator in each robbery had "knowledge of how banks, and in particular this bank, Key Bank, was laid out" (Tr., p. 55, Ls. 18-20);
12. in both robberies the perpetrator "appeared to know and demanded in each case that cash be taken from two teller drawers" that were hidden from regular customers (Tr., p. 55, Ls. 20-25);
13. the perpetrator in each robbery "asked specifically for 20s, 50s and 100s by denomination" (Tr., p. 55, L. 25 – p. 56, L. 3);
14. in each robbery the perpetrator instructed the tellers not to "include any dye, any bait or any trackers" (Tr., p. 56, Ls. 3-5); and

15. in both cases "the perpetrator was very easily and quickly able to identify an electronic tracker that was hidden inside a bill" (Tr., p. 56, Ls. 5-11).

The district court also noted some of the other evidence obtained by police, including that obtained by execution of warrants: the car used in the April robbery likely belonged to Williams (Tr., p. 56, L. 14 – p. 57, L. 13); a particular identifying characteristic seen on the hand of the robber at the April robbery was also present on Williams (Tr., p. 57, Ls. 14-21); police found "two other sets of color matching long-sleeved shirt and handkerchief" in Williams' possession (Tr., p. 57, L. 22 – p. 58, L. 1); the handkerchiefs had an "elastic band custom sewn into the back" (Tr., p. 58, Ls. 1-4); Williams had sewing materials consistent with having sewn in the elastic mask holders (Tr., p. 58, Ls. 4-6); Williams had a handgun "consistent with the one that was … displayed in the July bank robbery" (Tr., p. 58, Ls. 6-8); police found "approximately $7,000" in hundred dollar bills, some of which had sequential serial numbers (Tr., p. 58, Ls. 8-13); and Williams had "several pairs of mirrored navigator-type sunglasses matching the description [of glasses] used in both robberies" (Tr., p. 58, Ls. 13-15).

The district court reasoned that any of this evidence "taken by itself" was not necessarily distinctive or uncommon. (Tr., p. 58, Ls. 16-17.) "What is distinctive and uncommon, and in the court's view sufficient to identify a common scheme or make it highly suggestive that the same person committed both crimes, is that when you apply all of these things together, it makes a signature-type of event, very unique as to the way the robber operated in both robberies." (Tr., p. 58, Ls. 17-23.) The similarities between the robberies went "beyond mere coincidence." (Tr., p. 58, L. 24 – p. 59, L. 9.)

The facts and the law support the district court's analysis. The evidence shows two bank robberies with a series of commonalities that, taken individually, might mean nothing, but, taken together, strongly suggest that they were committed by the same person (and that the person was Williams). The district court pointed out that a common scheme is shown by "crimes that share features idiosyncratic in character which permit an inference that each individual offense was committed by the same person or persons as a part of a pattern of criminal activity involving certain identified crimes; whereas common plan described crimes related to one another for the purpose of accomplishing a particular goal." (Tr., p. 54, Ls. 1-10 (citing Scott v. Com., 651 S.E.2d 630, 635 (Va. 2007) ("The term 'common scheme' describes crimes that share features idiosyncratic in character, which permit an inference that each individual offense was committed by the same person or persons as part of a pattern of criminal activity involving certain identified crimes.")).) The district court further concluded that the evidence "is very compelling, identity or signature evidence." (Tr., p. 64, Ls. 1-2.) Indeed, the odds that two different robbers would randomly employ such nearly identical methods of robbing two banks in the same chain in the same time-period are astronomical.

Williams argues that the facts, even taken as a whole, "are not distinctive or remarkable. An early morning bank robbery committed by an average white male with a disguise and some knowledge of teller drawers and tracking bills is not so unusual that it tends to identify the individual of the prior robbery." (Appellant's brief, p. 10.) Were this an accurate and complete description of the

facts, the state might agree with Williams. Williams' analysis, however, merely ignores the most relevant facts.[3] When all of the facts are included in the analysis the ruling of the district court is perfectly sound.

Williams also relies on one difference he believes prevents a determination that the evidence of one robbery is relevant to identity in the other robbery. "[I]n the April robbery, the perpetrator did not display a weapon; in the July robbery, the perpetrator showed the tellers a handgun in his waistband." (Appellant's brief, p. 10.) The district court, however, addressed that difference and included it in its totality analysis. (Tr., p. 56, Ls. 8-18.)

Moreover, the district court determined that the difference was not as stark as Williams would have it seem. "In April, he kept his hand in his jacket except when he was reaching up to take the money and, in July, he pulled up his … coat over his waistband and showed them the weapon[.]" (1/29/16 Tr., p. 36, L. 24 – p. 37, L. 2; see also Tr., p. 54, Ls. 13-16 (incorporating prior articulation of facts).) The district court also found it significant that in the July robbery "the perpetrator lifted his shirt and showed a handgun" when he discovered the tracker as the teller handed it to him, whereas in the April robbery the robber did not discover the tracker until he was in his car in a parking lot a short distance from the bank. (Tr., p. 56, Ls. 8-15.) Because an inference from the evidence is that the robber in April in fact had a gun in his pocket but did not otherwise display it (9/22/15 G.J. Tr., p. 20, L. 18 – p. 21, L. 17 (teller in the April robbery testified that the

[3] Williams' counsel recites a fairly accurate summary of the facts found by the district court. (Appellant's brief, pp. 9-10.) It is only the analysis where most of those facts, and all of the truly significant ones, are omitted. (Appellant's brief, p. 10.)

robber's hand "was in his pocket until he reached for the money" and that he complied with the demand for money, in part, because he "didn't want to see a weapon")), the difference in the robberies is not particularly weighty. Williams has failed to show that the evidence showing the remarkable similarities in the robberies was irrelevant to show that they were committed by the same person.

Williams next argues that the district court abused its discretion in balancing the potential for unfair prejudice against the probative value of the evidence, noting that the evidence linking Williams to the April robbery is stronger than that linking him to the July robbery. (Appellant's brief, pp. 10-12.) Williams' argument fundamentally misunderstands the district court's analysis. The district court concluded that the commonalities of the two crimes "make a compelling case that the same person committed each robbery." (Tr., p. 64, Ls. 1-6.) Thus, evidence that Williams committed the April robbery is properly considered as identity evidence in both robberies. The jury is not being asked to believe Williams committed the July robbery because his commission of the April robbery shows a propensity to commit robbery; rather, the evidence is that both robberies were committed by the same robber, and therefore if Williams committed the April robbery he likely also committed the July robbery. By failing to recognize this important distinction Williams misunderstands the district court's ruling and his argument that all the evidence is prejudicial is without basis.

The district court determined that the commonalities of the robberies present a "compelling case that the same person committed each robbery" and therefore the evidence of both is admissible as identity evidence to prove both

robberies and, therefore, there would be little prejudice in trying the robbery charges together. (Tr., p. 61, L. 22 – p. 62, L. 3; p. 63, L. 24 – p. 64, L. 14.) Williams has failed to show error or abuse of discretion in the district court's analysis or ruling.

II.
Williams Has Failed To Show Prosecutorial Misconduct In Closing Argument, Much Less Fundamental Error

A. Introduction

During opening statements the prosecution informed the jury it would be hearing evidence that police found a handgun, ammunition and magazines when they executed search warrants on Williams' hotel room and car. (Tr., p. 375, Ls. 7-23.) Defense counsel asserted that Williams would tell the jury "adamantly, without a doubt, he did not possess a firearm, ammunition, holster, clips or anything associated with these guns." (Tr., p. 383, Ls. 17-19.) Williams, however, after the state had presented its case, elected to not testify and invoked his right against compelled self-incrimination. (Tr., p. 754, Ls. 4-5.) Defense counsel also, in opening statement and closing argument, repeatedly asserted that officers, based on presumptions and assumptions, were trying to "pin" the robberies on Williams. (Tr., p. 380, Ls. 3-22; p. 802, L. 17 – p. 803, L. 7.)

In rebuttal closing argument the prosecution pointed out that defense counsel's allegations in his opening statement that Williams did not possess a gun were not evidence, and that there was no evidence to support those factual assertions. (Tr., p. 815, L. 25 – p. 816, L. 7.) The prosecution went through the evidence that the gun, ammunition and loaded magazines had been found in

Williams' hotel room and car and concluded by arguing the gun had not been planted by the police as implied by Williams' counsel. (Tr., p. 816, Ls. 8-18.) The prosecutor then took on the allegation that police were trying to "pin" these crimes on Williams, saying the claim was "ludicrous" because the evidence did not in any way support it. (Tr., p. 816, L. 18 – p. 817, L. 12.) The prosecutor characterized the claims that evidence was planted and the police were trying to pin the crimes on Williams as "offensive" and unsupported by the evidence, and argued that the case was instead one of good police work. (Tr., p. 817, L. 13 – p. 818, L. 11.)

For the first time on appeal, Williams claims that the prosecutor's argument was improper, rising to the level of prosecutorial misconduct and fundamental error. (Appellant's brief, pp. 13-19.) Williams' claim is meritless.

B. Standard Of Review

"When prosecutorial misconduct is not objected to at trial, Idaho appellate courts may only order a reversal when the defendant demonstrates that the violation in question qualifies as fundamental error." State v. Perry, 150 Idaho 209, 227, 245 P.3d 961, 979 (2010). To prevail on a claim of fundamental error a defendant must demonstrate (1) violation of an unwaived constitutional right; (2) that the error is clear or obvious and lack of objection was not tactical; and (3) prejudice. Id. at 226, 245 P.3d at 978.

C. Williams' Claims Of Fundamental Error Are Without Merit

Prosecutors have considerable latitude in closing argument and have the right to discuss the evidence and the inferences and deductions arising therefrom. State v. Payne, 146 Idaho 548, 566, 199 P.3d 123, 141 (2008); State v. Sheahan, 139 Idaho 267, 280, 77 P.3d 956, 969 (2003); State v. Phillips, 144 Idaho 82, 86, 156 P.3d 583, 587 (Ct. App. 2007). The purpose of the prosecutor's closing argument is to enlighten the jury and help the jurors remember and interpret the evidence. State v. Reynolds, 120 Idaho 445, 450, 816 P.2d 1002, 1007 (Ct. App. 1991). Where, as here, the complained of comments occurred during a rebuttal closing argument, the United States Supreme Court has held, "[t]he prosecutors' comments must be evaluated in light of the defense argument that preceded it." Darden v. Wainwright, 477 U.S. 168, 179 (1986).

In opening statement and closing argument the defense contended that the gun, ammunition and magazines officers stated they found in Williams' hotel room and car were not in fact Williams' and that officers were trying to "pin" the robberies on Williams. (Tr., p. 380, Ls. 3-22; p. 383, Ls. 17-19; p. 802, L. 17 – p. 803, L. 7.) The prosecutor properly responded by arguing that the defense theory that the firearm was planted and that the officers were trying to "pin" a crime on an innocent man was unsupported by the evidence and in fact the evidence showed good police work. The only even arguably objectionable part of that argument was the prosecutor's statement that the defense theory was "offensive to me." (Tr., p. 817, L. 13; p. 818, L. 7.) However, in context, even

that argument was not objectionable. See State v. Gutierrez, 143 Idaho 289, 294-95, 141 P.3d 1158, 1163-64 (Ct. App. 2006) (finding argument that jury "should be offended by the comments that were made about the victim in this case" were "not improper" "in context").

Even if subject to a valid objection, it is far from clear that the argument amounted to a constitutional violation. "[T]he United States Supreme Court has noted that in determining whether a prosecutor's comment violated the Fifth Amendment, 'a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.'" State v. Severson, 147 Idaho 694, 719, 215 P.3d 414, 439 (2009) (quoting Donnelly v. DeChristoforo, 416 U.S. 637, 647 (1974)). Nothing in the record suggests the prosecutor was arguing based on matters other than the evidence presented; rather, the prosecutor's argument is based on the "tons of evidence" showing Williams robbed two banks. (Tr., p. 817, Ls. 4-6; see also Tr., p. 814, L. 19 – p. 815, L. 23 (going over instruction regarding what is evidence that excludes arguments of counsel); p. 815, L. 23 – p. 816, L. 15 ("evidence does not support" allegation that gun was planted); p. 818, Ls. 12-13 (state's theory supported by "plenty of evidence").)

Finally, there is no basis for a finding of prejudice in the record. The prosecutor started out his rebuttal argument by reading the court's instruction on what was evidence, excluding the arguments of counsel and that the jury was to base its verdict only on the evidence. (Tr., p. 814, L. 19 – p. 815, L. 19.) The

prosecutor even pointed out that the instruction meant his own argument was not evidence. (Tr., p. 815, Ls. 20-23.) There is no reason to believe on this record that the jury ignored its instructed duty. E.g., State v. Grantham, 146 Idaho 490, 498, 198 P.3d 128, 136 (Ct. App. 2008) (jury presumed to follow instructions).

Williams argues on appeal that the prosecutor's rebuttal argument was misconduct for four reasons. (Appellant's brief, pp. 17-18.) Review of all four of his claims shows them to be meritless.

First, he claims the prosecutor "disparaged defense counsel by labeling his opening and closing remarks as ludicrous allegations." (Appellant's brief, pp. 17-18.) This is, to coin a phrase, a ludicrous allegation. First, Williams is stretching the truth when he labels the prosecutor's statements regarding ludicrous allegations as aimed at defense counsel's "opening and closing remarks." The prosecutor was clearly and specifically talking about the allegations that officers planted the gun and were trying to "pin" the robberies on Williams. (Tr., p. 815, L. 23 – p. 817, L. 12.) According to Merriam-Webster's online dictionary, an "allegation" is "a positive assertion especially of misconduct." (https://www.merriam-webster.com/dictionary/allegation.) Accusing the police of planting a gun and trying to "pin" a crime on a person certainly meets this definition. Again according to Merriam-Webster, "ludicrous" is defined as "meriting derisive laughter or scorn as absurdly inept, false, or foolish." (https://www.merriam-webster.com/dictionary/ludicrous.) The prosecutor's argument that the defense "allegation" (assertion of misconduct) was "ludicrous" (meriting scorn because it was false) was an entirely proper

argument. Williams' argument that the prosecutor's argument breached his constitutional rights merits scorn.

Williams next argues the prosecutor "interjected his personal beliefs by informing the jury that he was offended—personally and on law enforcement's behalf—by defense counsel's actions in defending his client." (Appellant's brief, p. 18.) The record, however, does not support Williams' claim. The prosecutor did not state that he was offended by the fact defense counsel was defending Williams. The prosecutor stated he was offended by the allegations that the officers planted evidence and tried to "pin" crimes on Williams. (Tr., p. 815, L. 20 – p. 818, L. 11.) Even though whether the prosecutor was in fact offended by the allegation that police planted evidence and tried to "pin" the robberies on Williams was not subject to presentation of evidence at trial, the argument that the police did not in fact plant evidence and did not "pin" the robberies on Williams was squarely based on the evidence presented at trial. (Id.) As set forth above, the prosecutor's argument that he was "offended" by the allegations of police misconduct, which allegations were unsupported by any evidence, did not rise to the level of a constitutional violation, much less a clear and prejudicial one.

Williams' third claim of prosecutorial misconduct is that he "vouched for the police's credibility by telling the jury that the 'truth' was 'exactly' what was said by the police." (Appellant's brief, p. 18.) What the prosecutor actually argued, however, is something quite different than represented by Williams. After arguing that if the police were willing to plant evidence to "pin" the robberies

on Williams they would have planted more than the gun (they would also have planted masks and jackets matching the descriptions of the masks and jackets used by the robber rather than discovering mask and jacket combinations that, although similar, did not match the descriptions), the prosecutor argued, "The truth is that's not what happened ladies and gentlemen. What happened is exactly what they testified to. These things were legitimately found in the defendant's possession." (Tr., p. 817, L. 14 – p. 818, L. 5.) The prosecutor's argument was thus based specifically on the officer's testimony and a proper hypothetical that if the defense theory of planted evidence and pinned crimes were true the evidence would have been different. There is no reasonable interpretation of this argument as being based on anything other than the evidence.

Williams' fourth and final claim of prosecutorial misconduct is that the prosecutor "vouched for the police, placing the State's prestige behind them, by telling the jury that this case was an example of 'good police work,' 'a fine job,' and, again, 'good police work,' which allowed them to solve the case." (Appellant's brief, p. 18.) It was perfectly proper for the state to rebut the defense argument that the case was about bad police work (planting evidence and trying to "pin" a crime on Williams) by asserting that the case involved "good police work." Williams' argument is meritless.

Williams has failed to show any of the three elements of a fundamental error claim. Contrary to Williams' claims, the prosecutor did not argue that "any defense was a ludicrous allegation, so offensive to the State and the police, that

the prosecutor could not help but comment on it." (Appellant's brief, p. 18.) Rather, the prosecutor responded to a specific argument (that evidence was planted and the police were trying to "pin" the robberies on Williams) and argued that it was not a credible argument based on the evidence. Because none of the three prongs of a fundamental error claim are shown by the record, Williams' claim must be rejected.

III.
Williams Has Failed To Show Error In The Supplemental Brief

A. Introduction

Williams asserts five claims of error in his supplemental briefing. (Supplemental Brief of Appellant, Pro Se, p. 1 (hereinafter "Supplemental brief").) Review shows these claims to be without merit.

B. Standard Of Review

The appellant must affirmatively demonstrate error on the record; the appellate court will not review the record in search of it. Woods v. Crouse, 101 Idaho 764, 620 P.2d 798 (1980); State v. Knight, 128 Idaho 862, 865, 920 P.2d 78, 81 (Ct. App. 1996). Pro se litigants are held to the same standards and rules of appellate procedure as are parties appealing through counsel. State v. Sima, 98 Idaho 643, 644, 570 P.2d 1333 (1977); see also Faretta v. California, 422 U.S. 806, 835 n.46 (1975) ("[t]he right of self-representation is not ... a license not to comply with the relevant rules of procedural and substantive law").

C. Williams' Claim Of Error For Denial Of "Hybrid" Representation Is Without Merit

On the first day of trial, prior to jury selection, Williams expressed dissatisfaction with the tactical decisions of his trial counsel and requested substitute counsel. (Tr., p. 214, L. 7 – p. 224, L. 12.) The district court explained that an indigent defendant with appointed counsel did not have the right to choose which counsel represented him, that differences over trial strategy were not a proper ground to disqualify appointed counsel, and denied Williams' motion for substitution of counsel. (Tr., p. 224, L. 13 – p. 226, L. 7.) The district court then inquired if Williams wished to proceed with appointed counsel or to exercise his right to self-representation. (Tr., p. 226, Ls. 8-11.) Williams stated he was still thinking about that option. (Tr., p. 226, L. 12.) The district court reminded Williams that the jury was going to be in the courtroom in "about five minutes." (Tr., p. 226, Ls. 13-14.) At that point Williams asked, "Could they do voir dire for me and then I represent myself?" (Tr., p. 226, Ls. 15-16.) The district court answered, "No. You can either represent yourself or they do." (Tr., p. 226, Ls. 17-18.)

On appeal Williams, based on analogy to the Kentucky Constitution, claims he has a right under the Idaho Constitution to "hybrid" representation that was denied by the district court. (Supplemental brief, p. 2.) This claim was not asserted below, and is therefore not preserved for appellate consideration. State v. Wheaton, 121 Idaho 404, 407, 825 P.2d 501, 504 (1992) (declining to address claim that state constitution provided greater protection than the United States Constitution because defendant failed to preserve argument in district court).

Even if the merits of the claim are reached, Williams has failed to show error because there is no right to "hybrid" representation. Rather, such is a matter of discretion for the trial court. See, e.g., State v. Clayton, 100 Idaho 896, 898, 606 P.2d 1000, 1002 (1980) ("it is permissible to appoint 'standby' counsel to be present in the courtroom in the event the defendant needs and requests some assistance"); State v. Averett, 142 Idaho 879, 886, 136 P.3d 350, 357 (Ct. App. 2006) ("we hold that the appointment of standby counsel is discretionary and not a matter of constitutional right"). See also United States v. Halbert, 640 F.2d 1000, 1009 (9th Cir. 1981) ("A criminal defendant does not have an absolute right to both self-representation and the assistance of counsel."). Thus, although Williams had the right to representation at state expense and the right to self-representation upon waiver of the right to representation by counsel, he did not have the right to invoke the right to counsel for parts of the trial and the right to waive it and represent himself for other parts.

D. Williams Has Failed To Show That Pre-Trial Restraints Violated His Rights

Williams filed a motion to be released "from the excessive shackling he is subject to while in court" on pre-trial proceedings. (R., pp. 148-54.) He supported it with an affidavit, in which he claimed the restraints caused him "pain" that made it "difficult to concentrate" and to "communicate," precluded him from taking notes, and had thus "grossly interfered with [his] ability to cooperate with counsel" and "seriously" impaired his "mental facilities," among other allegations. (R., pp. 156-57.) The district court heard evidence from Sergeant Harris of the sheriff's office and considered argument on the motion. (R., pp. 171-73.) The

district court denied the motion, first noting that its ruling did not extend to use of restraints at trial,[4] on four bases: (1) the "same" constitutional standards applicable to trial did not apply to pre-trial proceedings; (2) Williams did not have any specific physical or psychological conditions exacerbated by the restraints; (3) Williams did pose "legitimate security risks" because of his history of "crimes of violence" and assaultive and physically resistive behavior with correctional and jail staff; (4) the "level of restraints for pretrial hearings are necessary" and "don't infringe on constitutional rights." (R., pp. 173-74.) Application of the relevant legal standards shows no error.

"[T]he Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial." Deck v. Missouri, 544 U.S. 622, 629 (2005). This is because of the "adverse effect which the physical restraints [have] upon the presumption of innocence." State v. Crawford, 99 Idaho 87, 95, 577 P.2d 1135, 1143 (1978). However, restraints may be used in trial if "overriding concerns for safety or judicial decorum predominate." Id. at 96, 577 P.2d at 1144. "Neither the United States Supreme Court nor the Idaho Supreme Court have held that due process prohibits routine shackling of adults in preliminary proceedings …." State v. Doe, 157 Idaho 43, 56, 333 P.3d 858, 871 (Ct. App. 2014).

[4] The defense ultimately did not object to the restraints used during trial proceedings, which were minimal and hidden from the jury. (Tr., p. 182, L. 1 – p. 184, L. 14; p. 755, Ls. 6-23.)

Williams' claim of error on appeal fails first because it is moot and because it is necessarily harmless. "An issue becomes moot if it does not present a real and substantial controversy that is capable of being concluded by judicial relief." State v. Barclay, 149 Idaho 6, 8, 232 P.3d 327, 329 (2010) (citations omitted). Error which, beyond a reasonable doubt, did not contribute to the verdict is harmless. State v. Parker, 157 Idaho 132, 140, 334 P.3d 806, 814 (2014). Because Williams' shackling at pre-trial proceedings did not infringe upon the presumption of innocence at trial, the error did not contribute to the verdict and was therefore harmless. Because holding anew the pre-trial hearings without vacating the verdict is pointless, no viable remedy for the alleged error can be provided.

Second, however, there was no error by the trial court. The district court concluded that the constitutional standard regarding restraints in court for pre-trial proceedings was not the same as in trial. (R., pp. 173-74.) As shown above, this was accurate. There was little or no concern that pre-trial restraints (as opposed to in-trial restraints) would have an "adverse effect" on Williams' presumption of innocence. See Crawford, 99 Idaho at 95, 577 P.2d at 1143. If, as Williams argues, the restraints rose to pre-trial punishment, see, e.g., I.C. § 19-108 (pre-conviction detention must be no more than necessary to assure defendant answers the charge), such would have no effect on the fairness of the trial or of his conviction. Moreover, the district court concluded that the "level of restraints for pretrial hearings are necessary." (R., p. 174.) Williams has failed to

show error in that conclusion. Williams' claim of error in relation to pre-trial restraints fails on both the facts and the law.

E. Williams Has Shown No Error In The Denial Of The Request For Substitute Counsel

On the day trial started, prior to the start of jury selection, Williams moved to substitute appointed counsel. (Tr., p. 214, L. 7 – p. 224, L. 12. See also Tr., p. 748, L. 11 – p. 753, L. 19.) The district court denied the motion, concluding Williams had not alleged any legal conflict, and that the differences in trial strategy he described did not rise to the level of showing cause for substitution of counsel. (Tr., p. 224, L. 13 – p. 226, L. 7.) A defendant seeking a different appointed counsel must demonstrate "good cause" for the substitution. State v. Nath, 137 Idaho 712, 714-15, 52 P.3d 857, 859-60 (2002). "The mere lack of confidence in an otherwise competent counsel is not grounds for the appointment of substitute counsel." State v. Skunkcap, 157 Idaho 221, 237, 335 P.3d 561, 577 (2014). The district court did not err in denying Williams' motion for substitution of appointed counsel.[5]

[5] Williams further argues that his counsel was ineffective and the district court should have declared a mistrial. (Supplemental brief, pp. 12-14.) An appellate court will generally not review a claim of ineffective assistance of counsel first raised on direct appeal "because claims of ineffective assistance of counsel regularly raise issues on which no evidence was presented at the defendant's trial." State v. Saxton, 133 Idaho 546, 549, 989 P.2d 288, 291 (Ct. App. 1999).

F. Williams' Argument That The District Court Erred By Not Reversing Its Decision On Restraints At Trial When He Indicated He Wished To Invoke His Right To Self-Representation Is Meritless

On the first day of trial, after the district court ruled on the appropriate restraints at trial and after denying Williams' motion for substitution of counsel, Williams expressed a desire to represent himself. (Tr., p. 226, L. 19 – p. 227, L. 2.) Before accepting any waver of the right to counsel, the district court started giving Williams his Faretta[6] warnings. (Tr., p. 227, Ls. 3-11.) As part of those warnings, the district court informed Williams that it would not change its ruling on restraints, so Williams would have to present his defense "from the desk." (Tr., p. 227, Ls. 12-17.) Williams contended that the presence of restraints would be "taking it away from my right to represent myself" by not being able to approach the podium, approach the jury, pace in the well, or present his hand demonstratively.[7] (Tr., p. 227, L. 15 – p. 228, L. 10.) The judge responded to these arguments by explaining, respectively, that Williams would ask his questions from the table, would face the jury when addressing them, would not be in the well, and that a demonstration of his hand as evidence would not be allowed in opening statement (where it is an inappropriate presentation of evidence) but arrangements would be made for demonstrating the hand during the presentation of evidence. (Id.; see also p. 230, L. 4 – p. 231, L. 15.) Williams concluded that if he were not released from his restraints he would not represent himself. (Tr., p. 228, Ls. 11-14; see also p. 228, L. 15 – p. 232, L. 15.)

[6] Faretta v. California, 422 U.S. 806 (1975).

[7] Because the robber was masked, whether Williams' hand matched photographic evidence of the robber's hand was part of the identification at issue at trial.

Williams contends the district court denied him the right of self-representation by declining to remove Williams' restraints. (Supplemental brief, pp. 15-21.) This argument fails because it is contrary to applicable law.[8] "The decision whether to shackle a defendant is one that a court must make on grounds that have nothing to do with his right to self-representation." United States v. Cooper, 591 F.3d 582, 587 (7th Cir. 2010). "[T]he defendant's decision to proceed pro se does not vitiate the trial court's ability to employ a reasonable means of restraint upon a defendant if, exercising its broad discretion in such matters, the court finds that restraints are reasonably necessary under the circumstances." State v. Shashaty, 742 A.2d 786, 798 (Conn. 1999) (internal quotations omitted). Williams' claim that he can trump the district court's decision to employ limited restraints in court by invoking his right to self-representation is without basis in law.

Moreover, Williams' invocation of his right to represent himself would have created no risk that the jury would have become aware of the restraints, and thus infringe upon the presumption of innocence. See Crawford, 99 Idaho at 95, 577 P.2d at 1143 (use of restraints may have adverse effect on presumption of

[8] Williams also claims facts related to the restraints far different than those found by the district court. (Compare Supplemental brief, pp. 15-21 with Tr., p. 232, Ls. 3-7; p. 755, Ls. 6-23.) Because Williams has not claimed or shown the district court's factual findings to be clear error they must be accepted as the facts on appeal. Barber v. Honorof, 116 Idaho 767, 770, 780 P.2d 89, 92 (1989) ("Findings of fact by a trial court will not be disturbed on appeal unless they are clearly erroneous."). Thus, for purposes of this appeal, the relevant facts are that the tether was "not constricting, not tight, [and] not in any way discomforting," that Williams could "stand up and move a couple [of] steps freely" and turn around, and that Williams could display his hand to the jury without revealing the presence of the tether. (Tr., p. 755, Ls. 6-23.)

innocence). First, Williams' choice to not represent himself assured there would be no infringement on his right to be presumed innocent. Second, he was not compelled or coerced into electing to not represent himself by fear that the restraints would become known to the jury. To the contrary, the district court specifically indicated it would make all reasonable accommodations to make sure that the ankle tether being used in court did not impede Williams' ability to present his defense and was not called to the attention of the jury. (Tr., p. 227, L. 23 – p. 231, L. 15; p. 755, Ls. 6-23.) Williams could have fully exercised his right to self-representation without risk of a violation of his right to be presumed innocent.

The district court properly concluded that limited restraints (an ankle tether not visible to the jury) met the proper balance of security with Williams' trial rights. Williams' temporary invocation of the right to self-representation (abandoned upon learning that it would not result in a lack of restraints) did not change that calculus. Rather, the district court reasonably concluded that, with a few reasonable accommodations, Williams could represent himself without making the jury aware of the restraint. Williams has failed to show error.

G. Williams Has Shown No Error In The Denial Of His Suppression Motions

Williams filed two motions to suppress. First, he moved to suppress evidence obtained "as a result of an illegal arrest." (R., pp. 90-91.) In relation to this motion, Williams argued he was arrested without a warrant and without probable cause. (R., pp. 106-08.) Second, he moved to suppress "all evidence obtained as a result of an illegal search of his hotel room." (R., pp. 182-206.)

Williams argued the warrant was issued on "stale" evidence (R., pp. 187-88) and that it was unreasonable to believe a bank robber would have evidence of his crimes in his hotel room (R., pp. 188-90). After hearing the testimony of the investigating police officer (which the district court found "credible and reliable") the district court denied the motions. (R., pp. 266-67.)

The district court concluded that the facts that Williams generally fit the description of the robber and drove a car that likewise fit the description of the robber's car gave rise to reasonable suspicion to detain Williams and determine if he had a distinctive bump on his left hand as was identified in surveillance video of the robber. (R., pp. 267-77.) Confirming that Williams had a bump on his left hand as seen on the robber led officers to arrest Williams based on probable cause. (R., pp. 277-79.) The district court further concluded that the search warrant was constitutionally valid. (R., pp. 279-85.) Application of the law to the facts found shows that the district court did not err.[9]

"An investigative detention is a seizure of limited duration to investigate suspected criminal activity and does not offend the Fourth Amendment if the facts available to the officer at the time gave rise to reasonable suspicion to believe that criminal activity was afoot." State v. Stewart, 145 Idaho 641, 644, 181 P.3d 1249, 1252 (Ct. App. 2008). Reasonable suspicion requires more than "a mere hunch or inchoate and unparticularized suspicion," but the "quantity and quality of information necessary" is "less than that necessary to establish probable cause." State v. Bishop, 146 Idaho 804, 811, 203 P.3d 1203, 1210

[9] The state also specifically incorporates the district court's thorough fact-finding and analysis (R., pp. 266-85) in its argument.

(2009) (internal quotations omitted). "Whether an officer possessed reasonable suspicion is evaluated based on the totality of the circumstances known to the officer at or before the time of the stop." Id. The district court's determination that reasonable suspicion was "abundantly clear" from the totality of the circumstances, especially given that there was "little doubt" that Williams' car was used in the April 2015 robbery (R., pp. 274-75), is consistent with these legal precedents and standards.

Likewise, the district court correctly concluded that the use of handcuffs, under the facts of this case, did not amount to a *de facto* arrest. (R., pp. 272-74.) A court "must consider all of the surrounding circumstances and determine whether the investigative methods employed were the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." State v. Frank, 133 Idaho 364, 368, 986 P.2d 1030, 1034 (Ct. App. 1999). Such circumstances include the "seriousness of the crime, the location of the encounter, the length of the detention, the reasonableness of the officer's display of force, and the conduct of the suspect as the encounter unfolds." Frank, 133 Idaho at 368, 986 P.2d at 1034. "If the use of the handcuffs is a reasonable precaution to ensure the officers' safety, the use of the handcuffs is warranted during the limited stop. If the investigative detention becomes unreasonable, the detention is transformed into an arrest." State v. DuValt, 131 Idaho 550, 554, 961 P.2d 641, 645 (1998). Again, the district court's analysis is entirely consistent with applicable legal standards.

The district court also determined that Williams' arrest was constitutionally proper. (R., pp. 277-79.) Application of the law to the facts found supports this conclusion.

Generally, any seizure of a person, whether by arrest or detention, must be supported by probable cause. Michigan v. Summers, 452 U.S. 692, 700 (1981); Dunaway v. New York, 442 U.S. 200, 208 (1979). "Reasonable or probable cause for an arrest exists where the officer possesses information that would lead a person of ordinary care and prudence to believe or entertain an honest and strong suspicion that the person arrested is guilty." State v. Buti, 131 Idaho 793, 798, 964 P.2d 660, 665 (Ct. App. 1998) (citation omitted). The evaluation of probable cause "must take into account the factual and practical consideration of everyday life on which reasonable and prudent men, not legal technicians, act." Id. "In determining whether there is probable cause for an arrest, an officer is entitled to draw reasonable inferences from the available information in light of the knowledge that he has gained from his previous experience and training." Id. Probable cause does not require an actual showing of criminal activity, but only the "probability or substantial chance" of such activity. Illinois v. Gates, 462 U.S. 213, 244-245 n.13 (1983). The probable cause standard necessary for an arrest "must be distinguished from the burden of proof that is borne by the State at trial" because "[t]he adequacy of probable cause is not measured against the high standard of proof beyond a reasonable doubt that is required for conviction." State v. Zentner, 134 Idaho 508, 510, 5 P.3d 488, 490 (Ct. App. 2000).

The district court found probable cause existed because Williams' car "was almost certainly the same as used in the April 2015 robbery"; that Williams generally matched the description of the robber "including height, build, haircut and distinctive nose"; and that officers were "able to confirm" a "large, distinctive bump on the back of [Williams'] left hand that was in the identical location as seen in the surveillance still photo of the robber from the April 2015 robbery." (R., p. 279.[10]) This totality of the circumstances created probable cause to believe Williams was the robber.

Finally, the district court concluded that Williams had failed to show any constitutional deficiency in the search warrant for his hotel room. (R., pp. 279-85.) Specifically, the district court rejected claims of "staleness" and lack of "nexus" with the hotel room, concluding that the evidence submitted to obtain the warrant was sufficient to establish probable cause that evidence of the robberies, such as cash, clothing or the gun used would be in the room at the time the warrant was requested. (Id.) The district court's analysis is supported by the applicable law.

"To satisfy the constitutional probable cause standard, evidence must create probable cause for the belief that the items sought are at the place to be searched at the time the search warrant is requested." State v. Carlson, 134 Idaho 471, 479, 4 P.3d 1122, 1130 (Ct. App. 2000) (internal quotations omitted).

[10] The state submits that, if this Court finds error in the district court's conclusion that the initial detention was not a *de facto* arrest, officers had probable cause to arrest even without the evidence of the bump on the hand gained as a result of the detention. Evidence that Williams generally matched the description of the robber and his car was "almost certainly" used in at least one of the robberies created probable cause to arrest Williams for robbery.

"A magistrate need only determine that it would be reasonable to seek the evidence in the place indicated in the warrant, not that the evidence sought is there in fact, or is more likely than not to be found, where the search takes place." State v. Harper, 152 Idaho 93, 98, 266 P.3d 1198, 1203 (Ct. App. 2011).

"Whether information regarding the presence of items in a particular place is stale depends upon the nature of the factual situation involved." State v. Turnbeaugh, 110 Idaho 11, 13, 713 P.2d 447, 449 (Ct. App. 1985). Thus, "there exists no magical number of days within which information is fresh and after which the information becomes stale." State v. Gomez, 101 Idaho 802, 808, 623 P.2d 110, 116 (1980). "An important factor in "staleness" analysis is the nature of the criminal conduct. If the affidavit recounts criminal activities of a protracted or continuous nature, a time delay in the sequence of events is of less significance." Id. The Idaho Court of Appeals adopted the following observation: "'[t]he observation of a half-smoked marijuana cigarette in an ash tray at a cocktail party may be stale the day after the cleaning lady has been in; the observation of the burial of a corpse in a cellar may well not be stale three decades later.'" Turnbeaugh, 110 Idaho at 13, 713 P.2d at 449 (quoting Andreson v. State, 331 A.2d 78, 106 (Md. App. 1975), *aff'd sub nom* Andreson v. Maryland, 427 U.S. 463 (1976)). The district court properly rejected the argument that there was no probable cause to believe Williams would still have cash, articles of clothing, or the gun because "29 days had passed since the last robbery." (R., p. 280.)

The "nexus" requirement between the evidence sought and the place to be searched is as follows:

> Probable cause to believe that a person has committed a crime does not necessarily give rise to probable cause to search that person's home. Nonetheless, even though criminal objects are not tied to a particular place by any direct evidence, an inference of probable cause to believe that they would be found in that place can be reasonable. A magistrate is entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense. Moreover, the magistrate may take into account the experience and expertise of the officer conducting the search in making a probable cause determination.

State v. O'Keefe, 143 Idaho 278, 287, 141 P.3d 1147, 1156 (Ct. App. 2006) (internal citations omitted). The district court properly applied this standard to conclude that evidence Williams did not check into the hotel until 17 days after the last robbery was insufficient to defeat the reasonable inferences that items associated with the robberies would be kept by Williams in his current residence at the hotel. (R., pp. 282-85.)

Williams disagrees with several of the district court's findings and its analysis. (Supplemental brief, pp. 22-35.) He has failed, however, to show clear error in the district court's factual findings. State v. Reese, 132 Idaho 652, 653, 978 P.2d 212, 213 (1999) ("When reviewing a motion to suppress evidence, this Court will defer to the trial court's findings of fact unless the findings are clearly erroneous."). More importantly, he has failed to show that the district court misapplied the law in any fashion.

As shown above, the circumstances known to officers more than adequately established reasonable suspicion that Williams was the robber

associated with three bank robberies and thus justified his detention. Further identification evidence resulted almost immediately from the investigative detention, leading to an arrest based on probable cause. The inferences from the evidence submitted to obtain the search warrant for Williams' temporary residence for evidence of the prior three robberies were not based on stale evidence, nor was there any reason to believe that Williams had disposed of all incriminating evidence in the days since the last robbery, or stored it elsewhere such that there was no longer a valid belief it could be at his hotel room. In short, every stop of the investigation complied with the constitutional requirements for search and seizure. Williams has failed to show error.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of conviction.

DATED this 19th day of July, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 19th day of July, 2017, served two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

KENT GLEN WILLIAMS
IDOC #119473
I.S.C.I.
P. O. BOX 14
BOISE, ID 83707

_/s/ Kenneth K. Jorgensen_____
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd