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State v. Maynard Appellant's Reply Brief Dckt. 38695

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 38695
)	
v.)	
)	
REGINA AMELIA MAYNARD,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

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

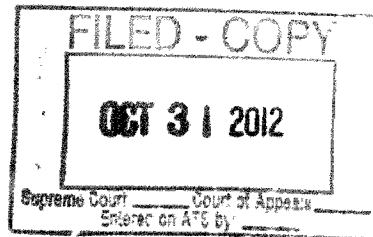
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STATEMENT OF THE CASE

Nature of the Case

On appeal, Regina Maynard has raised two claims for this Court's review, along with a claim of cumulative error. First, Ms. Maynard asserted that the district court erred in denying her motion for mistrial because a police officer, treated as an agent of the State for purposes of prosecutorial misconduct, testified as to evidence that this officer had been previously informed was deemed inadmissible at trial. Second, Ms. Maynard asserted that the trial court erred, and violated her constitutional right to due process and to confront the State's witnesses against her, when it precluded her from cross-examining a witness (Christine Maynard) about the charges this witness was facing – which could have provided motive or bias for this witness to testimony favorably for the State.

In response, the State has claimed that the improper testimony of the police officer was harmless, and therefore there was no need to grant a mistrial; and that any error in the court precluding Ms. Maynard's cross-examination of Christine Maynard was invited by Ms. Maynard. In the alternative, the State argues that the court's actions in precluding this cross-examination were harmless.

While Ms. Maynard continues to assert that the individual and cumulative effect of the errors in her case were not harmless, she will rely on the arguments contained within her Appellant's Brief and will not reiterate those arguments herein. This Reply Brief is necessary, however, to address the State's claim that the violation of Ms. Maynard's right to confront the State's witness was invited error. Under a review of the record in this case, in conjunction with the applicable legal standards for the doctrine

of invited error, there was no invited error and the State's claim to the contrary is without merit.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Ms. Maynard's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court err when it precluded Ms. Maynard from cross-examining one of the State's key witnesses about the potential penalties of the criminal charges that witness was currently facing?

ARGUMENT

The District Court Erred When It Precluded Ms. Maynard From Cross-Examining One Of The State's Key Witnesses About The Potential Penalties Of The Criminal Charges That Witness Was Currently Facing

A. Introduction

Aside from challenging the prejudice that inured from this error, the State's sole substantive contention regarding the district court's error in failing to permit Ms. Maynard to cross-examine one of the State's witnesses about the charges this witness was facing was that any error was invited by Ms. Maynard. This claim, however, is unavailing. First, the district court's initial ruling regarding the inadmissibility of the subject of penalty was specific to the sentence *Ms. Maynard* was personally facing as the potential result of her charges – not any other witness at trial. Second, Ms. Maynard did not request this ruling, or even acquiesce in it. She merely acknowledged her awareness of the rules of evidence in response to the district court's ruling on the State's motion. Finally, the State itself opened the door to Ms. Maynard questioning the witness as to potential grounds of bias by implying that this witness had no expectation of consideration for her testimony. Under these circumstances, as was correctly noted by defense counsel, due process and the constitutional right to confront witnesses demands that the defendant be permitted to counter such testimony with evidence of potential bias or motive.

B. The Doctrine Of Invited Error Does Not Apply Under The Facts Of This Case, And Therefore The District Court Erred When It Precluded Ms. Maynard From Cross-Examining One Of The State's Key Witnesses About The Potential Penalties Of The Criminal Charges That Witness Was Currently Facing

As an initial matter, the State has argued, in conjunction with its claim of invited error, that Ms. Maynard has not challenged on appeal the district court's determination that the prosecutor had not opened the door to the admissibility of Ms. Maynard's questioning of a witness as to the criminal penalties this witness was facing. This argument does not accurately reflect Ms. Maynard's argument on appeal. In fact, Ms. Maynard has made this claim, in particular with regard to her constitutional right to confrontation. The fact that the State opened the door to this ground of cross-examination and confrontation was particularly noted on page 25 of the Appellant's Brief in this case. The majority of her argument on appeal is devoted to the admissibility and relevance of this evidence as impeachment evidence with regard to Christine Maynard's potential motive, bias, or ulterior motive to provide testimony favorable to the State. (Appellant's Brief, pp.23-30.) In addition, Ms. Maynard has also challenged on appeal the district court's determination that the evidence she was seeking to elicit on cross-examination was somehow barred by the district court's earlier ruling in this case. (See Appellant's Brief, p.31.) Therefore, the State's assertion that Ms. Maynard had not challenged these rulings by the district court is not supported by the record in this case.

Likewise unsupported by the record in this case is the State's substantive response to Ms. Maynard's claim of error: that she had somehow invited this error by the district court in light of her comments on the court's prior ruling. (See Respondent's Brief, pp.12-15.) This argument is misplaced for two reasons. First, the record shows that Ms. Maynard never actually induced, or consented in, any ruling by the district court

that limited her ability to cross-examine the State's witnesses regarding potential bias or motive for their testimony based upon pending criminal charges. Second, even if there had been such an initial concession made (which there was not), the State opened the door to Ms. Maynard's cross-examination when the State elicited testimony from Christine Maynard that suggested to the jury that she did not have any incentive to provide testimony favorable to the State at Ms. Maynard's trial.

1. The Doctrine Of Invited Error Does Not Apply Under The Facts Of This Case Because The District Court's Initial Ruling On The State's Motion Seeking To Exclude Evidence Of Potential Penalties Applied To The Potential Penalties Ms. Maynard Was Facing At Trial

As a threshold matter, Ms. Maynard asserts that the doctrine of invited error would not apply in the first instance to the district court's ruling regarding Ms. Maynard's ability to cross-examine her mother, Christine Maynard, regarding the charges this witness was facing because the court's prior ruling excluding testimony about potential criminal penalties was limited to the potential penalty **Ms. Maynard** was personally facing at trial.

That the State's objection to any mention of potential penalties was in reference to the penalties that Ms. Maynard was facing as a result of the trial is apparent from the State's comments surrounding its motion. The State argued:

. . . But I would just ask the court -- the issue of penalty is not an issue in this case.

So bringing up potential penalties or prison penalties, things like that -- the State would ask for that admonishment. I don't think it's relevant.

And all that does is simple incite the jury's passions toward the defendant. So I would ask that any mention of that not be permitted.

(Trial Tr., p.28, Ls.18-25 (emphasis added).)

Read in context, the State's motion is directed at the potential penalties that Ms. Maynard could face if she were convicted. After the State addressed other matters, Ms. Maynard's sole response to the court was that counsel was "aware of the rules." (Trial Tr., p.29, L.3.) This statement appears to be nothing more than an acknowledgment that the ultimate sentence that Ms. Maynard would face, if convicted, was solely for the trial court to determine, and therefore the subject of the potential penalty she may face was irrelevant to the jury at trial. See, e.g., I.C. §§ 19-2512, 19-2513; I.C.J.I. 106.

"The doctrine of invited error applies to estop a party from asserting an error when his own conduct induces the commission of the error." *State v. Atkinson*, 124 Idaho 816, 819 (Ct. App. 1993). It was the State's motion that sought to exclude evidence of the penalties that Ms. Maynard was facing, not her own motion. Therefore, Ms. Maynard did not directly induce any subsequent error flowing from this ruling. Additionally, her response did not even suggest that she agreed with the trial court, it merely iterated that she was aware of the rules of evidence.

Moreover, the error at issue in this appeal appears to be distinct from the trial court's prior ruling – a ruling that was specific to the potential penalties that Ms. Maynard was facing as a result of her trial. Given that the State's motion in this case appears to be limited solely to the question of the admissibility of evidence regarding the penalties that Ms. Maynard was personally facing, the trial court's subsequent ruling regarding impeachment of **other** witnesses with evidence of pending criminal charges was not subsumed within this ruling. Accordingly, Ms. Maynard's equivocal response indicating her "awareness" of the rules of evidence was not directed

at the trial court's subsequent ruling – directed at another witness' testimony – but appears from the record to have been in response to a request by the State not to mention the potential penalties from Ms. Maynard's own offense. As such, the doctrine of invited error does not apply to Ms. Maynard's initial response to the trial court's ruling.

2. The Doctrine Of Invited Error Does Not Apply In This Case Because Ms. Maynard Did Not Induce, Or Otherwise Consent In, The District Court's Ruling On The State's Motion To Exclude Evidence At Trial Regarding The Issue Of Criminal Penalties

In addition, Ms. Maynard's subsequent statements upon being denied her request to confront Christine Maynard about the criminal charges she was facing did not amount to inviting the district court's error in preventing this cross-examination.

In understanding why this is the case, it is useful to examine the case law defining the parameters of the doctrine of invited error – both as to where the doctrine applies and where the doctrine does not apply. For example, the doctrine of invited error has been held to apply where defense counsel's own questions directly call for the very response that is challenged on appeal. *Atkinson*, 124 Idaho at 819-821. It has also been applied where the defendant stipulates to the admissibility of evidence, but later seeks to challenge the presentation of that evidence on appeal. *State v. Norton*, 151 Idaho 176, 187 (Ct. App. 2011). Finally, this doctrine has also been applied where the defendant objects to the trial court taking a particular action, but then seeks to challenge on appeal the failure to take that action. *State v. Bagshaw*, 137 Idaho 613, 617 (Ct. App. 2002).

In contrast, both the Idaho Supreme Court and the Idaho Court of Appeals have held that the doctrine of invited error does **not** apply, where there is the mere absence

of an objection to the trial court's ruling. See *State v. Adamcik*, 152 Idaho 445, 448-449 (2012); *State v. Blake*, 133 Idaho 237, 239-240 (1999); *State v. Grantham*, 136 Idaho 490, 499 (Ct. App. 2008). This is because, in such a situation, the appellant did not encourage the court to issue the ruling challenged on appeal, but instead "merely failed to object." *Adamcik*, 152 Idaho at 449.

In this case, Ms. Maynard's subsequent remarks to the district court, in seeking to impeach Christine Maynard, do not show any acquiescence in the court's ruling denying her the right to confront and impeach Christine Maynard as to her potential ground for bias. What the record shows is that Ms. Maynard vigorously **opposed** this ruling, asserting multiple times that the court's refusal to allow this testimony would violate her constitutional right to confront the State's witnesses and was further inconsistent with the Idaho Rules of Evidence. (Trial Tr., p.642, L.2 – p.644, L.14.) Accordingly, because Ms. Maynard did not encourage in any manner the trial court's ruling precluding her from cross-examining Christine Maynard regarding the potential penalties she was facing at the time of her testimony on behalf of the State, the doctrine of invited error does not apply.

3. Even Assuming Ms. Maynard Invited Any Evidentiary Error At The Time Of The District Court's Initial Ruling, The State Opened The Door To The Cross-Examination Of Its Witness Regarding The Criminal Penalties This Witness Was Facing By Implying That This Witness Had No Bias Or Motive To Provide Testimony Favorable To The State

Even assuming - for the purpose of argument - that Ms. Maynard invited an initial ruling by the district court regarding the inadmissibility of any evidence of potential criminal penalties regarding all witnesses in this case, the district court erred in finding that this evidence was admissible when the State elicited testimony from Christine

Maynard that she had no aspirations of any benefit from the State as a result of her testimony. The State asked multiple questions of Christine Maynard seeking to elicit testimony that she had no potential bias or motive for providing testimony against Ms. Maynard. (Trial Tr., p.613, L.13 – p.614, L.3.)

It was only thereafter that Ms. Maynard sought to question Christine Maynard about the criminal charges she was facing at the time in an attempt to impeach this witness as to potential grounds of bias, motive, or any ulterior motive to provide testimony favorably to the State. (Trial Tr., p.641, L.17 – p.645, L.22.) Even assuming that the trial court's prior ruling subsumed the testimony provided by Christine Maynard, it was the State that chose to put Christine Maynard's credibility at issue. Prior case law dictates that such action opens the door to introduction of evidence bearing on issues of credibility, even where that evidence is not otherwise admissible. See *State v. Mace*, 133 Idaho 903, 906 (Ct. App. 2000); *State v. Arledge*, 119 Idaho 584, 587-588 (Ct. App. 1991). That is because, "whenever evidence is introduced for purposes of impeachment, it necessarily involves a witness' credibility, and credibility is always relevant." *Arledge*, 119 Idaho at 588.

In sum, Ms. Maynard did not invite any error as to the district court's determination to exclude evidence regarding the potential penalties Christine Maynard was facing – offered for purposes of impeachment to show that she was facing severe charges and may have held an aspiration for more lenient treatment as a result of her testimony for the State. She did not induce or consent in this ruling and, in fact, vigorously opposed this ruling at trial. Moreover, it was the State that chose to place at issue the question of whether Christine Maynard held any aspirations for leniency

regarding her own criminal charges in exchange for providing testimony on behalf of the State. Under this record, the doctrine of invited error does not apply and the State's assertion to the contrary is without merit.

CONCLUSION

Ms. Maynard respectfully requests that this Court reverse her judgments of conviction and sentences, and remand her case for further proceedings.

DATED this 31st day of October, 2012.



SARAH E. TOMPKINS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31st day of October, 2012, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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