

6-25-2013

# State v. McNeil Appellant's Reply Brief Dckt. 39881

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 39881
	)	
v.	)	ADA COUNTY NO. CR 2011-6449
	)	
LLOYD HARDIN MCNEIL,	)	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

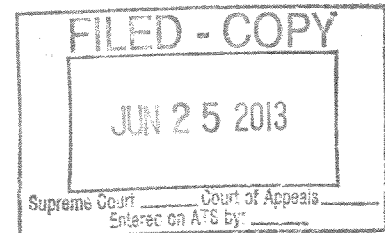
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## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUE PRESENTED ON APPEAL.....	2
ARGUMENT .....	3
The Evidence Presented At Trial Was Insufficient To Support Mr. McNeil’s Conviction For Voluntary Manslaughter .....	3
CONCLUSION.....	5
CERTIFICATE OF MAILING .....	6

## TABLE OF AUTHORITIES

### Cases

<i>State v. Severson</i> , 147 Idaho 694 (2009) .....	3
---	---

## STATEMENT OF THE CASE

### Nature of the Case

On appeal, Mr. McNeil argues that the evidence against him was insufficient to support the jury's guilty verdict for voluntary manslaughter, that the prosecutor committed misconduct, and that the district court abused its discretion when it imposed a combined sentence of fifty-four years, with twenty-five years fixed, and when it denied his Rule 35 motion.

In response, the State raises a number of arguments, including contending that the evidence was sufficient to support the jury's verdict on the voluntary manslaughter charge because "the jury could have drawn the reasonable inference that" the victim died during a fight with Mr. McNeil.

This Reply Brief is necessary to respond to the State's sufficiency argument. With respect to the State's other arguments, Mr. McNeil will rely on the arguments set forth in his Appellant's Brief.

### Statement of the Facts and Course of Proceedings

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

## ISSUE

Was the evidence presented at trial sufficient to support Mr. McNeil's conviction for voluntary manslaughter?

## ARGUMENT

### The Evidence Presented At Trial Was Insufficient To Support Mr. McNeil's Conviction For Voluntary Manslaughter

In its briefing, the State argues that the evidence was sufficient to support the jury's verdict as to both the cause of death and sudden quarrel or heat of passion elements. For the reasons set forth below, the State is incorrect.

It is worth noting that the State only minimally addresses Mr. McNeil's first argument, that it failed to produce sufficient evidence to establish the cause of death element, noting that Ms. Davis' "death appeared to not be accidental and [the medical examiner] was certain that she did not die of natural causes." (Respondent's Brief, p.6.) The problem with the State's argument is that it disregards the fact that Dr. Garrison, the medical examiner, was unable to form *any* medical opinion as to the cause and manner of Ms. Davis' death because any such opinion would be "a matter of speculation" that could not be proven. (Tr., p.558, Ls.2-12.) The State also makes no attempt to address Mr. McNeil's discussion of *State v. Severson*, 147 Idaho 694 (2009), and his argument that, when the cause of death cannot be determined to have been the result of another person's actions, the evidence is not sufficient to support a homicide conviction. (Appellant's Brief, pp.10-11.)

With respect to Mr. McNeil's argument that there was insufficient evidence to support the sudden quarrel or heat of passion element, the State argues that the evidence presented makes it is possible that Mr. McNeil killed Ms. Davis during an argument before her brother, Matthew Hess, left for work that morning, and that Mr. McNeil staged her body to make it appear that she was merely sleeping before later moving it to the bedroom and starting the fire. The State also points to the fact that

Ms. Davis' "body was covered in bruises, including large bruises on her chest."  
(Respondent's Brief, pp.6-8.)

The first problem with the State's contention concerns the bruises on Ms. Davis' chest. In light of Dr. Garrison's testimony that there were no signs of blunt force trauma "that would cause death," it cannot be reasonable to conclude that the bruises on Ms. Davis' chest were the result of a deadly struggle. (Tr., p.558, Ls.13-17.)

The second problem is that it was essential to the State's case that Ms. Davis died *only after* her brother had left for the day. That is why the State called Mr. Hess' manager at McDonald's to establish that he arrived late for work, between 8:20 and 8:30 a.m., on the day of Ms. Davis' death and did not leave work until 3:30 p.m., several hours after the fire started. (Tr., p.643, L.8 – p.645, L.16.) The reason that the State needed to establish Mr. Hess' whereabouts at the time of Ms. Davis' death and the fire was because Mr. Hess testified that he and his sister had a contentious and violent relationship. Among the incidents between them in the months leading up to her death were Ms. Davis running into Mr. Hess with her car, and Ms. Davis calling the police on him on more than one occasion, including once when they were being "belligerent" with each other and another time when she threatened him with a stick. (Tr., p.634, L.13 – p.636, L.16.) Consistent with this theory, during closing arguments, the State argued, "He [Mr. Hess] later [that morning] sees Natalie sleeping on his [Mr. McNeil's] lap." (Tr., p.1065, Ls.13-14.) The State also argued that Ms. Davis was "vulnerable" at the time of her death, which the evidence showed occurred during "that narrow window of time where only he and her [sic] were there, and the next thing you know, the house is on fire . . . ." (Tr., p.1096, Ls.5-17.)




The third and final problem with the State's argument is that the toxicology and medical evidence presented by the State was that Ms. Davis was incapacitated at the time of her death as a result of her consumption of excessive amounts of alcohol and Benadryl, and would have been "very difficult to arouse . . . without what we call painful stimulation." (Tr., p.598, L.8 – p.609, L.21.) Such a combination was sufficient to "suppress the respiratory system" to the extent that she could have died accidentally merely by lying in a position in which her ability to breath was compromised or could have died "as a result of suffocation with very little compression on [her] chest . . . done . . . by some other person." (Tr., p.560, Ls.1-23.)

#### CONCLUSION

For the reasons set forth herein, and in his Appellant's Brief, Mr. McNeil respectfully requests that this Court vacate the judgment of conviction with respect to the charge of voluntary manslaughter and remand this matter for entry of a judgment of acquittal on that charge. Additionally, he respectfully requests that this Court vacate the judgment of conviction on all other charges and remand this matter for a new trial in light of the fundamental error resulting from the numerous instances of prosecutorial misconduct. Finally, if this Court does not vacate the judgment of conviction on all charges, he respectfully requests that this Court reduce the underlying sentences in his case by ordering that they run concurrently.

DATED this 25<sup>th</sup> day of June, 2013.

  
\_\_\_\_\_  
SPENCER J. HAHN  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25<sup>th</sup> day of June, 2013, 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:

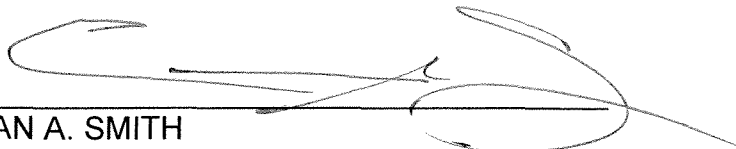
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