

1-6-2016

State v. Villanueva Appellant's Reply Brief Dckt. 42217

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Villanueva Appellant's Reply Brief Dckt. 42217" (2016). *Not Reported*. 1949.
https://digitalcommons.law.uidaho.edu/not_reported/1949

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 42217
)	
v.)	CANYON COUNTY NO.
)	CR 2013-14852
)	
ALFONSO VILLANUEVA JR.,)	REPLY BRIEF
)	
Defendant-Appellant.)	

RECEIVED
 IDAHO SUPREME COURT
 COURT OF APPEALS
 2016 JAN -6 PM 2:42

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
 DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
 COUNTY OF CANYON

HONORABLE CHRISTOPHER S NYE
 District Judge

SARA B. THOMAS
 State Appellate Public Defender
 State of Idaho
 I.S.B. #5867

KENNETH K. JORGENSEN
 Deputy Attorney General
 Criminal Law Division
 P.O. Box 83720
 Boise, Idaho 83720-0010
 (208) 334-4534

JASON C. PINTLER
 Deputy State Appellate Public Defender
 I.S.B. #6661
 P.O. Box 2816
 Boise, ID 83701
 (208) 334-2712

ATTORNEYS FOR
 DEFENDANT-APPELLANT

ATTORNEY FOR
 PLAINTIFF-RESPONDENT

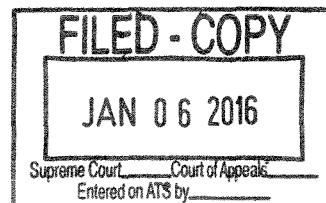


TABLE OF CONTENTS

	<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	2
ISSUE PRESENTED ON APPEAL	3
ARGUMENT.....	4
The Prosecutor Committed Misconduct Depriving Mr. Villanueva Of His Right To A Fair Trial By Making Factual Assertions The Prosecutor Knew To Be False	4
CONCLUSION	6
CERTIFICATE OF MAILING.....	7

TABLE OF AUTHORITIES

Cases

State v. Perry, 150 Idaho 209 (2010)4

STATEMENT OF THE CASE

Nature of the Case

Police officers were called to the residence Alphonso Villanueva shared with his wife, Maria Sanchez (*hereinafter*, Maria), and their daughter Amanda Villanueva (*hereinafter*, Amanda), after Amanda called 911 claiming that Mr. Villanueva threw a beer bottle at Maria, striking her in the head, and that he was suicidal. Maria and Amanda both admitted repeatedly, both out-of-court and under oath, that they initially lied about what happened and that, in reality, Maria was accidentally struck by a phone that Mr. Villanueva attempted to toss to Amanda. Mr. Villanueva appeals from his Judgment and Commitment stemming from a jury verdict finding him guilty of felony domestic battery and asserts that the prosecuting attorney deprived him of his right to due process of law by committing misconduct when she falsely argued to the jury that Maria and Amanda had only recently made up their accident claim, knowing full well that they had both made these claims multiple times in the months leading up to the trial.

In its Respondent's brief, the State acknowledges that the prosecutor's arguments were "plainly improper" but argued these arguments did not affect the outcome of the trial. (Respondent's Brief, pp.12-21.) This Reply Brief is necessary to address the State's argument that Mr. Villanueva has failed to demonstrate the prosecutorial misconduct was not harmless.

Statement of the Facts and Course of Proceedings

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

ISSUE

Did the prosecutor commit misconduct depriving Mr. Villanueva of his right to a fair trial by making factual assertions the prosecutor knew to be false?

ARGUMENT

The Prosecutor Committed Misconduct Depriving Mr. Villanueva Of His Right To A Fair Trial By Making Factual Assertions The Prosecutor Knew To Be False

Mr. Villanueva's claim is raised for the first time on appeal; therefore, he must establish that the prosecutor's actions are reviewable as "fundamental error." *State v. Perry*, 150 Idaho 209, 227 (2010). The fundamental error test is stated as follows:

[W]here an error has occurred at trial and was not followed by a contemporaneous objection, such error shall only be reviewed where the defendant demonstrates to an appellate court that one of his unwaived constitutional rights was plainly violated. If the defendant meets this burden then an appellate court shall review the error under the harmless error test, with the defendant bearing the burden of proving there is a reasonable possibility that the error affected the outcome of the trial.

Id. (footnote omitted). The State acknowledges that the prosecutor's misconduct in this case both affected Mr. Villanueva's constitutional right to due process of law and is plain on its face. (Respondent's Brief, pp.12-16.) However, the State argues that there is no reasonable possibility that the error affected the outcome of the trial. (Respondent's Brief, pp.16-21.)

In making its harmless error argument, the State appears to rely in large part upon evidence that the jury was instructed they could not consider as evidence of guilt. In its statement of the facts, the State details testimony from Officer Harward and Detective Seibel relaying statements made by both Maria and Amanda during the 48-hour period after the incident (Respondent's Brief, pp.2-3, 5), and argues, "the salient issues for the jury to decide were whether Amanda and Maria had any motive to recant and which version of events – the one they initially *reported to police* or the one they testified to at trial – was true" (Respondent's Brief, p.18 (emphasis added).) The State continues,

Contrary to Villanueva's assertions on appeal that the state's case was weak (Appellant's brief, p.16), there was an abundance of evidence - much of which the prosecutor properly referred to during closing argument - demonstrating that neither Amanda nor Maria were reliable witnesses and that their reports to the 911 dispatcher *and investigating officers* on or near the night of the incident that Villanueva intentionally struck Maria in the head with a telephone actually *reflected the truth*.

(Respondent's Brief, pp.18-19 (emphasis added).) The State continues by arguing, "the prosecutor spent the majority of her closing arguments pointing to the evidence that showed Amanda and Maria's *initial reports* were corroborated and their trial version was not." (Respondent's Brief, p.21 (emphasis added).)

To the extent that the State relies upon Amanda and Maria's statements to law enforcement as substantive evidence the jury could rely upon in determining Mr. Villanueva's fate, the State is mistaken. Maria and Amanda's statements to law enforcement, with the exception of Amanda's 911 call, were admitted solely for impeachment purposes – not for the truth of the matter asserted – and the jury was correctly instructed that these prior statements could only be considered when determining the believability of the witness who allegedly made them, and the jury could not "use these earlier statements as evidence in the case." (Tr. 4/3/14, p.390, Ls.7-18.)

The only direct evidence the jury heard that Mr. Villanueva committed a battery was the 911 call in which Amanda said "my dad just hit my mom. Can I please give you the address so you can go over there and get him?" (Exh. 1) That evidence, in and of itself, is thin as Amanda also claimed "he hit my mom with a beer bottle," which is an obviously false statement. (Exh. 1.) The jury never heard any substantive evidence from Maria demonstrating that she was the victim of domestic battery. Officer Harward claimed Maria told Dr. Lee "something was thrown at her and it hit her in the head"

(Tr. 4/1/14, p.203, L.17 – p.205, L.23), while Dr. Lee testified Maria said “she was struck with an object” (Tr. 4/2/14, p.232, L.10 – p.240, L.13), but the jury never heard any statement from Maria that could be considered for the truth of the matter asserted, that Mr. Villanueva either willfully or intentionally threw the phone at her.

There is a reasonable probability that the verdict in this case was a product of the prosecutor’s knowing deception of the jurors, which was done in an effort to discredit the only two witnesses to the events that were not on trial. The State’s argument to the contrary is unsound and should be rejected by this Court.

CONCLUSION

Mr. Villanueva respectfully requests that this Court vacate his Judgment and Commitment and remand his case to the district court.

DATED this 6th day of January, 2016.


JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6th day of January, 2016, 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:

ALFONSO VILLANUEVA JR
INMATE #76012
ISCC
PO BOX 70010
BOISE ID 83707

CHRISTOPHER S NYE
DISTRICT COURT JUDGE
E-MAILED BRIEF

RICHARD L HARRIS
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.


EVAN A. SMITH
Administrative Assistant

JCP/eas