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## State v. Archuleta Respondent's Brief Dckt. 42294

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

STATE OF IDAHO,	)	
	)	No. 42294
Plaintiff-Respondent,	)	
	)	Ada Co. Case No.
vs.	)	CR-2014-2262
	)	
MARCUS REY ARCHULETA,	)	
	)	
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

HONORABLE DEBORAH A. BAIL  
District Judge

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**FILED - COPY**

FEB 23 2015

Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_  
Entered on ATS by \_\_\_\_\_

ATTORNEYS FOR  
PLAINTIFF-RESPONDENT

ATTORNEY FOR  
DEFENDANT-APPELLANT

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## STATEMENT OF THE CASE

### Nature Of The Case

Markus Rey Archuleta appeals from his conviction and judgment for possession of methamphetamine with a persistent violator enhancement.

### Statement Of The Facts And Course Of The Proceedings

The state charged Archuleta with possession of methamphetamine, a felony, two misdemeanors for possession of paraphernalia and disturbing the peace, and a sentencing enhancement for being a persistent violator. (R., pp. 42-43, 76-77.) Archuleta moved to sever the disturbing the peace charge. (R., p. 52.) The factual background Archuleta provided was that a Rite-Aid employee called police, resulting in an investigation and Archuleta's arrest for willful concealment; that Archuleta later loudly and possibly violently confronted the Rite-Aid employee he believed was responsible for his prior arrest; this led to Archuleta's arrest for witness intimidation (later charged in this case as disturbing the peace) and discovery of the methamphetamine and paraphernalia that led to the other charges in this case. (R., pp. 54-56; see also R., pp. 62-65.) The state moved for permission to use the evidence in its case. (R., pp. 72-74.) The district court denied the motion to sever and limited the evidence regarding why Archuleta confronted the store employee. (R., p. 78.)

At trial the Rite-Aid employee, David Duncan, testified that on the date in question Archuleta approached him, calling out and saying, "Are you the mother F'er that called the cops on me." (Tr., p. 76, L. 11 – p. 77, L. 13.) The defense moved for a mistrial outside the presence of the jury and, in the alternative, for

the testimony to be stricken and the jury instructed to disregard it. (Tr., p. 77, L. 14 – p. 78, L. 19.) The court denied the mistrial, but elected to address the testimony in the instructions. (Tr., p. 78, L. 20 – p. 79, L. 7.)

Later in the trial the judge presented the proposed jury instructions to the parties, who both represented they did not object. (Tr., p. 143, Ls. 6-10.) The instructions did not directly address the evidence of the contents of Archuleta's statements to Duncan. (Tr., p. 147, L. 20 – p. 158, L. 14; R., pp. 85-105.) The jury ultimately found Archuleta guilty of possession of methamphetamine and being a persistent violator, but acquitted on the misdemeanor charges of disturbing the peace and possession of paraphernalia. (R., pp. 106-08, 111.)

The district court imposed a sentence of seven years with one year determinate and entered judgment. (R., pp. 112-15.) Archuleta filed a timely notice of appeal. (R., pp. 120-22.)

## ISSUES

Archuleta states the issues on appeal as:

1. Did the district court commit reversible error when it denied Mr. Archuleta's motion for a mistrial?
2. Did the district court commit reversible error when it failed to provide a limiting instruction after the State's witness testified to evidence which the district court previously ruled was inadmissible?

(Appellant's brief, p. 4.)

The state rephrases the issues as:

Has Archuleta failed to show reversible error in the district court's rulings on his request for a mistrial?

## ARGUMENT

### Archuleta Has Failed To Show Reversible Error

#### A. Introduction

The district court concluded that inadmissible evidence (Mr. Duncan's testimony that Archuleta confronted him and asked if he was the person who "called the cops" on him) had been presented but ultimately rejected Archuleta's proposed remedies. (Tr., p. 77, L. 11 – p. 80, L. 1.) Because the presentation of the evidence, even if inadmissible, did not render the trial unfair, Archuleta has failed to show that the lack of a remedy was reversible error.

#### B. Standard Of Review

The relevant inquiry on appeal from the denial of a motion for a mistrial is "whether there has been reversible error." State v. Watkins, 152 Idaho 746, 766, 274 P.3d 1279, 1281 (Ct. App. 2012). Archuleta bears the burden of showing that the trial court committed reversible error when it denied his motion for a mistrial. State v. Rodriguez, 106 Idaho 30, 674 P.2d 1029 (Ct. App. 1983). "The trial court's refusal to declare a mistrial will be disturbed only if that event, viewed retrospectively, amounted to reversible error." Watkins, 152 Idaho at 766, 274 P.3d at 1281.

#### C. The Testimony Was So Minimally Unfairly Prejudicial That, Even In The Absence Of Other Curative Steps, A Mistrial Was Not Called For

A mistrial is appropriate where there has been conduct, inside or outside of the courtroom, that is "prejudicial to the defendant and deprives the defendant of a fair trial." I.C.R. 29.1(a). Thus, the event triggering the mistrial motion must

be both prejudicial and deprive the defendant of a fair trial in order to warrant a mistrial. If there was no error, or if the error was harmless beyond a reasonable doubt, denial of the motion for mistrial was proper. Watkins, 152 Idaho at 766, 274 P.3d at 1281. Evidence may be excluded if its potential for “unfair prejudice” substantially outweighs its probative value. I.R.E. 403. “Unfair prejudice” is the tendency to suggest a decision on an improper basis. State v. Ruiz, 150 Idaho 469, 471, 248 P.3d 720, 722 (2010). Application of these legal standards to the record in this case shows minimal chance of unfair prejudice, even in the absence of other curative steps, such that any error was clearly harmless.

The unfair prejudice, if any, that arose from the testimony of the contents of Archuleta’s statement when he confronted Mr. Duncan did not render the trial unfair. Archuleta claims the unfair prejudice was that “the jurors were made aware of the fact Mr. Archuleta had done something which prompted Mr. Duncan to call the police” and therefore would “conclude that Mr. Archuleta is the kind of guy that [sic] regularly breaks the law.” (Appellant’s brief, p. 7.) The evidence, however, was merely that Archuleta accused Mr. Duncan of having called the police on him. There was no evidence that Archuleta had actually done something that merited police intervention, much less what that something might have been. The only fact the jury could reasonably conclude from this evidence was that Archuleta had a dispute with Duncan arising from Duncan’s calling the police. Archuleta’s belief that the evidence led to the conclusion Archuleta “regularly breaks the law” is mere fantasy. It is more likely that the jury concluded that Archuleta believed himself wrongly accused of something, based

on his willingness to confront his accuser. Indeed, had the jury concluded that Duncan had properly called the police for some illegal conduct by Archuleta, and that Archuleta had come to confront him about it, the jury's acquittal on the disturbing the peace charge is inexplicable.

Archuleta also argues the jury might "assume" he is a "confrontational person." (Appellant's brief, p. 7.) Given that the charge was disturbing the peace that arose out of a confrontation, the state fails to see how this argument supports an inference that the evidence was *unfairly* prejudicial.

Finally, Archuleta argues the state's evidence was "very weak" because the jury did not find the evidence regarding charges on which it acquitted "compelling." (Appellant's brief, p. 8.) While the state concedes that an acquittal may be the result of "weak" evidence, Archuleta has failed to even attempt to show how the allegedly unfair prejudice he suffered attached more to the charges of conviction than those of acquittal. Archuleta has failed to show why the acquittals in this case support his claim of unfair prejudice.

The witness' volunteered statement that Archuleta accused the witness of calling the police on him was so minimally unfairly prejudicial, if even improperly before the jury at all, it did not affect the fairness of the trial, even in the absence of other curative steps. Archuleta has therefore failed to show reversible error mandating the granting of a mistrial.

CONCLUSION

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

DATED this 23rd day of February, 2015.



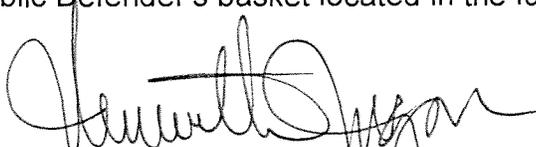
\_\_\_\_\_  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of February, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by causing a copy addressed to:

SHAWN F. WILKERSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



\_\_\_\_\_  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/pm