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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44535
)	
v.)	ADA COUNTY NO.
)	CR-FE-2016-1996
ROY AYERS BAXTER, JR.,)	
)	
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**

HONORABLE JASON D. SCOTT
District Judge

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STATEMENT OF THE CASE

Nature of the Case

The district court abused its discretion when it denied Mr. Baxter's motion to withdraw his guilty plea because he met his burden of showing a just reason to withdraw his plea, which was rendered unknowing as a result of a post-plea change in his domestic violence evaluation, and the State did not make (or even attempt to make) any showing that it would be prejudiced by the withdrawal of Mr. Baxter's guilty plea. Mr. Baxter submits this Reply Brief to respond to a mischaracterizations of the facts in the Respondent's Brief and to explain why, under the actual facts of this case, the district court abused its discretion in denying his motion.

Statement of Facts and Course of Proceedings

Mr. Baxter included a statement of facts and course of proceedings in his opening brief, see Appellant's Br., pp.1-4, which he relies on and incorporates herein. He addresses the State's factual mischaracterization in the argument section of this brief.

ISSUE

Did the district court abuse its discretion in denying Mr. Baxter's motion to withdraw his guilty plea?

ARGUMENT

The District Court Abused Its Discretion In Denying Mr. Baxter's Motion To Withdraw His Guilty Plea Because Mr. Baxter Met His Burden Of Showing A Just Reason To Withdraw His Guilty Plea, And The State Did Not Make Any Showing Of Prejudice

The State asserts in its brief that Mr. Baxter's "apparent motive" for moving to withdraw his guilty plea was "simply buyer's remorse." (Respondent's Br., p.8.) This is not a case of buyer's remorse. Mr. Baxter pled guilty, pursuant to a written plea agreement, with the understanding that the State would recommend probation. (8/26/16 Tr., p.6, Ls.12-14; R., pp.74-84, 89.) The State did not recommend probation, but instead recommended a rider, after Mr. Baxter explained his conduct at the change of plea hearing, which was consistent with what was stated in the police reports. (9/23/16 Tr., p.33, L.12 – p.34, L.8; Presentence Investigation Report ("PSI"), pp.27-34.) At the hearing on Mr. Baxter's motion to withdraw his guilty plea, counsel for Mr. Baxter told the district court Mr. Baxter "never would have pled guilty to a rider offer." (8/26/16 Tr., p.15, Ls.12-13.) And counsel confirmed to the district court that Mr. Baxter would withdraw his motion if the State agreed to recommend probation, but the State refused to recommend probation. (8/26/16 Tr., p.16, Ls.13-17; p.27, Ls.10-13.)

The procedural history of this case is critical to the merits of Mr. Baxter's motion to withdraw his guilty plea, and the State mischaracterizes that history in its Respondent's Brief. The State writes:

As he did below, Baxter asserts that he only pleaded guilty because the state agreed to recommend probation if a domestic violence evaluation concluded that he was less than a high risk to reoffend, and (unbeknownst to the state) Baxter had already gotten a domestic violence evaluation from Dr. Arnold that concluded he was less than a high risk to reoffend.

(Respondent's Br., p.7.) The fact that Mr. Baxter obtained a domestic violence evaluation prior to accepting the State's plea offer was in no way "unbeknownst to the state."¹

Mr. Baxter entered a plea of "not guilty" in this case on May 27, 2016. (R., p.72.) At that time, counsel for Mr. Baxter informed the district court that the parties had the outline of a plea agreement in place, and that Mr. Baxter was getting a domestic violence evaluation done at his own expense, and that the trial might go away depending on the results of that evaluation. (R., p.72.) On June 17, 2016, counsel for Mr. Baxter received the domestic violence evaluation from Dr. Arnold, who determined Mr. Baxter presented less than a high risk to reoffend. (R., p.89.) Counsel for Mr. Baxter forwarded the domestic violence evaluation to the prosecutor on June 28, 2016. (R., pp.89, 101.) The prosecutor reviewed the evaluation and informed Mr. Baxter's counsel that she would not recommend a bond reduction lower than \$100,000 because of Mr. Baxter's "gross omissions [to Dr. Arnold] as to his conduct in the instant offense, as well as his misstatements regarding substance use." (R., p.101.)

¹ The State also mischaracterizes Mr. Baxter's offense. The State describes the offense as follows, "On February 14, 2016, after using methamphetamine and drinking alcohol most of the day, Baxter violently attacked his wife, punching her in the throat and leaving bruises on her arms." (Respondent's Br., p.1.) The State cites Mr. Baxter's testimony at the change of plea hearing as support for this statement. (See *id.*) But Mr. Baxter did not testify that he used methamphetamine on the day of the offense. He testified that, on February 14, he and his wife "had been drinking most of the day" and "were just out drinking and partying that weekend." (7/1/16 Tr., p.14, Ls.13-17.) He then said, "Before that, a couple days, it was actually out partying and doing meth." (7/1/16 Tr., p.14, Ls.17-18.) Mr. Baxter included this fact—that he used methamphetamine "a couple days" before the incident—in his Appellant's Brief, see Appellant's Br., p.3, note 1, and it is significant because the prosecutor cited Mr. Baxter's substance abuse as one of the factors that "may impact on [Dr. Arnold's] finding of risk." (8/26/16 Tr., p.21, Ls.1-9.)

But the prosecutor *did not* inform counsel that she would be challenging Dr. Arnold's assessment of Mr. Baxter's risk of reoffending. (8/26/16 Tr., p.6, Ls.5-11; R., p.89.) After "much discussion" with his attorney, Mr. Baxter decided to plead guilty pursuant to the plea agreement, with the understanding that the State would recommend probation. (R., p.89.)

On July 1, 2016, Mr. Baxter changed his plea to "guilty." (R., pp.86, 89.) At the change of plea hearing, counsel for Mr. Baxter informed the district court that the domestic violence evaluation had been completed, and he had shared the report with the prosecutor, "so we don't have to do that." (7/1/16 Tr., p.7, Ls.21-23.) After the district court accepted Mr. Baxter's guilty plea and was setting the matter for sentencing, counsel for Mr. Baxter stated, "Your Honor, it's our hope that since the domestic violence evaluation has already been done, that we can set it more quickly." (7/1/16 Tr., p.20, Ls.3-5.) The district court later said, "And you say you already have a domestic violence evaluation done, and you'll submit that." (7/1/16 Tr., p.21, Ls.1-2.) Counsel responded, "I've submitted it to the state. We'll make sure the presentence investigator gets a copy, or I could just send a copy to you and then we're done with that I guess. Either way is fine by me." (7/1/16 Tr., p.21, Ls.3-7.) At no point did the prosecutor state she was no longer satisfied with the domestic violence evaluation, or would be contacting Dr. Arnold to suggest changing the results of the evaluation.

Buyer's remorse is the sense of regret one might feel after making a purchase, possibly stemming from fear of having made the wrong choice. Here, Mr. Baxter's only regret was that the State did not abide by its agreement to recommend probation based

on the results of the domestic violence evaluation, which was completed before Mr. Baxter entered into the plea agreement with the State, and before he pled guilty.

On the record presented, based on the actual facts of this case, where Mr. Baxter presented a just reason to withdraw his guilty plea, and the State made no showing of prejudice, the district court abused its discretion by denying Mr. Baxter's motion to withdraw his guilty plea. See *State v. Harstock*, 160 Idaho 639, 640 (Ct. App. 2016) ("Whether to grant a motion to withdraw a guilty plea lies in the discretion of the district court and such discretion should be liberally applied."); see also *State v. Johnson*, 120 Idaho 408, 411 (Ct. App. 1991) (stating "the court is to exercise liberal discretion" when a defendant seeks to withdraw a guilty plea before sentencing, and when the defendant presents a just reason to withdraw his plea, "relief will be granted absent a strong showing of prejudice by the state").

CONCLUSION

For the reasons stated above as well as those set forth in his opening brief, Mr. Baxter respectfully requests that this Court vacate his conviction, reverse the district court's denial of his motion to withdraw his guilty plea, and remand this case to the district court for further proceedings.

DATED this 20th day of March, 2017.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of March, 2017, 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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JASON D SCOTT
DISTRICT COURT JUDGE
E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas