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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 44906**
	)	
v.	)	**ADA COUNTY NO. CR-FE-2016-1321**
	)	
JASON ELLSWORTH	)	
COAPLAND,	)	**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

HONORABLE DEBORAH A. BAIL
District Judge

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STATEMENT OF THE CASE

Nature of the Case

In his Appellant's Brief, Jason Coapland asserted the district court abused its discretion by overruling his hearsay objection and allowing a detective to testify that he heard an unidentified woman say "you didn't have to do that," a short time after Mr. Coapland stabbed Chance Worosz. (Appellant's Brief, pp.9-19.) In its Respondent's Brief, the State acknowledges the district court erred in its stated reasons for overruling Mr. Coapland's objections, conceding the statement in question was hearsay, and was not admissible as a present sense impression. (Respondent's Brief, p.8.) The State, however, now asks this Court to affirm the district court's ruling, arguing for the first time on appeal that the statement was admissible as an excited utterance. (Respondent's Brief, pp.8-12.)

Mr. Coapland asserts this Court should reject the State's "right result-wrong theory" argument because the State did not first present its excited utterance theory to the district court. Even if this Court does consider the State's argument for the first time on appeal, Mr. Coapland asserts the statement at issue is not admissible as an excited utterance. Additionally, the State's argument that the district court did not err in failing to give instructions on self-defense (Respondent's Brief, pp.14-17), and its harmless error arguments (Respondent's Brief, pp.13-14, 18-19), are without merit.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Coapland's Appellant's Brief and are incorporated herein by reference. They are repeated in this Reply Brief only where helpful for consideration of the parties' legal arguments.

ISSUES

I. Did the district court abuse its discretion by allowing Detective Pietrzak to testify that he heard an unidentified female say "you didn't have to do that," as the statement was hearsay and was not admissible pursuant to any exception to the hearsay rule?

II. Did the district court err in failing to instruct the jury on self-defense?

III. Did the accumulation of errors deprive Mr. Coapland of his right to a fair trial?[1]

[1] The State's response to Mr. Coapland's cumulative error argument is unremarkable (Respondent's Brief, pp.19-20), and he does not further address that issue in this Reply Brief. Mr. Coapland relies upon the arguments made at pages 24 and 25 of his Appellant's Brief on this issue.

<u>ARGUMENT</u>

I.

<u>The District Court Abused Its Discretion By Allowing Detective Pietrzak To Testify That He Heard An Unidentified Female Say "You Didn't Have To Do That," As The Statement Was Hearsay And Was Not Admissible Pursuant To Any Exception To The Hearsay Rule</u>

After Detective Pietrzak testified in general terms about hearing a "very angry" "uproar" while leaving the Interfaith Sanctuary (Tr., p.79, L.24 – p.80, L.14), the prosecutor asked, "Were you able to make out any of the words that were being said specifically?" (Tr., p.80, Ls.15-16). Defense counsel objected, arguing the prosecutor's question "is calling for hearsay." (Tr., p.80, Ls.17-18.) The district court ruled,

> It's not hearsay if he is describing what he actually observed and heard, and he's describing a situation where he is hearing an uproar. So it is both present sense impression and it's also not hearsay. I suppose you refer to him as an ear witness. So please proceed.

(Tr., p.80, Ls.19-25.) Detective Pietrzak testified he heard "one female voice that said something very consistent with you didn't have to do that." (Tr., p.81, Ls.3-9.)

In his Appellant's Brief, Mr. Coapland asserted that the district court abused its discretion by overruling his hearsay objection. (Appellant's Brief, pp.9-19.) Specifically, Mr. Coapland asserted that the statement was hearsay, was not admissible for any non-hearsay purposes, and was not admissible as a present sense impression, which were the district court's apparent reasons for overruling the objection. (Appellant's Brief, pp.9-19; *see also* Tr., p.79, L.24 – p.81, L.3.) In its Respondent's Brief, the State concedes that the statement in question was hearsay and was not admissible has a present sense impression; however, for the first time on appeal, the State asserts the statement was admissible as an excited utterance, and that any error was harmless. (Respondent's Brief, pp.8-14.) This Court should reject the State's arguments

A. This Court Should Not Consider The State's Excited Utterance Argument, As That Theory Was Not Presented, Argued, Or Considered By The District Court

The general rule in Idaho is that appellate Courts may only affirm a district court's decision on a legal theory not adopted by the district court, if that theory was first presented to the district court.[2] *State v. Garcia-Rodriguez*, 162 Idaho 271 (2017). Mr. Coapland asserts that because the State did not argue to the district court that the hearsay statement in question was admissible as an excited utterance, the State failed to preserve this legal theory for appellate review. As such, this Court should not consider whether the statement, "you didn't have to do that," made by an unidentified woman was admissible as an excited utterance.

In *Garcia-Rodriguez*, the State appealed from the district court's order granting the defendant's motion to suppress. *Id.* at 273. In the district court, the State argued the search was justified as incident to the defendant's arrest for misdemeanor driving without privileges. *Id.* at 274. The district court rejected this argument, finding the arrest was unlawful because the State did not present evidence that the officers had reasonable grounds to believe the defendant would not appear in court, as required under I.C. § 49-1407. *Id.* Citing to the United States Supreme Court's holding in *Virginia v. Moore*, 553 U.S. 164 (2008), the State argued for the first time on appeal that the arrest was justified because officers had probable cause to believe the defendant

---

[2] There are a few exceptions to this general rule. Parties may challenge the Court's jurisdiction at any time. *State v. Lute*, 150 Idaho 837, 840 (2011). In civil matters, appellate Courts will consider a constitutional issue raised for the first time on appeal, "if such consideration is necessary for subsequent proceedings in the case," *Murray v. Spalding*, 141 Idaho 99, 101 (2005), and will consider issues raised by a criminal defendant for the first time on appeal if the defendant shows fundamental error, *State v. Perry*, 150 Idaho 209, 219–28 (2010). Additionally, a party can raise an issue for the first time on appeal if the district court actually decided the issue. *State v. Duvalt*, 131 Idaho 550, 553 (1998). Finally, appellate Courts may consider arguments not raised in the district court, if there is a controlling, intervening decision which changes or clarifies the law on the issue raised. *See, e.g., State v. Frederick*, 149 Idaho 509, 513 n.3 (2010).

committed a crime, regardless of the additional requirements necessary to justify an arrest found in I.C. § 49-1407. *Id.* at 274-75. While noting that the State's new-found appellate theory was "likely correct," the Idaho Supreme Court rejected the State's request that it reverse the district court's order suppressing evidence on that theory, because the State did not present that theory to the district court. *Id.* at 275.

The *Garcia-Rodriguez* Court reached its holding after noting that it has long been the law in Idaho that appellate Courts will not consider issues raised for the first time on appeal, and that the parties on appeal will be held to the legal theories and arguments presented in the lower court. *Id.* (citations omitted). Importantly, the Court did not limit the preservation requirement to appellants; rather, "This requirement applies equally to all parties on appeal." *Id.* at 276. In *dicta* the *Garcia-Rodriguez* Court also acknowledged, "While the State properly observes that this Court has corrected lower court decisions based on legal error, we did so when the lower court reached the correct result albeit by way of erroneous legal reasoning." *Id.* at 275-76.

Reading these long-standing provisions of Idaho law together, the standard acknowledged by the *Garcia-Rodriguez* Court requires parties to preserve their theories and arguments by first presenting them to the district court; if they do so, the parties may present these same theories and arguments on appeal.[3] The parties are not, however, limited to arguing only the propriety of the decision actually rendered by the district court. A party may argue that

[3] Parties on appeal are not limited to reciting verbatim the arguments they made in the district court. Although new substantive issues cannot be raised for the first time on appeal, the specific arguments the parties make in support of their legal theories may "evolve" between the lower court and the appellate court. *Ada County Highway District v. Brooke View, Inc.*, 162 Idaho 138, 142 n.2 (2017). Appellate counsel, like trial counsel, have a duty to zealously represent their respective clients, and a duty of candor to the Appellate Court. *See* I.R.P.C. Preamble (2); I.R.P.C. 1.1; I.R.P.C. 3.1; I.R.P.C. 3.3. Appellate counsel cannot meet their ethical obligations and effectively represent their client on appeal, if they are confined to simply repeating the arguments made in the district court.

the lower court reached the correct result, albeit by an incorrect legal theory, *only if the correct theory was presented and either rejected, or not considered by the lower court. See Garcia-Rodriguez*, 162 Idaho at 275-76. Had the State asserted, and the district court rejected or not considered, an argument that the defendant's search was justified under *Virginia v. Moore* regardless of the provisions of I.C. § 49-1407, the *Garcia-Rodriguez* Court would have certainly reversed the district court's suppression order.[4] *Id.*

The State cites *State v. Smith*, 161 Idaho 782, 785-87 (2017), in support of its claim that this Court should consider its excited utterance argument raised for the first time on appeal. (Respondent's Brief, p.12.) The State's reliance on *Smith* is misplaced. The *Smith* Court held the out-of-court statement in question in that case was admissible as a statement by a co-conspirator in furtherance of a conspiracy, pursuant to I.R.E. 801(d)(2)(e), even though the district court admitted the statement for a different reason. *Id.* at 786. Although the parties *on appeal* did not argue the admissibility of the statements pursuant to I.R.E. 801(d)(2)(E), the *Smith* Court held the prosecutor made a sufficient offer prior to trial "that the State would present evidence showing a conspiracy" between the defendant and the person who made the statement, and the Court found the State did, in fact, present sufficient evidence showing the existence of the conspiracy. *Id.* at 786-87. In holding, "[t]he issue should be decided on the applicable law," and in finding, "the statement was not hearsay under Idaho Rule of Evidence 801(d)(2)(E)," *id.* at 787, the *Smith* Court's decision is consistent with precedent *limiting the parties on appeal* to those arguments and theories they presented in the district court, but allowing the appellate Court

[4] Though not specifically articulated, the *Garcia-Rodriguez* Court's holding that it would "decline to adopt a 'wrong result-wrong theory' approach to reverse a lower's court's decision *based on issues neither raised nor argued below*," *id.* at 276 (emphasis added), indicates the Court would have considered and ruled upon the State's "likely correct" appellate argument, had it been presented to the district court.

to review whether the district court's decision was correct, albeit under an incorrect legal theory, based upon arguments and theories presented in the district court.

1. <u>The State's Appellate Argument Is A Prime Example Of Why Idaho Appellate Courts Do Not Decide Issues Based On Theories And Arguments Not Presented To The District Court</u>

The *Garcia-Rodriguez* Court noted the reason for the preservation requirement has existed since before Idaho became a State:

> It is for the protection of inferior courts. It is manifestly unfair for a party to go into court and slumber, as it were, on his defense, take no exception to the ruling, present no point for the attention of the court, and seek to present his defense, that was never mooted before, to the judgment of the appellate court. Such a practice would destroy the purpose of an appeal and make the supreme court one for deciding questions of law in the first instance.

Garcia-Rodriguez, 162 Idaho at 276 (quoting *Smith v. Sterling*, 1 Idaho 128, 131 (1867)). The State's appellate argument is the model of a party attempting to "make the [S]upreme [C]ourt one for deciding questions of law in the first instance." (Respondent's Brief, pp.10-12.)

An excited utterance is defined as "A statement relating to a startling event or condition made while the declarant was under the stress or excitement cause by the event or condition." I.R.E. 803(2). Based in large part upon evidence presented *after* it had already been admitted, the State argues the statement, "you didn't have to do that," was admissible an excited utterance because seeing a stabbing with graphic injuries "would be a 'startling event' for nearby witnesses, by any standard," even if the person did not see the stabbing. (Respondent's Brief, pp.10-11.) The State continues by arguing that "the common-sense intuition" is that the uproar was in response to the stabbing, and the State reasons the "'very sudden' uproar would be the definition of a spontaneous outburst that is not the product of reflective thought." (Respondent's Brief, p.11.) The State also argues that because the unidentified person is a woman and

Mr. Coapland and his friend are both men, "it is apparent that person lacked self-interest." (Respondent's Brief, p.11.) The State's conclusions are specious.

Had the State made these arguments to the district court, Mr. Coapland would have been able to respond by arguing that, just because some people were startled, does not mean the unidentified witness was, and that if the witness did not see the stabbing, her testimony is inadmissible for lack of personal knowledge (I.R.E. 602), and that her opinion of whether someone did or did not do something is not relevant (I.R.E. 401), and therefore not admissible (I.R.E. 402). Whether the "uproar" was "very sudden" and in response to the stabbing is irrelevant to the question of whether the specific, objected-to comment from the unidentified woman – "you didn't have to do that" – was in response to *her* actually witnessing the stabbing, and whether the statement was a product of *her* reflective thought. *See* I.R.E. 803(2). The "you didn't have to do that" statement, on its face, appears to have been the product of reflective thought, as the unidentified woman placed her value judgment on whether someone did, or did not, have to do something. Finally, the fact that the unidentified woman is a woman, and Mr. Coapland and Mr. Worosz are both men, has absolutely no bearing on whether the unidentified woman had no self-interest when she made the statement.

Left without an offer of proof at trial, the State's appellate counsel weaves a tapestry of disparate facts and asks this Court to infer from those facts that the hearsay in question was admissible as an excited utterance. This Court should reject the State's appellate argument.

2. <u>The State Had Every Opportunity To Argue The Hearsay Statement It Proffered Was Admissible As An Excited Utterance, But Failed To Do So</u>

The State also suggests that this Court should excuse its failure to offer the statement as an excited utterance in the district court, claiming it "did not have the opportunity to respond to

the hearsay objection and point out the theories upon which the statement could be admitted," because the district court ruled on Mr. Coapland's hearsay objection without first requiring the State to offer its purported justifications for the admissibility of the statement. (Respondent's Brief, p.12.) While Mr. Coapland agrees that the district court should not have ruled on his objection without first requiring the State to show why the out-of-court statement was admissible, *see State v. Davis*, 155 Idaho 216, 219 (Ct. App. 2013), the State's suggestion that it did not have the *opportunity* to offer its excited utterance justification is simply wrong.

The prosecutor who solicited the statement from Detective Pietrzak could have, at any time prior to or immediately after the court ruled on Mr. Coapland's objection, argued to the district court that it was offering the statement as an excited utterance (if indeed the prosecutor believed the statement was admissible as an excited utterance). The prosecutor adopted the out-of-court statement in question as the State's trial theme. The prosecutor began the State's opening statement as follows:

> Ladies and gentlemen of the jury, this case is about the defendant being caught red-handed.
>
> You didn't have to do that. Why did you do that?
>
> Those were a couple of the statements that Detective [Pietrzak] of the Boise Police Department was able to understand coming from a group of loud ruckus people in a group outside Interfaith Sanctuary on January 30, 2016.
>
> Throughout the course of this trial, you will learn that that group had just witnessed the defendant Jason Coapland stab the victim Chance Worosz in the stomach.

(Tr., p.68, L.23 – p.69, L.11.) The prosecutor then used the statement four times during the first few verses of its closing argument. (Tr., p.239, L.16 – p.240, L.15.)

Presumably, the prosecutor knew that she was not going to call the unidentified woman as a witness, and the prosecutor surely knew (or at least should have known), that Mr. Coapland

would object to the out-of-court statement the State concedes on appeal is hearsay, on hearsay grounds. The prosecutor could have informed Mr. Coapland and the district court that it intended to offer the statement as an excited utterance prior to trial, or at least prior to soliciting the hearsay. Even after the court ruled on Mr. Coapland's objection, the State could have simply stated that it was offering the statement as an excited utterance, in addition to the reasons the court gave for overruling the objection. The court stated "so please proceed" (Tr., p.80, Ls.19-25) – it did not "order[] the questioning to continue, before the state could raise any further issues" (Respondent's Brief, p.12).

As the proponent of the evidence, the prosecutor had the obligation to demonstrate its admissibility upon Mr. Coapland's hearsay objection. *See Davis*, 155 Idaho at 219. The State's failure to do so should not be excused simply because it may have been uncomfortable for the prosecutor to make the offer, after the court overruled Mr. Coapland's objection. The State solicited what it concedes is hearsay. It did not argue to the district court that the statement was admissible as an excited utterance. This Court should not consider the State's excited utterance argument on appeal.

B. The State Has Failed To Prove The Hearsay Statement Was Admissible As An Excited Utterance

Even if this Court considers the State's excited utterance justification for the first time on appeal, it should find the State has failed to meet its burden to show the statement was an excited utterance, pursuant to I.R.E. 803(2). As the appellant, Mr. Coapland generally bears the burden of demonstrating the district court erred in overruling his objection. *See Perry*, 150 Idaho 209, 222 (2010). However, the State's new-found appellate argument effectively renders this Court "one for deciding questions of law in the first instance." *See Sterling*, 1 Idaho at 131. As such,

the State should bear the burden of demonstrating its proffered hearsay is admissible under I.R.E. 803(2). *See Davis*, 155 Idaho at 219. The State has failed to meet that burden.

The fatal flaw in the State's excited utterance argument is the same fatal flaw in the district court's present sense impression reasoning: there is nothing in the record that demonstrates the unidentified witness actually saw the stabbing, thus the statement does not have any circumstantial guarantee of trustworthiness. As noted above, an excited utterance is defined as "A statement relating to a startling event or condition made while the declarant was under the stress or excitement cause by the event or condition." I.R.E. 803(2). Idaho Courts have held that "[t]o fall within the excited utterance exception, an out-of-court statement must meet two requirements. First, there must be a startling event that renders inoperative the normal reflective thought process of the observer, and second, the declarant's statement must be a spontaneous reaction to that event rather than the result of reflective thought." *State v. Hansen*, 133 Idaho 323, 325 (Ct. App. 1999) (citing *State v. Parker*, 112 Idaho 1, 4 (1986); *State v. Burton*, 115 Idaho 1154, 1156 (Ct. App. 1989)). Assumed within this definition, however, is that the witness actually witnessed, and the statement actually describes, the event in question. *See* I.R.E. 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."); I.R.E. 402 ("Evidence which is not relevant is not admissible.")

Without identifying the witness, the State has failed to demonstrate that her statement – "you didn't have to do that" – related to the stabbing, the purpose for which the State now offers the statement. Therefore, the State has failed to demonstrate the statement has any circumstantial guarantee of trustworthiness. "The unifying trait of all the Rule 803 exceptions is a circumstantial guarantee of trustworthiness sufficient to justify nonproduction of the declarant,

whether available or not." *Miller v. Keating*, 754 F.2d 507, 510 (3d Cir. 1985). Though referring to Federal Rule of Evidence 803, the *Miller* Court's description applies equally to Idaho Rule of Evidence 803. *See State v. Woodbury*, 127 Idaho 757, 759 (Ct. App. 1995) (recognizing federal case law interpreting a federal rule is relevant and helpful to Idaho courts interpreting the equivalent Idaho rule); *see also* I.R.E. 803(24) (allowing for the admission of hearsay statements "not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness ….").

Without identifying the witness, the State failed to demonstrate the witness saw the stabbing, and thus failed to demonstrate the statement was relevant and admissible as an excited utterance. *See* I.R.E. 401, 402, 803(2). Nothing in the statement itself – "you didn't have to do that" – demonstrates the witness actually saw the stabbing.[5] *See Miller*, 754 F.2d at 511. Without proving the witness saw the stabbing, the State failed to prove her statement was a spontaneous reaction to the stabbing itself, a spontaneous reaction to someone else doing something else, or a spontaneous reaction at all. *See* I.R.E. 803(2). On its face, the statement appears to be the witness reflecting on something – perhaps the stabbing, perhaps not – and placing a value judgment on whatever the witness saw. *Id.* Even if the State identified and called the witness to testify, her value judgment was not relevant to the jury's consideration of any fact at issue. *See* I.R.E. 401, 402.

The State, asking this Court to be one of first impression on this issue, has failed to demonstrate to this Court that the statement was admissible as an excited utterance.

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[5] Had the witness said something to the effect of "I saw him stab that guy," the statement may very well have been admissible as an excited utterance as the statement itself would include an indication that the witness saw the event the statement purports to describe. *See Miller*, 754 F.2d at 511.

C. The State Uses The Wrong Harmless Error Analysis And Has Failed To Prove, Beyond A Reasonable Doubt, That The Erroneously Admitted Statement Did Not Contribute To The Verdict

While most of its harmless error argument is unremarkable, the State concludes by surmising "The record therefore does not show that the 'you didn't have to do that statement' contributed to the verdict – or that *without* that statement the jury would have concluded that [Mr.] Coapland acted lawfully." (Respondent's Brief, p.13 (emphasis in original). This is simply not the harmless error standard.

First, Mr. Coapland was not required to prove that he acted lawfully; on the contrary, the State was required to prove, beyond a reasonable doubt, each element of the aggravated battery charge. *See In re Winship*. 397 U.S. 358 (1970). Second, the harmless error standard announced in *Perry*, 150 Idaho at 221-22, adopting the standard articulated in *Chapman v. California*, 386 U.S. 18 (1967), is *not met* when the State proves the defendant would have been convicted *without* the jury hearing the objected-to evidence. Under the *Chapman* test,

> The inquiry, in other words, is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this* trial was surely unattributable to the error. That must be so, because to hypothesize a guilty verdict that was never in fact rendered—no matter how inescapable the findings to support that verdict might be—would violate the jury-trial guarantee.

Sullivan v. Louisiana, 508 U.S. 275, 279-80 (1993) (citations omitted). The State hypothesizes a jury verdict – one occurring without the jury hearing the inadmissible statement – that was never in fact rendered in this case.

The prosecutor chose "you didn't have to do that" as the State's theme. The State has failed to prove, beyond a reasonable doubt, that the erroneous admission of this hearsay statement did not contribute to the verdict.

II.

The District Court Erred In Failing To Instruct The Jury On Self-Defense

A trial court must instruct the jury on all matters of law pertinent to their considerations. *State v. Severson*, 147 Idaho 694, 710 (2009) (citing I.C. § 19-2132). The court must honor a party's request for a specific instruction if that instruction is "'correct and pertinent.'" *Id.* (quoting I.C. § 19-2132). A proposed instruction is correct and pertinent where: (1) it is a correct statement of the law; (2) it is not adequately covered by other instructions; and (3) it is supported by the evidence presented. *See id.* at 710-711 (citing *State v. Olsen*, 103 Idaho 278, 285 (1982)). "A defendant is entitled to have the jury instructed on his theory of the case whenever there is *some* supportive evidence for that theory." *State v. Hansen*, 133 Idaho 323, 329 (Ct. App. 1999).

For the reasons asserted in his Appellant's Brief – namely, Mr. Worosz's testimony that he pushed Mr. Coapland before Mr. Coapland swung the knife at Mr. Worosz (Tr., p.119, L.13 – p.121, L.12; p.134, L.9 – p.136, L.16) – there was *some* supportive evidence of Mr. Coapland's self-defense theory. (*See* Appellant's Brief, pp.20-22.) The State argues that, because neither Mr. Coapland nor anyone else testified that he had a reasonable fear of Mr. Worosz, or that he used reasonable force in responding to the threat posed by Mr. Worosz pushing him, the court correctly denied his request for a self-defense instruction. (Respondent's Brief, pp.15-18.) The State's argument is incorrect.

As recognized in *Hanson*, a defendant is not required to testify that he feared for his safety in order to have the jury instructed on his self-defense theory. 133 Idaho at 329. Since no one else *could* testify as to what was going on in Mr. Coapland's head when he stabbed Mr. Worosz, the lack of testimony from anyone else on this subject is irrelevant. *See State v.*

Moad, 156 Idaho 654, 661 (Ct. App. 2014) (recognizing that a jury may infer intent from conduct or circumstantial evidence) (citations omitted). Therefore, the fact that Mr. Coapland did not testify that he acted out of fear is irrelevant.

Additionally, whether or not Mr. Coapland used "reasonable force" is a question for the jury to decide. *State v. Garner*, 159 Idaho 896, __, 367 P.3d 720, 724 (Ct. App. 2016). Mr. Coapland's actions speak for themselves – whether he or any other witness believes he did or did not use reasonable force, is simply irrelevant. Had it granted Mr. Coapland's request, the court would have instructed the jury substantially as follows:

> The kind and degree of force which a person may lawfully use in self-defense are limited by what a reasonable person in the same situation as such person, seeing what that person sees and knowing what the person knows, then would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. *Although a person may believe that the person is acting, and may act, in self-defense*, the person is not justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.

I.C.J.I. 1518 (emphasis added). Considering that Mr. Coapland's personal belief in whether he was acting in self-defense is irrelevant to the question of whether he used reasonable force, he is not required to provide testimony on this issue in order to meet the threshold of showing *some* evidence to support giving the self-defense instruction. Because there was *some* evidence in the record supporting Mr. Coapland's claim of self-defense, the district court erred in denying Mr. Coapland's request to instruct the jury on self-defense.

Furthermore, the State bases its harmless error argument upon the same grounds it argues the self-defense instruction was not required in the first place. (Respondent's Brief, pp.15-18.) The State argues "[b]ecause a self-defense theory had no evidentiary support, it is clear beyond a reasonable doubt that the verdict was unaffected by the lack of a self-defense instruction." (Respondent's Brief, p.19.) The State fails to acknowledge that, if the jury were instructed on

self-defense, the State would have the burden of proving, beyond a reasonable doubt, that Mr. Coapland did not act in self-defense. *See* I.C.J.I. 1517. The State also did not address Mr. Coapland's argument that the lack of a self-defense instruction effectively denied his Sixth Amendment right to a fair trial. (*See* Appellant's Brief, pp.23-24.) Mr. Coapland asserts that the State has failed to meet its burden of proving, beyond a reasonable doubt, that the district court's erroneous denial of his self-defense instruction was harmless.

CONCLUSION

Mr. Coapland respectfully requests that this Court vacate his conviction for aggravated battery and remand his case to the district court for further proceedings.

DATED this 30th day of May, 2018.

_________/s/_________________
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of May, 2018, 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:

JASON ELLSWORTH COAPLAND
INMATE #40518
ISCC
PO BOX 70010
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DEBORAH A BAIL
DISTRICT COURT JUDGE
E-MAILED BRIEF

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CRIMINAL DIVISION
E-MAILED BRIEF

________/s/_________________
EVAN A. SMITH
Administrative Assistant

JCP/eas