

11-3-2015

# State v. Ruiz Appellant's Reply Brief Dckt. 42362

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 42362
	)	
v.	)	ADA COUNTY NO. CR 2013-14198
	)	
JOSE ANTONIO RUIZ,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	

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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 STEVEN J HIPPLER  
District Judge

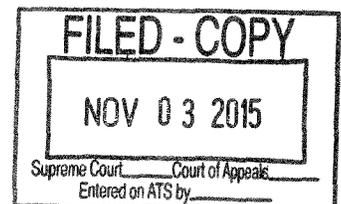
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## STATEMENT OF THE CASE

### Nature of the Case

On appeal, Mr. Ruiz argued that the district court erred when it denied Mr. Ruiz' motion for a mistrial after one of the State's witnesses testified in direct violation of the district court's pretrial evidentiary ruling, and the prosecutor committed misconduct by effectively misstating the reasonable doubt standard and lowering the State's burden of proof. In response, as to the denial of Mr. Ruiz's motion for a mistrial, the State acknowledges the witness's testimony violated the district court's order, but argues that Mr. Ruiz has failed to show the corrective actions were inadequate. (Respondent's Brief, pp.4-7.) While the State does not concede misconduct during the prosecutor's closing argument, the State contends that Mr. Ruiz has not shown there was "any basis to believe that the jury would not have followed the court's instructions on the burden of proof." (Respondent's Brief, pp.8-9.)

The instant Reply Brief is necessary to briefly reiterate the harm caused by the prosecutor's misconduct during closing argument and why the jury instructions could not have cured the misconduct. As to the remaining issue, the State's argument is unavailing.

### Statement of the Facts and Course of Proceedings

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

ISSUE

Did the prosecutor commit misconduct by misstating the State's burden of proof?

## ARGUMENT

### The Prosecutor Committed Misconduct By Misstating The State's Burden Of Proof

#### A. Introduction

The prosecutor committed misconduct during closing arguments by misstating the State's burden of proof in violation of Mr. Ruiz's right to due process and a fair trial. Due to the nature of misconduct, that the jury was instructed on the proper reasonable doubt standard is irrelevant where the State was advocating an interpretation of the somewhat difficult to understand instruction.

#### B. The Prosecutor Committed Misconduct During The State's Closing Arguments Amounting To Fundamental Error, Requiring This Court To Vacate Mr. Ruiz' Convictions

In its brief, the State argues that because the jury was properly instructed on the reasonable doubt standard and the jury is presumed to follow the jury instructions, Mr. Ruiz is unable to show error. However, due to the nature of the misconduct, the prosecutor's argument, which lowered the State's burden of proof, cannot be harmless.

To reiterate, during closing the State argued:

**In order to acquit him, you have to disbelieve the state's witnesses and have you to [sic] believe that [J.E.] made it all up.** Motive is not an element, but it is definitely something to consider. Why would she make this up?

If you believe her, that is proof beyond a reasonable doubt. **And so through this lens, this view of the evidence,** I'll now go through the evidence of the crime.

(Tr., p.554, Ls.9-16 (emphasis added).) The jury was then instructed on the standard of proof:

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove his innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

(R., p.147.)

That the jury was properly instructed on the standard of proof does not cure the prosecutor's misconduct in this case. Without a doubt, even legally trained minds struggle with understanding the standard of reasonable doubt. Jurors, the majority of which have no legal acumen, tend to struggle mightily with the concepts contained within a properly given reasonable doubt definitional instruction. *See State v. Haston*, 811 P.2d 929, 932 fn.3 (Utah App. Ct. 1991) (“Beyond a reasonable’ doubt” is a concept not readily capable of being imparted to a lay jury.”) *rev'd on other grounds on review by State v. Haston*, 846 P.2d 1276 (1993).

Here, the prosecutor, in her closing argument, attempted to define for the jury how to apply the given reasonable doubt instruction to the evidence it heard at trial. (Tr., p.554, Ls.9-16 (emphasis added).) The problem, however, is that the State's attempt to further define and apply the reasonable doubt standard to the facts of the case instructs the jury on a burden that is much lower than constitutionally permissible. Telling the jurors they could not acquit Mr. Ruiz unless they first disbelieve all of the state's witness and conclude that J.E. “made it all up” misstates the proper standard and lowers the *State's burden of proof*. That the jury was properly instructed has no

bearing on the error as the State promoting an improper application of the correct standard to the evidence in the case. Thus, the error, which is plain from the record, cannot be harmless.

Accordingly, there is a reasonable possibility that the prosecutor's misconduct affected the outcome of the trial, and the error is not harmless.

CONCLUSION

Mr. Ruiz respectfully requests that this Court vacate his convictions and remand his case to the district court for further proceedings.

DATED this 3<sup>rd</sup> day of November, 2015.

  
ERIC D. FREDERICKSEN  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of November, 2015, 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:

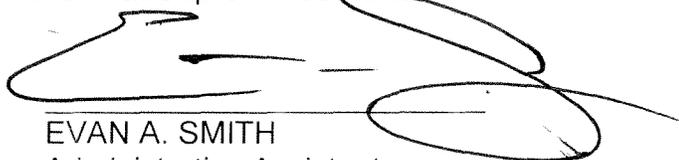
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DISTRICT COURT JUDGE  
E-MAILED BRIEF

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

A handwritten signature in black ink, appearing to read "Evan A. Smith", written over a horizontal line.

EVAN A. SMITH  
Administrative Assistant

EDF/eas