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State v. Rubio Appellant's Reply Brief Dckt. 44633

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44633
)	
v.)	KOOTENAI CO. NO. CR 2015-20847
)	
JOSEPH ROMAN RUBIO,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

HONORABLE CYNTHIA K.C. MEYER
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

REED P. ANDERSON
Deputy State Appellate Public Defender
I.S.B. #9307
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

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

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

In his appellant's brief, Mr. Rubio argued that the district court erred when it denied his motion to dismiss the information and when it denied his motion for a judgment of acquittal. He also argued that the district court erred when it incorrectly instructed the jury. The State concedes that Mr. Rubio is entitled to a new trial because the district court improperly instructed the jury. As such, this reply brief only addresses the State's arguments that this Court should not review the district court's denial of Mr. Rubio's motion to dismiss, and that the district court did not err when it denied Mr. Rubio's motion for a judgment of acquittal.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Rubio's appellant's brief. They need not be repeated in this reply brief, but are incorporated herein by reference thereto.

ISSUES

- I. Did the district court err in denying Mr. Rubio's motion to dismiss because a community service timecard is not an instrument that might be filed under any law; therefore, there was no probable cause to believe Mr. Rubio committed the crime of offering a false or forged instrument for record?

- II. Did the district court err when it denied Mr. Rubio's Rule 29 motion for judgment of acquittal?

- III. Did the district court err by incorrectly instructing the jury and reducing the State's burden of proof to prove all the elements?

ARGUMENT

I.

The District Court Erred In Denying Mr. Rubio's Motion To Dismiss Because A Community Service Timecard Is Not An Instrument That Might Be Filed Under Any Law; Therefore, There Was No Probable Cause To Believe Mr. Rubio Committed The Crime Of Filing A False Instrument

The State concedes that Mr. Rubio's trial was unfair because some of the district court's jury instructions "invaded the jury's function to determine whether the state proved certain elements of the crime," and this violated Mr. Rubio's right to due process. (Resp. Br., pp.9-11.) However, the State relies on *State v. Maylett*, 108 Idaho 671, 672 (Ct. App. 1985) to argue that this Court should not examine the sufficiency of the evidence because Mr. Rubio was convicted "after a trial." (Resp. Br., pp.7-9.) *Maylett*, however, does not support that argument. Rather, *Maylett* makes it clear that appellate courts will not examine the sufficiency of the evidence presented at a preliminary hearing if "a defendant has been convicted following a *fair trial*" *Id.* (emphasis added). In *Maylett*, the Court of Appeals held that Mr. Maylett was convicted after a fair trial and therefore declined "to examine the sufficiency of the evidence presented at Maylett's preliminary examination." *Id.* Thus, the State's argument on this issue is without merit; the trial in this case is not a bar to this Court reviewing the sufficiency of the evidence presented at the preliminary hearing.

II.

The District Court Erred When It Denied Mr. Rubio's Rule 29 Motion For Judgment Of Acquittal

Mr. Rubio argued in his appellant's brief that the district court should have granted Mr. Rubio's I.C.R. 29 motion because no rational trier of fact could have found the timecard was an "instrument" that, if genuine, might have been filed under any law. (App. Br., pp.19-23;

I.C. § 18-3203.) In other words, after the trial, the State had still not presented sufficient evidence on each of the elements such that the jury could find Mr. Rubio guilty beyond a reasonable doubt. In response, the State argues that—if the jury had been properly instructed—the evidence presented by the State at the trial was sufficient to sustain the jury’s verdict. (Resp. Br., pp.11-19.) However, the State’s attempts to provide reasoned analysis on whether the jury could find that the timecard was an instrument that could be filed under a law ultimately run up against the same basic problems the district court encountered; the facts of this case did not support prosecution under I.C. § 18-3203.

For example, the State argues that the jury, if it had been given the definition of an instrument that this Court adopted in *Steel Farms v. Croft & Reed, Inc.*, 154 Idaho 259 (2012), would have found that Mr. Rubio’s timecard fit that definition. (Resp. Br., pp.13-17.) But the State’s reliance on *Steel Farms* illustrates how dramatically different Mr. Rubio’s timecard was from the instrument in *Steel Farms*. As the State explains, the issue in *Steel Farms* was whether a handwritten interlineation on an original contract had to be in a different instrument in order to satisfy the lease’s merger clause. *Id.* at 265. The Court noted that the language of the merger clause stated that the contract constituted the “entire agreement between Landlord and Tenant” *Id.* It went on to hold that the handwritten amendment was effective because the “handwritten interlineation inscribed upon an *existing contract* appears on a written instrument.” *Id.* (emphasis added). Mr. Rubio’s timecard was clearly not a contract that constituted an agreement between the district court and Mr. Rubio. Nevertheless, the State asserts that the timecard “defined Mr. Rubio’s duty to complete 56 hours of community service.” (Resp. Br., p.16.) This is almost exactly what the district court said when it denied Mr. Rubio’s motion to dismiss, and it is simply wrong. (6/28/16 Tr., p.25, Ls.2-12.) The timecard was not a contract as in *Steel*

Farms, and it did not define Mr. Rubio's duties. Therefore, it did not meet the definition of an instrument.

The State goes on to assert that Mr. Rubio's writing on his timecard, was "similar to the interlineation in Steel Farms" because it "helped define his rights and liabilities. Specifically, his forgery of the hours worked, helped define Rubio's *right* not to have his probation violated." (Resp. Br., p.16 (emphasis added).) This makes no sense; there is no such "right." Mere handwriting on a piece of paper, timecard or otherwise, does not create a contract. The State's attempt to fabricate some kind of a definition of "rights and liabilities" based on the timecard so as to compare it to a contract is simply too much of a stretch. The interlineation in *Steel Farms* was on an existing contract, and here the only things that *defined* Mr. Rubio's obligations were the district court's order that he complete 56 hours of community service time, and the community service contract, not the timecard itself. (*See R.*, p.68.)

The State takes a similarly unsupportable position on the issue of whether there was a law under which Mr. Rubio's timecard could have been filed, claiming that the filing of any document with a court is a "filing under any law," and that "under any law" really adds nothing to the term "filed." (Resp. Br., pp.18-19.) Essentially, the State reads "under any law" out of I.C. § 18-3203 and argues that if something is merely filed, it complies. It asserts that, because there is no statutory definition of filing "under any law," the term would have been given its plain, non-technical meaning in the jury instructions. (Resp. Br., p.18.) It argues, "Here, the plain, non-technical meaning of filing 'under any law' simply refers to the lawful act of filing a legal document with the court." (Resp. Br., p.18.) Finally, it contends that the statute does not require that the instrument be filed under a law, only that it "might be filed 'under any law of this state.'" (Resp. Br., p.18.)

These claims ignore the Court of Appeals' Opinion in *State v. Callaghan*, 143 Idaho 856 (Ct. App. 2006), relied on in the appellant's brief. (App. Br., p.18.) In *Callaghan*, the Court of Appeals made it clear that filing under a law is a requirement: "We further note that the parties have offered no law . . . that could be construed in this case as *fulfilling the 'under any law' requirement* of I.C. § 18-3203 . . ." *Id.* at 859, n.4 (emphasis added). Thus, the "might" in the statute does not mean this element is optional as the State argues; it means that the statute would only apply if a person *could* file the instrument under or pursuant to a law. That was not the case here. Mr. Rubio submitted his timecard pursuant to a court order, not a law. (App. Br., pp.16-17.) Thus, even viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found the essential elements of this crime beyond a reasonable doubt. Therefore, the district court erred when it denied Mr. Rubio's I.C.R. 29 motion.

CONCLUSION

Mr. Rubio respectfully requests that this Court vacate his judgment of conviction and remand this case to the district court with instructions to enter a judgment of acquittal for the offense, or remand for a new trial.

DATED this 4th day of December, 2017.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of December, 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:

JOSEPH ROMAN RUBIO
INMATE #113193
ICIO
381 W HOSPITAL DRIVE
OROFINO ID 83544

CYNTHIA KC MEYER
DISTRICT COURT JUDGE
E-MAILED BRIEF

JEANNE M HOWE
KOOTENAI COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

RPA/eas