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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	<b>NO. 47904-2020</b>
Plaintiff-Respondent,	)	
	)	<b>CANYON COUNTY NO. CR14-19-12065</b>
v.	)	
	)	
JASON CORT BROCK,	)	<b>APPELLANT'S BRIEF</b>
	)	
Defendant-Appellant.	)	
_____	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF CANYON**

---

**HONORABLE CHRISTOPHER S. NYE**  
District Judge

---

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

**BEN P. MCGREEVY**  
Deputy State Appellate Public Defender  
I.S.B. #8712  
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

No doctor testified at Jason Cort Brock's trial. But the alleged victim in this domestic battery—traumatic injury case made two statements about her medical diagnoses, and those statements were outside the scope of the permitted testimony under the district court's order on Mr. Brock's motion in limine to prevent testimony on medical diagnoses. Following each of the medical diagnosis statements, the district court gave the jury an instruction to disregard the statement. After the jury found Mr. Brock guilty, he filed a motion for a new trial, asserting his trial counsel had intended to request a mistrial and the medical diagnosis statements warranted a mistrial. The district court denied Mr. Brock's motion for a new trial.

In this appeal, Mr. Brock asserts the district court abused its discretion when it denied his motion for a new trial.

### Statement of the Facts and Course of Proceedings

Around 2:00 AM one morning, Canyon County Sheriff's Deputy Curl received two calls for service to the Notus area, believed to be connected. (*See Tr.*, p.64, L.17 – p.65, L.1.)<sup>1</sup> The first call was from a male named Jason, who stated that his wife had punched and pushed him. (*See Tr.*, p.65, Ls.2-5.) In the second call, the caller stated that a woman had come to the door and said that Jason had punched her. (*See Tr.*, p.65, Ls.5-8.)

When Deputy Curl responded to the location of the calls near the fire station in Notus, officers from Parma and Wilder were already there with a man and a woman. (*See Tr.*, p.65, Ls.11-23.) The man, Mr. Brock, had red marks on his forehead and right knee, and he had

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<sup>1</sup> All citations to "Tr." refer to the 278-page volume of the Transcript on Appeal which includes the transcripts of the Jury Trial conducted on October 24 and 25, 2019, as well as the transcript of the Motion for New Trial hearing conducted on December 18, 2019.

swelling on his left hand. (Tr., p.66, Ls.1-17, p.70, L.7 – p.71, L.1.) The woman, Myra Cathy Brock, had a bloody, red, swollen nose and swelling around her eyes. (See Tr., p.67, Ls.11-21; Tr., p.85, Ls.13-20.) After Deputy Curl spoke with Mr. Brock and Ms. Brock, he took Mr. Brock to the Canyon County Jail, while Ms. Brock was taken to the hospital. (See Tr., p.66, L.7 – p.70, L.6.)

Ms. Brock was Mr. Brock's ex-wife, and they had two adult children together. (See Tr., p.32, L.11 – p.33, L.5, p.129, Ls.3-14.) As of the date of the incident, Ms. Brock had been living in Mr. Brock's house in Notus for about six years. (See Tr., p.33, Ls.6-8, p.129, L.20 – p.130, L.6.) Mr. Brock testified that he had been hoping that they would get back together. (Tr., p.130, Ls.13-19.)

Before 2:00 am on the morning of the incident, Mr. Brock confronted Ms. Brock about nude photos she had taken two years prior. (See Tr., p.33, L.9 – p.34, L.7, p.130, L.20 – p.133, L.7.) The photos were on Ms. Brock's Facebook Messenger app, and Mr. Brock was able to access them because Ms. Brock used Facebook Messenger on Mr. Brock's phone. (See Tr., p.34, Ls.8-16, p.131, Ls.5-17.) Mr. Brock testified that Ms. Brock had sent the photos to another guy, and he was upset because he thought that they had more than a roommate relationship at the time the photos were taken. (See Tr., p.131, L.25 – p.132, L.25.)

Mr. Brock testified that he had taken his prescription Xanax about an hour before confronting Ms. Brock, which generally made him sleepy within fifteen minutes of taking it. (See Tr., p.133, L.25 – p.134, L.14.) He had also drunk about half a can of Monaco, a canned cocktail. (See Tr., p.134, Ls.15-24.)

The two had a verbal argument about the photos, and Ms. Brock told Mr. Brock he had done nothing for their daughter while she was sick. (See Tr., p.35, Ls.4-8, p.146, Ls.3-22.) The

verbal argument escalated into a physical altercation. (*See Tr.*, p.34, L.20 – p.35, L.14, p.133, Ls.10-24.) Mr. Brock testified that the physical altercation began when Ms. Brock slapped him on both sides of his face. (*Tr.*, p.133, Ls.17-21.) He told her she hit like a bitch, and she slapped him again and got him with a “haymaker,” a right hook that knocked him out over a table and broke it. (*Tr.*, p.133, Ls.21-24.) Mr. Brock clearly remembered her throwing the haymaker at him, but did not remember much at all after the punch. (*See Tr.*, pp.134, L.25 – p.135, L.5.) He remembered hearing the glass breaking on the table. (*See Tr.*, p.135, Ls.6-7.) The first thing Mr. Brock remembered after being punched was calling 911. (*Tr.*, p.135, Ls.11-13.)

In contrast, Ms. Brock testified that the physical altercation began when Mr. Brock struck her with a closed fist on her head. (*See Tr.*, p.35, Ls.15-24.) She told him to stop, and he then struck her in the nose. (*See Tr.*, p.36, L.7 – p.37, L.4.) She testified that when he struck her in the nose, she heard and felt a crack and crunch, and she started to bleed. (*See Tr.*, p.37, Ls.5-8.) Per Ms. Brock, Mr. Brock hit her twice more, in the temple and jaw. (*Tr.*, p.37, Ls.18-24.) She then hit him in the left temple with a closed fist, and he fell and broke a table. (*Tr.*, p.37, L.24 – p.38, L.11.) However, Mr. Brock testified that he did not remember hitting, striking or punching Ms. Brock. (*Tr.*, p.136, Ls.2-4.)

Ms. Brock testified that, after she punched Mr. Brock, she grabbed his phone and went into the bathroom. (*See Tr.*, p.39, Ls.9-12.) She testified that he kicked in the door or pushed it through, and she ran to the neighbors and asked them to call the police. (*See Tr.*, p.39, L.15 – p.40, L.9.) Ms. Brock testified that Mr. Brock went outside and told her no one was coming to help her, but he denied chasing after her. (*See Tr.*, p.39, L.22 – p.40, L.3, p.136, Ls.14-22.)

According to Ms. Brock, she told the police at the scene that she hit back. (*See Tr.*, p.40, L.21 – p.41, L.2.) Mr. Brock testified that he remembered talking to the police at the scene, but

he was confused by Deputy Curl's questions and still had "cobwebs" from being knocked out. (*See* Tr., p.136, L.24 – p.137, L.22; *see also* State's Ex. 2 (Deputy Curl's redacted body camera footage).) For example, he told the deputy he had been knocked out, but a few moments later said he had not been knocked out, before he again stating he had been knocked out. (*See* Tr., p.137, Ls.13-18.) He testified that he told Deputy Curl that he had not been drinking, because he was not supposed to be drinking with his medication. (Tr., p.138, Ls.4-11.) He did not know where she hit him on the head, because he did not see it coming. (Tr., p.138, Ls.16-21.) Further, when asked why he denied hitting Ms. Brock, he answered, "I denied hitting her because I didn't hit her." (Tr., p.139, Ls.7-10.) He did not actually remember hitting her at all at any time that night. (Tr., p.139, Ls.11-17.) Mr. Brock also testified that he told the paramedics at the scene that he had been knocked out. (*See* Tr., p.139, L.21 – p.140, L.3.)

Ms. Brock testified that she had an X-ray and CT tests at the hospital. (Tr., p.41, Ls.6-12.) She had follow-up care, and was continuing treatment for her injuries. (*See* Tr., p.41, L.13 – p.42, L.1.) A paramedic who had been at the scene testified that he believed that Ms. Brock needed further medical attention, because of the swelling and possible internal injuries. (*See* Tr., p.86, Ls.1-12.) The paramedics took Ms. Brock to the hospital. (*See* Tr., p.86, Ls.13-14.) However, the paramedic could not make medical diagnoses. (Tr., p.85, Ls.23-25.)

The State charged Mr. Brock by Information with felony domestic battery—traumatic injury. (R., pp.19-20.) He entered a not guilty plea. (R., p.21.)

Mr. Brock exercised his right to a jury trial. (*See* R., pp.45-46, 52-54.) Before opening statements, Mr. Brock's counsel informed the district court that he had "noticed on the State's witness list that they haven't included a doctor. A doctor made a diagnosis of the injuries." (*See* Tr., p.19, Ls.7-10.) Defense counsel asserted, "Because that doctor is not testifying, I would like

to make an oral motion in limine to prevent anyone from making any statements about what that doctor's diagnosis was." (Tr., p.19, Ls.10-13.) Defense counsel explained: "The reason is because none of us are medical experts. The only person that could really testify about that diagnosis would be the doctor who made the diagnosis himself." (Tr., p.19, Ls.14-17.)

The State argued that Ms. Brock could testify that she was receiving treatment for a fractured nose. (*See* Tr., p.19, L.19 – p.20, L.14.) In reply, Mr. Brock's counsel asserted that Ms. Brock "is not a medical expert," and she had no independent knowledge of a fractured nose diagnosis. (*See* Tr., p.20, Ls.18-23.) While Ms. Brock could describe what she previously experienced, defense counsel asserted that anything along the line of "fractured nose" was "all based on someone else's diagnosis and that is hearsay and there is at this point no exception to that for that type of testimony." (*See* Tr., p.20, L.24 – p.21, L.6.)

The district court ruled: "I think she can testify that she felt—heard a crack. My nose is displaced. I don't know if that's the situation. Started bleeding profusely and to this date, I'm being treated for the injuries that I suffered on my nose." (Tr., p.21, Ls.18-22.)

However, during Ms. Brock's direct examination, when the State asked her what happened after she told Mr. Brock to stop, she testified: "He broke my nose. I heard a crack in my nose." (Tr., p.36, Ls.8-10.) Defense counsel and the State both asked to approach, but the district court instructed the jury, "I'll ask that you ignore that answer and if you could reask the question." (Tr., p.36, Ls.11-16.)

Moreover, during Ms. Brock's cross-examination, she testified that Mr. Brock was right-handed. (*See* Tr., p.43, Ls.8-9.) When Mr. Brock's counsel asked her why she had testified at the preliminary hearing that she did not know if Mr. Brock was right-handed or left-handed, she responded that she did not remember at the time. (*See* Tr., p.43, L.10 – p.44, L.8.) Defense

counsel then asked her, “Is it possible there’s other things that you don’t remember about that night?” (Tr., p.44, Ls.18-19.) Ms. Brock replied: “It could be a possibility. I had a concussion after that and that’s what happens.” (Tr., p.44, Ls.20-21.)

Mr. Brock’s counsel asked to approach off the record. (Tr., p.44, Ls.22-24.) After a bench discussion, the district court instructed the jury: “Folks, I’m going to ask you to ignore the last question. The last answer to the last question. Okay. Let’s move on.” (Tr., p.44, L.25 – p.45, L.3.) Before redirect examination, the prosecutor told the district court with respect to Ms. Brock, “I’m going to step out in the hallway and wait for her and admonish her again about the diagnosis thing because I don’t want her to talk about it.” (Tr., p.60, Ls.1-6.)

As part of the final jury instructions, the district court instructed the jury:

The person who commits what would otherwise be a criminal act without being conscious of committing the act is not guilty of the crime. Evidence has been received which may tend to show the defendant was not conscious of committing the act for which the defendant is here on trial. If after consideration of all the evidence you have a reasonable doubt the defendant was conscious of committing the act at the time the alleged crime was committed, the defendant must be found not guilty. A person cannot rely upon unconsciousness as a defense if the unconsciousness was a result of a person’s voluntary intoxication.

(Tr., p.209, Ls.4-14.)

In closing arguments, Mr. Brock’s counsel asserted that the issue was not so much whether Mr. Brock caused Ms. Brock’s injuries, “but the issue is did he cause them as a conscious act or did he cause them because he was unconscious?” (See Tr., p.223, Ls.6-9.) Defense counsel asserted: “What I’m here to try and persuade you is that he was unconscious when whatever happened between him and Mrs. Brock. I mean the actual physical touching, whatever that was, he was unconscious.” (Tr., p.223, Ls.10-13.) The jury found Mr. Brock guilty of domestic battery—traumatic injury. (R., pp.48-49; Tr., p.248, Ls.19-24.)

Two weeks after the jury verdict, Mr. Brock filed a Motion for New Trial and Notice of Hearing, “pursuant to ICR 34.” (R., pp.55-58.) The motion asserted: “During the jury trial in this matter defense counsel made a Motion in Limine requesting that the Court prohibit witnesses from presenting any medical diagnosis during the jury trial. The Court granted the Motion in Limine.” (R., p.55.) Further: “During direct examination of the alleged victim in this matter, she stated that Defendant had broken her nose. Defendant’s counsel attempted to move for a mistrial at that time. (R., pp.55-56.) “However, the Court, without a hearing outside the presence of the jury, decided to give a limiting instruction that the jury should not consider the broken nose statement by the witness.” (R., p.56.) The motion also asserted: “During cross-examination of the alleged victim, she stated that she suffered a concussion. She presented this medical diagnosis without solicitation by defense counsel. Before the issue of a mistrial could be raised, immediately the Court once again gave an instruction to the jury to disregard that statement by the witness.” (R., p.56.)

The motion then asserted that, “At the conclusion of closing statements defendant’s counsel intended to move for a mistrial due to the aforementioned improprieties,” as well as the district court’s separate decision to give a modified jury instruction on the unconscious act defense. (*See* R., p.56.) “However, defendant’s counsel simply forgot to make that oral motion prior to the jury’s verdict.” (R., p.56.) The motion asserted: “The two medical diagnosis statements made by the alleged victim were separately, and collectively, enough to justify a mistrial. Although the Court gave a corrective instruction, it is simply impossible for a jury to ignore and/or forget such critical statements that certainly had the effect of inflaming the jury.” (R., p.56.)

At the hearing on the motion for a new trial, Mr. Brock's counsel explained, "The problem I think, Your Honor, is that you cannot unring the bell." (Tr., p.256, Ls.6-7.) Per defense counsel, "Once they've heard that, even if they don't necessarily discuss it during jury deliberations, it has an effect on them," where the jurors "now know that she had a broken nose and had a concussion and it's going to be much more difficult for a jury to believe the unconscious act defense", which was "the defense in this particular case." (Tr., p.256, Ls.7-13.) Thus, defense counsel believed that the district court should have declared a mistrial, "If not after the first time, the second that she violated your motion—your order in limine that that should have occurred." (Tr., p.256, Ls.14-17.)

The district court stated, "So both of these motions are discretionary." (Tr., p.263, Ls.7-8.) The district court then determined: "On the medical testimony, I did give a curative instruction to the jury to disregard the victim's medical testimony in both cases, the broken nose and the concussion, and I think the jury can reach the same results of a conviction without regard to that. We gave an instruction on definition of traumatic injury." (Tr., p.263, Ls.8-13.) The district court determined: "These are discretionary. I have the curative instruction. I think that took care of it." (Tr., p.263, Ls.14-15.) The district court also rejected Mr. Brock's assertions regarding the modified jury instruction. (*See* Tr., p.263, L.16 – p.264, L.7.) Thus, the district court denied the motion for a new trial. (Tr., p.264, L.8.)

The district court imposed a unified sentence of five years, with one year fixed, suspended the sentence, and placed Mr. Brock on supervised probation for a period of five years. (R., pp.67-70.) Mr. Brock filed a Notice of Appeal timely from the district court's Judgment of Conviction, Order of Probation. (R., pp.74-77.)

ISSUE

Did the district court abuse its discretion when it denied Mr. Brock's motion for a mistrial?

## ARGUMENT

### The District Court Abused Its Discretion When It Denied Mr. Brock's Motion For A Mistrial

#### A. Introduction

Mr. Brock asserts that the district court abused its discretion when it denied his motion for a new trial, because the district court did not act consistently with the applicable legal standards. During the course of the trial, the district court erred in the decisions to not allow Mr. Brock to request a mistrial, and to not declare a mistrial. When viewed in the context of the full record, Ms. Brock's medical diagnosis statements constituted reversible error. Thus, the district court should have allowed Mr. Brock to request a mistrial, and then declared a mistrial.

#### B. Standard Of Review

"On the defendant's motion, the court may vacate any judgment and grant a new trial on any ground permitted by statute." I.C.R. 34(a). The statutory grounds for granting a new trial include, "When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial." I.C. § 19-2406(5).

The Idaho Supreme Court has held, "This Court reviews a denial of a motion for new trial for an abuse of discretion." *State v. Ellington*, 151 Idaho 53, 72 (2011). When an appellate court reviews an alleged abuse of discretion by a trial court, the sequence of inquiry requires consideration of whether the trial court correctly perceived the issue as one of discretion; acted within the outer boundaries of its discretion; acted consistently with the legal standards applicable to the specific choices available to it; and reached its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018). "Because a motion for new trial involves mixed questions of law and fact, an abuse of discretion will be found if the trial court's

findings of fact are not supported by substantial evidence or if the trial court does not correctly apply the law.” *Ellington*, 151 Idaho at 72 (alteration and internal quotation marks omitted).

C. The District Court Did Not Act Consistently With The Applicable Legal Standards When It Denied The Motion For A New Trial, Because The Court Erred In The Trial Decisions To Not Allow Mr. Brock To Request A Mistrial, And To Not Declare A Mistrial

The district court abused its discretion when it denied Mr. Brock’s motion for a new trial, because the district court did not act consistently with the applicable legal standards. During the course of the trial, the district court erred in the decisions to not allow Mr. Brock to request a mistrial, and to not declare a mistrial.

“A mistrial may be declared on motion of the defendant when there occurs during the trial, either inside or outside the courtroom, an error or legal defect in the proceedings, or conduct that is prejudicial to the defendant and deprives the defendant of a fair trial.” I.C.R. 29.1(a).

As the Idaho Supreme Court has held, “In reviewing a district court’s denial of a motion for mistrial in a criminal case, the question is not whether the trial judge reasonably exercised his discretion in light of circumstances existing when the mistrial motion was made.” *State v. Johnson*, 163 Idaho 412, 421 (2018) (quoting *State v. Sandoval-Tena*, 138 Idaho 908, 912 (2003). “Rather, the question must be whether the event which precipitated the motion for mistrial represented reversible error when viewed in the context of the full record.” *Id.* “Thus, where a motion for mistrial has been denied in a criminal case, the ‘abuse of discretion’ standard is a misnomer.” *Id.* “The standard, more accurately stated, is one of reversible error.” *Id.* The appellate court’s “focus is upon the continuing impact on the trial of the incident that triggered the mistrial motion.” *Id.* “The trial judge’s refusal to declare a mistrial will be disturbed only if that incident, viewed retrospectively, constituted reversible error.” *Id.*

When viewed in the context of the full record here, the medical diagnosis statements by Ms. Brock represented reversible error. Defense counsel noted that the State had not included the doctor who diagnosed Ms. Brock's injuries on its list of witnesses. (*See Tr.*, p.19, Ls.7-10.) Thus, Mr. Brock's counsel made a motion in limine "to prevent anyone from making any statements about what that doctor's diagnosis was." (*Tr.*, p.19, Ls.10-13.) The district court allowed Ms. Brock to "testify that she felt—heard a crack. My nose is displaced. I don't know if that's the situation. Started bleeding profusely and to this date, I'm being treated for the injuries that I suffered on my nose." (*Tr.*, p.21, Ls.18-22.)

However, Ms. Brock violated the district court's order on Mr. Brock's motion in limine twice, by testifying on direct examination that Mr. Brock "broke my nose," and by testifying on cross-examination that she "had a concussion." (*See Tr.*, p.36, Ls.9-10, p.44, Ls.16-21.) Those medical diagnosis statements were outside the scope of the permitted testimony under the district court's order on the motion in limine. (*See Tr.*, p.21, Ls.18-22.) Moreover, Ms. Brock did not qualify as an expert witness, meaning the medical diagnosis statements were inadmissible as opinion testimony by a lay witness. *See I.R.E. 701(c) & 702.*

The medical diagnosis statements had a continuing impact on Mr. Brock's trial. As Mr. Brock's counsel asserted before the district court, "Although the Court gave a corrective instruction, it is simply impossible for a jury to ignore and/or forget such critical statements that certainly had the effect of inflaming the jury." (*See R.*, p.56.) With the medical diagnosis statements, the problem was "that you cannot unring the bell." (*See Tr.*, p.256, Ls.6-7.) As defense counsel asserted, "Once they've heard that, even if they don't necessarily discuss it during jury deliberations, it has an effect on them," where the jurors "now know that she had a broken nose and had a concussion and it's going to be much more difficult for a jury to believe

the unconscious act defense”, which was “the defense in this particular case.” (*See Tr.*, p.256, Ls.7-13.) The State implicitly recognized the prejudice, considering the prosecutor admonished Ms. Brock about the district court’s order after she made the two impermissible medical diagnosis statements. (*See Tr.*, p.60, Ls.1-6.)

Further, the Idaho Supreme Court has held, “A party’s deliberate violation of an order excluding evidence with little relevance but with great potential for prejudice is an attack on the fairness of the proceeding and cannot be countenanced.” *State v. Herrera*, 159 Idaho 615, 624 (2015). The facts of this case are in some ways distinguishable from *Herrera*, in that the order in *Herrera* excluded other acts evidence. *See id.* Also, while the State in *Herrera* “asked questions that appeared to be deliberately designed to elicit the exact testimony that the district court had specifically prohibited,” *see id.*, the State here merely asked Ms. Brock what happened after she told Mr. Brock to stop before she gave the first medical diagnosis statement (*see Tr.*, p.36, Ls.7-10). But Ms. Brock made the second medical diagnosis statement after the district court instructed the jury to disregard the first statement. (*See Tr.*, p.36, Ls.11-16, p.44, Ls.20-21.) As she was the State’s key witness, Ms. Brock’s two violations of the district court’s order on the motion in limine should be imputed to the State. *Cf. Ellington*, 151 Idaho at 67 (“As an officer of the State, Trooper Daly’s gratuitous and prejudicial response is imputed to the State, whether or not the State intended to elicit that response.”). Her violations were “an attack on the fairness of the proceeding and cannot be countenanced.” *See Herrera*, 159 Idaho at 624.

The district court instructed the jury to disregard Ms. Brock’s medical diagnosis statements. (*See Tr.*, p.36, Ls.11-16, p.44, L.25 – p.45, L.3.) “Error in admission of evidence may be cured by proper instruction, and it must be presumed that the jury obeyed the trial court’s direction.” *Johnson*, 163 Idaho at 421. However, the presumption that the jury will follow the

jury instructions may be overcome. *See, e.g., State v. Wrenn*, 99 Idaho 506, 510 (1978); *State v. Watkins*, 152 Idaho 764, 767-68 (Ct. App. 2012). “[T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored.” *Bruton v. United States*, 391 U.S. 123, 135 (1968). Mr. Brock submits that, in this context, the medical diagnosis statements overcame the presumption, because the continuing impact of the statements and their prejudice to Mr. Brock’s unconscious act defense drastically raised the risk that the jury would not follow the curative instructions.

Thus, when viewed in the context of the full record, Ms. Brock’s medical diagnosis statements constituted reversible error. *See Johnson*, 163 Idaho at 421. The district court should have allowed Mr. Brock to request a mistrial, and then declared a mistrial. *See* I.C.R. 29.1.

During the course of the trial, the district court erred in the decisions to not allow Mr. Brock to request a mistrial, and to not declare a mistrial. The district court therefore abused its discretion when it denied Mr. Brock’s motion for a new trial, because the district court did not act consistently with the applicable legal standards. *See* I.C. § 19-2406(5); I.C.R. 34(a). Thus, this Court should vacate the order denying Mr. Brock’s motion for a new trial and the judgment of conviction, and remand the matter to the district court for further proceedings.

CONCLUSION

For the above reasons, Mr. Brock respectfully requests that this Court vacate the district court's order denying his motion for a new trial and his judgment of conviction, and remand this matter to the district court for further proceedings.

DATED this 23<sup>rd</sup> day of October, 2020.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of October, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

BPM/eas