

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

STATE OF IDAHO, )  
 ) No. 47801-2020  
 Plaintiff-Respondent, )  
 ) Ada County Case No.  
 v. ) CR01-19-23411  
 )  
 DAVID RAY CRUSE, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

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**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

\_\_\_\_\_  
**HONORABLE PATRICK J. MILLER**  
District Judge  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

David Ray Cruse appeals from his conviction for domestic battery.

### Statement Of The Facts And Course Of The Proceedings

The state charged Cruse with attempted strangulation and felony domestic battery, with a persistent violator enhancement. (R., pp. 29-30, 39-40.) Prior to trial, Cruse submitted proposed instructions including, among others, a request for an instruction on the necessity defense. (R., pp. 49-50.) The case proceeded to trial. (R., pp. 148-77.)

At the trial<sup>1</sup> the victim testified that a series of arguments escalated until Cruse grabbed her by the throat. (Tr., p. 193, L. 8 – p. 200, L. 13.) She found it “[h]ard to breathe, not able to swallow” and she “started to not be able to focus.” (Tr., p. 200, Ls. 14-20.) Once released, the victim ran out of the house. (Tr., p. 201, Ls. 7-10.) Cruse caught her, “picked [her] up, threw [her] over his shoulders” and carried her back in the house while she was “kicking and screaming for someone to help and to call 911.” (Tr., p. 201, L. 10 – p. 203, L. 8.) The fight continued inside with various blows being exchanged both ways and Cruse again choking her. (Tr., p. 203, L. 9 – p. 207, L. 20.)

Karla Castresana, a neighbor, testified that she heard a woman screaming for help, and called 911. (Tr., p. 356, L. 14 – p. 359, L. 5.) She looked through the gaps in her fence in the backyard and saw a woman running and calling for help when a man “grabbed her and carried her on his shoulder” back inside the house. (Tr., p. 359, L. 6 – p. 362, L. 21.)

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<sup>1</sup> Because the jury ultimately acquitted Cruse of the strangulation charge and convicted of only a lesser misdemeanor offense (R., p. 219), the state’s recitation of the testimony at trial is focused primarily on evidence relevant to the battery count.

Cruse testified that the victim, while “significantly intoxicated,” walked toward his car holding a key fob. (Tr., p. 437, L. 10 – p. 438, L. 6.) Cruse grabbed her and “picked her up” and “carried her about ten feet back to the house” where he set her down outside the house. (Tr., p. 438, L. 9 – p. 439, L. 3; p. 455, L. 24 – p. 457, L. 14.) Cruse admitted his trial testimony differed significantly from what he told police. (Tr., p. 458, L. 22 – p. 461, L. 18; see State’s Exhibit 8.)

At the jury instruction conference Cruse argued that the necessity defense applied because “the defendant, if he did commit any battery, which we would argue he didn’t, was justified by the fact he was stopping [the victim] from driving drunk and potentially destroying the vehicle which also implicated his livelihood.” (Tr., p. 477, Ls. 13-24.) The district court first found that necessity did not apply to the strangulation count because Cruse denied having committed that act: “the defendant’s testimony was that he didn’t ever put his hands on the victim’s neck. So, in part, he’s not defending on the basis that he acted out of necessity.” (Tr., p. 478, Ls. 7-11; p. 480, Ls. 6-11; p. 481, L. 14 – p. 482, L. 9.) As to the battery count, the district court found that the defense was covered by other instructions on excessive force (R., p. 259), self-defense (R., p. 260), and defense of property (R., p. 262). (Tr., p. 482, L. 10 – p. 483, L. 1.)

In closing argument, the prosecutor argued that Cruse “admitted Count II on cross-examination,” and therefore his direct testimony “doesn’t make sense.” (Tr., p. 534, Ls. 21-23.) Cruse objected that the argument was improper because “defendant didn’t admit to Count II” and the argument was therefore “not in evidence.” (Tr., p. 534, L. 24 – p. 535, L. 2.) The district court determined the argument was that Cruse “admitted facts which the prosecution contends results in the admission” and “the State is certainly entitled to argue

what facts they think he admitted.” (Tr., p. 535, Ls. 3-8.) The prosecutor continued, arguing that Cruse admitted “grab[bing]” the victim, which is “exactly how the State has charged Count II.” (Tr., p. 535, Ls. 9-21.)

The jury acquitted Cruse of attempted strangulation (finding him guilty of an included misdemeanor battery), but found him guilty of felony domestic battery. (R., pp. 219-20.) Cruse pled guilty to the sentencing enhancement. (Tr., p. 585, L. 17 – p. 593, L. 16.) The district court imposed a sentence of twenty years with ten fixed on the enhanced felony. (R., pp. 293-96.) Cruse filed a timely notice of appeal. (R., pp. 298-301.) He also filed a Rule 35 motion seeking a reduction in sentence, which the district court denied. (R., pp. 315-23; Aug., pp. 1-4.)



## ISSUES

Cruse states the issues on appeal as:

- I. Did the district court erred [sic] by rejecting Mr. Cruse's proposed necessity defense instruction?
- II. Did the State commit prosecutorial misconduct?
- III. Was Mr. Cruse's Fourteenth Amendment right to due process of law violated because the accumulation of errors deprived him of his right to a fair trial?
- IV. Did the district court abuse its discretion when it imposed a unified sentence of twenty years, with ten years fixed, upon Mr. Cruse for a no-injury domestic battery conviction?
- V. Did the district court abuse its discretion when it denied Mr. Cruse's Idaho Criminal Rule 35 motion?

(Appellant's brief, p. 7.)

The state rephrases the issues as:

1. Has Cruse failed to show reversible error in the district court's ruling that the necessity defense was adequately covered by other defense instructions, namely protection of self and protection of property?
2. Has Cruse shown no prosecutorial misconduct?
3. Has Cruse failed to show cumulative error?
4. Has Cruse failed to show any abuse of sentencing discretion?

## ARGUMENT

### I.

#### Cruse Has Failed To Show Error In The District Court's Ruling That The Necessity Defense Was Redundant To The Self-Defense And Protection Of Property Defenses

##### A. Introduction

The district court instructed the jury on the affirmative defenses of self-defense (R., pp. 202-04), and defense of property (R., p. 205). It concluded that Cruse's requested instruction on necessity was adequately covered by the instructions on these defenses. (Tr., p. 482, L. 10 – p. 483, L. 1.) Cruse argues this was error because the facts support giving the instruction. (Appellant's brief, pp. 8-13.) This argument does not address the district court's ruling that the justification defenses were adequately covered by the given instructions. In addressing the district court's ruling, Cruse claims the defenses have different elements, and therefore giving the self-defense and defense of property instructions did not cover the necessity defense. (Appellant's brief, pp. 13-15.) Cruse's claim that the three defenses have different elements is not supported by law or the facts of this case. He has ultimately failed to show any theory in this case by which the jury could have rejected his two other affirmative defenses but accepted his necessity defense.

##### B. Standard Of Review

“The question of whether there is a reasonable view of the evidence that supports an instruction to the jury on the defense of necessity is matter of discretion for the district court.” State v. Howley, 128 Idaho 874, 878, 920 P.2d 391, 395 (1996).

C. Cruse Has Failed To Show Error In The Jury Instructions

Review of the elements of the defenses of necessity, self-defense, and defense of property shows they are virtually identical. The elements of a necessity defense are: (1) an objective “specific threat of immediate harm”; (2) circumstances necessitating the illegal act “must not have been brought about by the defendant”; (3) the avoidance of harm “could not have been accomplished by a less offensive alternative available to the actor”; and (4) the “harm caused was not disproportionate to the harm avoided.” Howley, 128 Idaho at 879, 920 P.2d at 396. See also State v. Korn, 148 Idaho 413, 417-18, 224 P.3d 480, 484-85 (2009) (subjective belief in immediate harm does not support a necessity defense).

The elements of self-defense are: (1) the defendant “believed that the defendant was in imminent danger of bodily harm”; (2) the defendant “believed that the action the defendant took was necessary to save the defendant from the danger presented”; (3) “a reasonable person, under similar circumstances, would have believed that the defendant was in imminent danger of bodily injury and believed that the action taken was necessary”; (4) the defendant “acted only in response to that danger and not for some other motivation”; and (5) the reasonable appearance of danger was ongoing at the time defendant acted. State v. Jimenez, 159 Idaho 466, 469-70, 362 P.3d 541, 544-45 (Ct. App. 2015) (citing I.C.J.I. 1517).

The elements of defense of property are: (1) conditions “which under the law justify a person in using force” in defense of “property in the person's lawful possession”, and (2) the amount of force is “reasonably necessary to prevent the threatened injury.” I.C.J.I. 1522. See also I.C. §§ 19-201, 19-202.

All of these defenses have the same basic structure: commission of an offense is justified if the harm prevented is real and imminent and greater than the harm inflicted by the defendant's actions. This is because all these defenses are variations of the justification defense. United States v. Leahy, 473 F.3d 401, 406 (1st Cir. 2007) ("ease in administration favors treating [the common law defenses of duress, necessity, and self-defense], in a federal felon-in-possession case, under a single, unitary rubric: justification"); United States v. Salgado-Ocampo, 159 F.3d 322, 327 n.6 (7th Cir. 1998), as amended (Nov. 4, 1998) ("necessity, justification, duress and self-defense are interchangeably lumped together under the rubric of the justification defense"); Farmer v. Anchorage, No. 6542, 1982 WL 889382, at \*2 (Alaska Ct. App. Nov. 17, 1982) ("necessity, defense of property, and defense of self" are "justification or excuse" defenses because if a defendant "properly acted in defense of property, out of mistake of fact, or from necessity, his action would have been justified or excused" (quotation marks omitted)). Indeed, defense of property "is a particularized example of a 'necessity defense' wherein the accused seeks to justify his conduct as being 'immediately necessary' to prevent another's 'imminent commission' of a statutorily listed offense." Rodriguez v. State, 392 S.W.3d 859, 861 (Tex. App. 2013). Because Cruse did not offer a justification for the battery other than defending himself or his property (Tr., p. 477, Ls. 13-24), the district court did not err in not giving a generalized necessity instruction on top of the specific self-defense and defense of property instructions.

On appeal Cruse primarily argues that the evidence supported a necessity defense. (Appellant's brief, pp. 8-13.) This argument does not address the district court's ruling, however. The district court did not rule that there was no evidence to support the giving

of the necessity defense instruction as to the battery charge, it ruled that the necessity version of the justification defense was covered by the two other justification defenses given, namely self-defense and defense of property. (Tr., p. 482, L. 10 – p. 483, L. 1.) Cruse’s first argument is irrelevant because it does not address the district court’s ruling.<sup>2</sup>

Cruse also argues that the district court was “incorrect in concluding that the necessity defense was adequately covered,” but does not articulate what necessity other than protecting himself or his property was presented by the evidence. (Appellant’s brief, pp. 13-15.) Because Cruse argued below the necessity was to protect his car (Tr., p. 477, Ls. 13-24), the district court properly concluded that a general necessity defense instruction was unnecessary in light of the specific necessity instruction it was giving on defense of property. Rodriguez, 392 S.W.3d at 861 (defense of property “is a particularized example of a ‘necessity defense’”). Cruse has failed to show error.

Even if Cruse had articulated some necessity other than self-defense or defense of property, any error in not giving a general necessity defense instruction was harmless. “If a defendant can demonstrate error, the burden shifts to the State to demonstrate that the error is harmless beyond a reasonable doubt.” State v. Weigle, 165 Idaho 482, 485, 447 P.3d 930, 933 (2019) (quotation marks omitted). Where jury rejection of a given defense would necessarily show rejection of the requested but not given defense, any error in not giving the requested defense is harmless. See Rodriguez v. State, 524 S.W.3d 389, 395

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<sup>2</sup> Cruse also does not challenge the district court’s ruling that the necessity defense did not apply to the strangulation charge because Cruse denied committing that underlying crime. Therefore, that ruling must stand and the conviction on the included offense therefore must be affirmed. Rich v. State, 159 Idaho 553, 555, 364 P.3d 254, 256 (2015) (“Where a lower court makes a ruling based on two alternative grounds and only one of those grounds is challenged on appeal, the appellate court must affirm on the uncontested basis.”). Moreover, it was the correct ruling. See infra, pp. 11-12.

(Tex. App. 2017) (“Appellant has not identified, and we cannot find, any evidence in the record specific to appellant’s necessity defense such that the jury might have rejected appellant’s self-defense theory while accepting his necessity theory.”).

In this case the jury necessarily concluded the defenses of self-defense and defense of property were disproved beyond a reasonable doubt. (R., pp. 202-05, 220.) As shown above, the three eyewitnesses to the crime (the victim, Cruse, and the neighbor) all testified that Cruse grabbed the victim and carried her. Two of the witnesses, the victim and the neighbor, testified this happened in the back yard opposite where the car was parked, while only Cruse claimed the victim was moving toward his car in the front. By rejecting the defense of property defense, the jury necessarily concluded either (1) that conditions did not “justify [Cruse] in using force in defense” of his car or (2) that the force Cruse used was not “reasonably necessary to prevent the threatened injury.” (R., p. 205.) The jury’s rejection of the defense of property defense would necessarily have resulted in the rejection of any other necessity of using force to stop the victim from driving Cruse’s car.

The district court correctly concluded that two justification defenses covered the range of possible justifications for the battery. The district court properly concluded that giving the general necessity defense instruction was unnecessary because it was already giving a specialized form of the necessity defense, the defense of property. Even if Cruse had articulated a necessity outside of protection of property and self, any error was harmless because if he was not justified in using force to protect the car or himself, he was not justified in using force to prevent the victim from accessing the car generally. Cruse has failed to show error, and even if there were error it was necessarily harmless.

## II.

### Cruse Has Shown No Error In The District Court's Ruling On The Prosecutor's Argument That Cruse Had Admitted Committing Domestic Battery

#### A. Introduction

In closing argument, the prosecutor argued Cruse had “admitted” the battery charge by testifying that he had grabbed the victim and carried her. (Tr., p. 534, Ls. 21-23; p. 535, Ls. 9-21.) Cruse objected that the argument was “not in evidence.” (Tr., p. 534, L. 24 – p. 535, L. 2.) The district court determined the argument was that Cruse “admitted facts which the prosecution contends results in the admission” and “the State is certainly entitled to argue what facts they think he admitted.” (Tr., p. 535, Ls. 3-8.)

On appeal Cruse argues the district court erred because Cruse did not admit he “unlawfully” grabbed the victim, but had asserted “multiple affirmative defenses” claiming his battery was justified. (Appellant’s brief, pp. 15-17.) However, the prosecutor was not even addressing his affirmative defenses or the lawfulness of the battery. Because Cruse did admit committing the battery, the argument was proper.

#### B. Standard Of Review

“Where, as here, there has been a contemporaneous objection to prosecutorial misconduct, we determine whether the challenged conduct constitutes misconduct, and if so, whether the error was harmless.” State v. Beebe, 145 Idaho 570, 574, 181 P.3d 496, 500 (Ct. App. 2007).

#### C. The Prosecutor's Argument Was Proper

“There is considerable latitude in closing argument, and both sides are entitled to discuss fully, from their respective standpoints, the evidence and the inferences that should

be drawn from it.” State v. Alwin, 164 Idaho 160, 169, 426 P.3d 1260, 1269 (2018) (quotation marks and ellipse omitted). “Generally, both parties are given wide latitude in making their arguments to the jury and discussing the evidence and inferences to be made therefrom.” State v. Herrera, 164 Idaho 261, 274, 429 P.3d 149, 162 (2018) (quotation marks omitted). “[A] court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations.” State v. Severson, 147 Idaho 694, 719, 215 P.3d 414, 439 (2009) (brackets added, quoting Donnelly v. DeChristoforo, 416 U.S. 637, 647 (1974)). Review shows that the prosecutor was within the latitude allowed in proper closing argument.

First, Cruse factually admitted that he committed the crime of domestic battery by grabbing his co-habiting fiancé and carrying her. (Tr., p. 437, L. 10 – p. 439, L. 3; p. 455, L. 24 – p. 457, L. 14.) There was nothing improper in the argument pointing this out. (Tr., p. 534, Ls. 21-23; p. 535, Ls. 9-21.)

Second, Cruse legally admitted having committed the charged domestic battery. Idaho follows the rule that justification defenses require the defendant to admit having committed the crime in order to claim he had been justified in doing so. See State v. Barton, 154 Idaho 289, 291-92, 297 P.3d 252, 254-55 (2013) (entrapment defense available only to defendant who admits the offense). See also Galvan v. People, 476 P.3d 746, 753 (Colo. 2020) (“When a defendant relies on an affirmative defense, he essentially admits the commission of the elements of the charged offense but seeks to justify, excuse, or mitigate his conduct.”); John B. v. Comm’r of Correction, 222 A.3d 984, 999 (Conn. App. 2019) (asserting an affirmative defense admits “commission of the crime” and “necessarily”



concedes that “each of the individual elements comprising the offense is satisfied” (quotation marks omitted)); People v. McLennon, 957 N.E.2d 1241, 1245 (Ill. App. 2011) (when asserting an affirmative defense, the defendant “admits to the offense but denies responsibility”); People v. Dupree, 788 N.W.2d 399, 405 n.11 (Mich. 2010) (“An affirmative defense admits the crime but seeks to excuse or justify its commission. It does not negate specific elements of the crime.”); 115 Am. Jur. Proof of Facts 3d 309 (originally published in 2010) (“Necessity or choice of evils is an affirmative defense because it requires the defendant’s belief that the violation of the law was necessary. Accordingly, in order to invoke the necessity defense, the defendant *must admit to having committed a crime.*” (italics added)). Again, the prosecutor was well within bounds by arguing that Cruse had admitted committing a domestic battery.

The prosecutor’s argument was nothing more than pointing out what Cruse had both legally and factually done: admitted committing a domestic battery by grabbing and carrying his co-habiting fiancé just after she left the house. (Tr., p. 534, Ls. 21-23; p. 535, Ls. 9-21.) The district court correctly overruled Cruse’s objection to this argument. (Tr., p. 535, Ls. 3-8.)

Cruse argues the prosecutor’s argument was improper because he had not admitted committing the domestic battery “unlawfully.” (Appellant’s brief, p. 17.) Although it is true that Cruse maintained that his actions were justified, he had both factually and legally admitted committing the crime of domestic battery. It was not improper, where the defendant factually and legally admits all the acts and mental state constituting the crime, but asserts only that his acts were justified as defense of self or property, to argue that the defendant has “admitted” committing the crime.

Finally, even if Cruse had demonstrated that the argument was somehow improper, any resulting error was harmless. An error will be found harmless if the state demonstrates that “the error is harmless beyond a reasonable doubt.” Weigle, 165 Idaho at 485, 447 P.3d at 933 (quotation marks omitted). The district court instructed the jury on self-defense and the specialized necessity defense of defense of property. (R., pp. 202-05.) Cruse’s counsel argued these defenses to the jury. (Tr., p. 555, L. 17 – p. 556, L. 1; p. 562, L. 14 – p. 565, L. 11.) The jury listened to what Cruse actually stated on the stand. (Tr., p. 437, L. 10 – p. 439, L. 3; p. 455, L. 24 – p. 457, L. 14.) This Court may conclude beyond a reasonable doubt that the prosecutor’s argument did not cause the jury to (1) conclude that Cruse admitted his actions were unlawful while testifying and (2) ignore his defenses in deliberations.

The prosecutor’s argument that Cruse had admitted the domestic battery was true as a matter of fact and as a matter of law. The district court properly overruled Cruse’s objection that it was not supported by the evidence. Even if potentially erroneous, any error was harmless because Cruse’s defenses were presented to the jury in both instructions and argument.

### III.

#### Cruse Has Shown No Cumulative Error

Cruse asserts he is entitled to a new trial under the cumulative error doctrine. (Appellant’s brief, p. 18.) “Under the doctrine of cumulative error, a series of errors, harmless in and of themselves, may in the aggregate show the absence of a fair trial. However, a necessary predicate to the application of the doctrine is a finding of more than one error.” State v. Perry, 150 Idaho 209, 230, 245 P.3d 961, 982 (2010) (citations

omitted). Cruse has failed to show any error, much less two errors. Even if the district court erred by not giving a general necessity instruction and overruling Cruse's objection to the prosecutor's closing argument were errors, Cruse has failed to show that his trial was unfair.

#### IV.

#### The District Court Did Not Abuse Its Sentencing Discretion

##### A. Introduction

The district court imposed a sentence of twenty years with ten years fixed on Cruse's conviction for domestic battery, enhanced for being a persistent violator. (R., pp. 293-96.) Cruse thereafter filed a Rule 35 motion seeking a reduction in sentence, which the district court denied. (R., pp. 315-23; Aug., pp. 1-4.)

On appeal Cruse contends his enhanced sentence is excessive because of "mitigating factors." (Appellant's brief, pp. 18-21.) He also argues the district court abused its discretion in not granting his motion for reduction of sentence in light of evidence of family and community support. (Appellant's brief, pp. 22-23.) Application of the relevant law and review of the record show no abuse of discretion.

##### B. Standard Of Review

"When reviewing whether a sentence is excessive, we review all the facts and circumstances in the case and focus on whether the trial court abused its discretion in fixing the sentence." State v. Fisher, 162 Idaho 465, 467, 398 P.3d 839, 841 (2017) (quotation marks omitted). The four factors of the abuse of discretion standard are whether the trial court "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to

the specific choices available to it; and (4) reached its decision by the exercise of reason.”  
State v. Garcia, 166 Idaho 661, \_\_\_, 462 P.3d 1125, 1144 (2020).

C. The Sentences Are Reasonable And Within The Trial Court’s Discretion

“Generally, when appealing a sentence as an abuse of discretion, the appellant must establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment.” State v. Matthews, 164 Idaho 605, 608, 434 P.3d 209, 212 (2019) (quotation marks omitted). “Those objectives are (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrong-doing.” State v. Bodenbach, 165 Idaho 577, 591, 448 P.3d 1005, 1019 (2019) (quotation marks omitted). “Further, a sentencing court's decision to treat a sentencing factor as mitigating or aggravating is a factual one” that will not be set aside unless clearly erroneous. Garcia, 166 Idaho at \_\_\_, 462 P.3d at 1144 (quotation marks omitted). Application of these standards to the district court’s sentencing shows no abuse of discretion.

The district court found that Cruse had a history of domestic violence against women. (Tr., p. 641, L. 22 – p. 644, L. 17.) The district court found Cruse’s trial testimony “not to be credible,” and the real reason Cruse had carried the victim back to the house was to prevent her from contacting the police because he was on probation. (Tr., p. 644, L. 18 – p. 646, L. 5.) Indeed, had the neighbor not called the police it was possible the entire incident would not have come to light. (Tr., p. 652, Ls. 8-19.)

Based on the domestic violence evaluation, the district court found Cruse to be a high risk to commit future domestic violence. (Tr., p. 646, Ls. 6-13.) The district court found that the root of Cruse’s offense was not “just about alcohol,” but was instead because

of “bad character.” (Tr., p. 646, L. 14-16.) Cruse had “violat[ed] terms of [his] probation” and “not responded to the treatment options,” and the court found that rehabilitation had “not been successful.” (Tr., p. 646, Ls. 16-21.) Despite probation and efforts at rehabilitation, Cruse continued to “drink” and “engage in manipulative and bad behavior.” (Tr., p. 646, Ls. 21-25.)

The district court specifically applied the goals of sentencing and the relevant Idaho Code. (Tr., p. 647, L. 16 – p. 649, L. 6.) The district court then concluded that “considering all of those factors and principally the protection of society,” as well as Cruse’s history of crimes, riders, and probations, the public would not be protected “absent a very long prison sentence.” (Tr., p. 649, Ls. 7-14.) The district court then imposed a sentence of 20 years with ten years determinate on the felony conviction and enhancement. (Tr., p. 649, L. 25 – p. 650, L. 2.) The district court recognized the sentence was “harsh,” but did not in “good conscience” believe a lesser sentence “would have the ability to protect the public.” (Tr., p. 650, Ls. 16-23.)

The record supports the district court’s findings. Cruse has an extensive history of criminal behavior, much of it involving violence or alcohol or both, including four prior felony convictions. (PSI, pp. 361-63, 369-72, 382-85.<sup>3</sup>) He has been on probation several times and did two prior riders, and was on probation when he committed the instant offenses. (Id.) His domestic violence evaluation rated him a “[h]igh risk” to commit additional domestic violence. (PSI, p. 377.) The district court’s findings are supported by the record, and the facts found by the court show it did not abuse its discretion in imposing a sentence of 20 years with ten fixed.

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<sup>3</sup> Citations to the PSI are to the electronic file “Conf.Docs.-Cruse.PDF.”

Cruse argues that “mitigating factors” show the district court abused its discretion. (Appellant’s brief, p. 19.) The first such “mitigating factor” Cruse claims is that the facts of the offense are not serious because his conviction “started out as a misdemeanor domestic battery without traumatic injury” in which the victim was not injured but “broke a beer glass over Mr. Cruse’s head.” (Appellant’s brief, pp. 19-20.) Cruse’s attempts to minimize the violence he inflicted on the victim cannot be countenanced. The district court specifically found that the victim’s recitation of events was credible and Cruse’s account of those same events was not credible. (Tr., p. 644, L. 18 – p. 645, L. 18.) Rather than meet his burden of showing clear error, Cruse ignores the district court’s findings and improperly invites this Court to substitute his version of events.

Second, Cruse argues he had a “difficult and extremely traumatic childhood, rife with violence.” (Appellant’s brief, p. 20.) However, the only evidence of Cruse’s childhood was a self-report from Cruse (PSI, pp. 354-55), whom the district court found to be not credible. Additionally, even if true, Cruse’s childhood was not really mitigating. Cruse was [REDACTED]. (PSI, p. 379.) He was decades removed from his childhood. And he had filled those decades with crimes, violence, and failed probations. (PSI, pp. 361-63, 369-72, 382-85.) If this factor was mitigating, it was mitigating early in this history. It was not mitigating in this case.

Third, Cruse blames his alcohol abuse. (Appellant’s brief, p. 20.) Once again, however, he merely ignores the district court’s contrary factual findings. As noted above, the district court found the violence more of an issue of character than of alcohol. (Tr., p. 646, L. 14-16.) The district court also found that probation and rehabilitation efforts, which included addressing alcohol abuse, had failed. (Tr., p. 646, Ls. 16-21.)

Fourth, Cruse argues he had “supportive family to assist him in rehabilitation.” (Appellant’s brief, p. 20.) Presumably this same family was there to support him in past probations and treatment. (PSI, pp. 361-63, 369-72, 382-85.) That family support has done little to nothing to facilitate rehabilitation or protect the community in the past likely indicates that it would not do so going forward.

Finally, Cruse cites his expressions of remorse. (Appellant’s brief, pp. 20-21.) Again, the district court found Cruse not credible and motivated by desire to avoid punishment. (Tr., p. 644, L. 18 – p. 646, L. 5.) Furthermore, either past remorse for his prior crimes and violence has not led to change, or he is just now, after years of violence, starting to feel remorse for his actions. Neither provides meaningful mitigation.

The district court focused on Cruse’s history of violence, particularly domestic violence, and concluded that societal protection required a very long sentence. On appeal Cruse does not directly address the district court’s analysis. Because the facts and the law show the sentence to be reasonable, Cruse has shown no abuse of discretion.

D. Cruse Has Shown No Abuse Of Discretion In The Denial Of His Motion To Reduce The Sentence

A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. State v. Knighton, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); State v. Allbee, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting an I.C.R. 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Cruse supported his Rule 35 motion with correspondence from family, friends, and

an employer. (R., pp. 318-23.) The district court denied the motion, finding that the sentence imposed was “appropriate,” and the letters did not “justify leniency.” (Aug., p. 4.) Cruse argues that the reduction should have been granted “in light of” the letters and the mitigating factors he identified in relation to his initial sentencing. (Appellant’s brief, pp. 22-23.) However, his appellate argument does not really address the core reason for the sentence—the need to protect society. Support by Cruse’s family and friends has simply not led to his rehabilitation or the protection of society. Cruse has failed to show any abuse of discretion.

#### CONCLUSION

The state respectfully requests this Court to affirm the district court’s judgment and order denying Cruse’s Rule 35 motion.

DATED this 20th day of January, 2021.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of January, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd