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### State v. Cruse Appellant's Reply Brief Dckt. 47801

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

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 47801-2020
	)	
v.	)	ADA COUNTY NO. CR01-19-23411
	)	
DAVID RAY CRUSE,	)	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 PATRICK J. MILLER**  
District Judge  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature of the Case

After being charged with one count of attempted strangulation and one count of felony domestic battery, David Cruse exercised his constitutional right to a jury trial. He was found guilty of misdemeanor domestic battery and felony domestic battery. He received a unified sentence of twenty years, with ten years fixed.

Mr. Cruse contends that the district court erred by refusing to give his requested necessity jury instruction. Mr. Cruse also asserts that the prosecutor committed misconduct during closing arguments by misrepresenting the evidence and that the accumulation of the errors deprived him of his right to a fair trial. Alternatively, Mr. Cruse contends that his sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts. He further contends that the district court abused its discretion in failing to reduce his sentence in light of the additional information submitted in conjunction with his Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion.

This Reply Brief is necessary to address the State's contentions that the district court did not err by refusing to give a necessity instruction, and, if it did err, any error was harmless. (Resp. Br., pp.5-9.) Mr. Cruse will also address the State's contention that the district court did not abuse its discretion in sentencing him to twenty years, with ten years fixed. (Resp. Br., pp.14-18.)

### Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Cruse'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 by rejecting Mr. Cruse's proposed necessity defense jury instruction?
- II. Did the State commit prosecutorial misconduct?<sup>1</sup>
- 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?

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<sup>1</sup> Mr. Cruse will address only the State's arguments as to Issues I and IV. Mr. Cruse fully briefed Issues II, III, and V in his Appellant's Brief, as incorporated herein, and the State's arguments do not merit further discussion.

## ARGUMENT

### I.

#### The District Court Erred By Rejecting Mr. Cruse's Proposed Necessity Defense Instruction

The State claims that the district court did not err by refusing to give a separate necessity jury instruction, because federal circuit courts and an Alaska appellate court have generally classified affirmative defenses such as duress, necessity, and self-defense under the rubric of “justification.” (Resp. Br., pp.5-6.) However, the State’s argument is not persuasive as it relies on non-controlling case law and ignores Idaho case law as well as the elements of the pattern Idaho Criminal Jury Instructions. Further, the State’s argument in support of its harmless error claim, that “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,” is baseless under Idaho law. (Resp., pp.8-9 (quoting *Rodriguez v. State*, 524 S.W.3d 389, 395 (Tex. App. 2017).) Under Idaho law, the court’s failure to give the necessity instruction constitutes reversible error in this case because “the instructions as a whole misled the jury or prejudiced a party.” *State v. Draper*, 151 Idaho 576, 588 (2011).

A necessity jury instruction was requested by the defense, and a reasonable view of the evidence supported a necessity instruction. (R., p.49.) In this case, the State accused Mr. Cruse of committing a domestic battery (Count II) by unlawfully pushing and/or grabbing Ms. Hume outside, in the common area of the apartment complex. (Tr., p.519, Ls.18-23; R., p.30.) The State alleged that Mr. Cruse pursued Ms. Hume when she ran out of the apartment and into the common area, and picked her up and carried her back into the apartment against her will. (Tr., p.530, Ls.5-21.) In support of its theory, the State elicited testimony from Ms. Hume that

she was trying to get away from Mr. Cruse, and that she kicked and screamed and yelled for help once Mr. Cruse started carrying her. (Tr., p.201, Ls.7-23.)

Two months before trial, Mr. Cruse requested a necessity jury instruction from the pattern Idaho Criminal Jury Instructions. (R., p.49.) At trial, he against requested the necessity instruction, asserting that the “necessity defense is vital to our defense as it is written here.” (Tr., p.481, Ls.11-13; p.482, L.25 – p.483, L.1.) This instruction was supported by the facts where, at trial, Mr. Cruse testified that he did touch and carry Ms. Hume and she yelled for him to stop; however, Mr. Cruse believed his actions were necessary. (Tr., p.438, Ls.2-25.) Mr. Cruse testified that he touched Ms. Hume, because he thought “she’s going to wreck that car, and she is going to get in trouble and get a DUI.” (Tr., p.438, Ls.9-13.) He was trying to stop Ms. Hume from being arrested and/or injured. Although the district court did not squarely address the issue, the court’s language indicated that it believed there was a factual basis for Mr. Cruse’s necessity instruction. (Tr., p.482, Ls.19-23 (concluding defense had “plenty of room to argue . . . that he was acting out of necessity or need”).)

However, the district court denied the requested jury instruction. (Tr., p.480, L.20 – p.483, L.1.) The district court concluded, “I think those other three instructions cover that issue and give the defense plenty of room to argue about the defendant’s argument that he was acting out of necessity or need with respect to the activity that was occurring outside as to the contact – the contact he admits occurred.” (Tr., p.482, Ls.18-25.) The court refused to give Mr. Cruse’s instruction because it concluded that the other jury instructions (self-defense, defense of property, and misfortune or accident) gave the defense sufficient room to argue that Mr. Cruse was acting out of necessity. (R., pp.201-05; Tr., p.476, Ls.7-25; p.482, Ls.18-24.) However, analysis of the evidence admitted at trial and the elements of the instructions at issue refutes this

decision. As discussed in Mr. Cruse's Appellant's Brief, the evidence in Mr. Cruse's case met all of the elements of a necessity defense. (App. Br., pp.11-15.) The State claims that Mr. Cruse did not show that a necessity instruction was needed because he was only arguing about "the necessity to protect his car." (Resp. Br., p.8.) The State claims that the jury's rejections of defense of property would require the rejection of any other necessity of using force to stop the victim from driving Mr. Cruse's car. (Resp. Br., p.9.) This is inaccurate because Mr. Cruse testified that he touched Ms. Hume out of concern that she would crash the car or that she would get a DUI. (Tr., p.438, Ls.9-13.)

The State pointed out that the incident outside occurred "in the back yard opposite where the car was parked" (Resp. Br., p.9); however, as pointed out by Mr. Cruse in his Appellant's Brief (App. Br., pp.11-12), the fact that there may have been conflicting evidence as to that element of the necessity defense does not justify not instructing the jury as to that defense. *See State v. Hastings*, 118 Idaho 854, 856 (1990) ("It is for the trier of fact to determine whether or not [the defendant] has met the elements of that defense."). Resolving the conflicting evidence in this regard requires a determination about the credibility of the witnesses and the evidence presented, and it is the jury, not the district court, that is tasked with making that determination. *See, e.g., State v. Almaraz*, 154 Idaho 584, 599 (2013); *State v. Allen*, 129 Idaho 556, 558 (1996).

The State claims that the general necessity defense instruction was unnecessary, because "[the jury] was already giv[en] a specialized form of the necessity defense, the defense of property." (Resp. Br., p.9.) The State's attempt to eviscerate any distinction between the necessity defense and the defense of property defense overlooks the existence of the pattern Idaho Criminal Jury Instructions. The pattern instructions are presumptively correct statements of law, and trial courts are expected to follow them as closely as possible unless another

instruction would more adequately, accurately, or clearly state the applicable law. *State v. Reid*, 151 Idaho 80, 85 (Ct. App. 2011).

In this case, the district court gave the self-defense instruction (R., pp.202-04), the defense of property instruction (R., p.205), and the mistake or accident instruction (R., p.201). These jury instructions are all distinctly different from the necessity instruction, ICJI 1512. Further, the given instructions did not include all of the essential elements of necessity to encompass Mr. Cruse's explanation of his actions in the outside common area. The district court's finding that Mr. Cruse's proposed necessity instruction was adequately covered by the self-defense, defense of property, and the mistake or accident instructions given was erroneous.

The self-defense jury instruction required the State to prove beyond a reasonable doubt that the battery was not justifiable. (R., p.202.) In order for the jury to find that Mr. Cruse acted in self-defense, *all* of the following conditions must have existed at the time of the striking: (1) Mr. Cruse reasonably believed he was in imminent danger of bodily harm; and (2) Mr. Cruse reasonably believed that the action taken was necessary to save himself from the danger presented; and (3) the circumstance were such that a reasonable person, under similar circumstances, would have believed that Mr. Cruse was in imminent danger and believed the action taken was necessary; (4) he acted only in response to the danger presented and not for some other motivation. (R., p.202.)

While the self-defense jury instruction does include consideration "that the action taken was necessary," it also includes several other conditions to which Mr. Cruse did not testify to regarding his actions in the common area, including a fear by Mr. Cruse that his own bodily injury was imminent. (*See* R., p.202.) It is highly unlikely that the jury would have believed Mr. Cruse thought he was in danger of bodily harm where he *did not testify* to being afraid of

getting hurt prior to the alleged battery outside the house. (*See* Tr., p.415, L.8 – p.462, L.23.) While Mr. Cruse testified that he did touch or pick up Ms. Hume in the common area, he did not testify that he did so for fear of his own imminent bodily harm. (Tr., p.438, L.15 – p.439, L.7.) Thus, a reasonable juror would *not* have concluded that Mr. Cruse acted in self-defense because he obviously did not meet *all* of the conditions of the self-defense instruction. (*See* R., pp.202-04.)

Another affirmative defense instruction given by the district court that purportedly encompassed the necessity defense was the defense of property jury instruction, which required:

When conditions are present which under the law justify a person in using force in defense of property in the person's lawful possession, that person may use such degree and extent of force as would appear to be reasonably necessary to prevent the threatened injury. Reasonableness is to be judged from the viewpoint of a reasonable person placed in the same position and seeing and knowing what the defendant then saw and knew. Any use of force beyond that limit is unjustified.

(R., p.205.) The defense of property instruction limits the use of force justification, providing that a use of force was not justified beyond the degree and extent "reasonably necessary" to prevent a threat to "property" in the person's "lawful possession." (*See* R., p.205.) However, there was evidence that Mr. Cruse did not own the car and was simply having Ms. Hume test-drive it, potentially creating a question in the jurors' minds as to whether Mr. Cruse was in "lawful possession" of the car. (Tr., p.188, Ls.12-15; p.241, Ls.16-22; p.416, Ls.3-15.)

The jury instruction that best fit the facts of the case and Mr. Cruse's defense was the necessity jury instruction. The elements of the necessity defense are: (1) a specific threat of immediate harm; (2) the circumstances which necessitate the illegal act must not have been brought about by the defendant; (3) the same objective 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. *State v. Hastings*, 118 Idaho 854, 855 (1990); *see also* Idaho Criminal Jury

Instruction (“ICJI”) 1512. The pattern jury instruction for the necessity defense provides that “the state must prove beyond a reasonable doubt that the defendant did not act because of necessity.” ICJI 1512.

Mr. Cruse testified that he did touch and carry Ms. Hume, and she yelled for him to stop; however, Mr. Cruse believed his actions were necessary. (Tr., p.438, Ls.2-25.) This belief is evident in his trial testimony. At trial, Mr. Cruse testified that he touched Ms. Hume, because he thought “she’s going to wreck that car, and she is going to get in trouble and get a DUI.” (Tr., p.438, Ls.9-13.) After four previous attempts to call Ms. Hume an Uber, and where all verbal attempts to stop her from leaving with the car failed, Mr. Cruse reasonably believed that the only way to stop her from driving the car while drunk was to physically carry her, the least offensive option. (Tr., p.438, L.11 – p.439, L.8.) Mr. Cruse perhaps could have called the police, but even had the police responded extremely quickly, the few minutes it took for their response would have been too long, and Ms. Hume could have gotten into an accident in an instant, particularly as intoxicated as she was.

Further, there was evidence that the harm caused was not disproportionate to the harm avoided. Ms. Hume did not report any physical injuries from Mr. Cruse restraining her outside the apartment. (Tr., p.249, L.24 – p.250, L.2.) Ms. Hume had downed *at least* seven or eight drinks that day and, by even her own account, was drunk. (Tr., p.235, Ls.8-10; p.239, L.6 – p.241, L.12; p.425, L.17 – p.434, L.4.) Had Ms. Hume driven the car at that time, she might have gotten in a serious accident, harming another person or even herself. (Tr., p.562, Ls.2-9.) Alternatively, she definitely would have been driving while intoxicated, and she may have been arrested for DUI. (Tr., p.564, Ls.17-22.) Mr. Cruse touched Ms. Hume, but did not physically injure or mark her body by carrying her.

A reasonable view of the evidence supported Mr. Cruse's requested instruction and the pattern instruction accurately stated the law. *See State v. Howley*, 128 Idaho 874, 878 (1996). The district court's refusal to instruct the jury on the necessity defense left Mr. Cruse unable to present a complete defense; therefore, the district court denied him a fair opportunity to defend against the domestic battery charge (Count II).

This Court should hold that the facts before the jury warranted a necessity instruction, that the district court's refusal to give such an instruction could not be harmless, vacate Mr. Cruse's felony domestic battery conviction, and remand this case to the district court for a new trial.

#### IV.

#### The District Court Abused Its Discretion When It Imposed A Unified Sentence Of Twenty Years, With Ten Fixed, Upon Mr. Cruse Following His Conviction For Domestic Battery

Mr. Cruse asserts that, given any view of the facts, his unified sentence of twenty years, with ten years fixed, is excessive. (App. Br., pp.18-21.) Mr. Cruse's arguments were mostly made in his initial Appellant's Brief; however, Mr. Cruse submits this Reply Brief in response to the State's claim regarding Mr. Cruse's sentence. The State pointed out that, "Based on the domestic violence evaluation, the district court found Cruse to be a high risk to commit future domestic violence." (Resp. Br., p.15.) However, the domestic violence evaluator's report was based on her understanding that Mr. Cruse had committed the attempted strangulation, despite the jury's decision to acquit him of that charge. (*See* PSI, p.374.) In the report, the evaluator relied on the police report in which Ms. Hume reported that Mr. Cruse choked her. (PSI, p.374.) The evaluator, despite noting that Mr. Cruse told her he was found not guilty of the Attempted Strangulation at trial, wrote that "per the current iCourt record, Attempted Strangulation is listed

‘not guilty’ for a plea, but it is not listed in the trial dispositions.” (PSI, p.374.) Evidently, despite Mr. Cruse’s statements to the contrary, the domestic violence evaluator was unwilling to believe that Mr. Cruse did not commit the crime or that he was acquitted. The district court erred in relying on the domestic violence evaluation where the evaluator was unaware of, or disregarded the jury verdict when preparing the evaluation.

### CONCLUSION

Mr. Cruse respectfully requests that this Court vacate his convictions on all counts and remand this matter for a new trial. Alternatively, Mr. Cruse respectfully requests that this Court reduce his sentence as it deems appropriate or remand his case to the district court for a new sentencing hearing.

DATED this 3<sup>rd</sup> day of February, 2021.

/s/ Sally J. Cooley  
SALLY J. COOLEY  
Deputy State Appellate Public Defender

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of February, 2021, I caused a true and correct copy of the foregoing APPELLANT’S REPLY 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

SJC/eas