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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 47904-2020
)	
v.)	CANYON COUNTY NO. CR14-19-12065
)	
JASON CORT BROCK,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**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

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STATEMENT OF THE CASE

Nature of the Case

The alleged victim in Jason Cort Brock's domestic battery with 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. Mr. Brock asserts the district court abused its discretion when it denied his motion for a new trial.

In its Respondent's Brief, the State argues that Mr. Brock has not shown that the district court abused its discretion by denying his motion for a new trial. (*See Resp. Br.*, pp.5-10.) Specifically, the State argues that Mr. Brock did not preserve any argument that the district court prevented him from moving for a mistrial. (*See Resp. Br.*, p.7.) The State also contends that Mr. Brock's claim that the district court should have declared a *sua sponte* mistrial was not cognizable in a motion for a new trial, and even if the claim were cognizable, Mr. Brock did not meet the Idaho Criminal Rule 29.1 standard for granting a motion for a new trial. (*See Resp. Br.*, pp.7-8.) Further, the State argues that the alleged victim's references to her broken nose and concussion were not unfairly prejudicial to Mr. Brock, and therefore no mistrial was warranted. (*See Resp. Br.*, pp.8-9.) The State next argues that the alleged victim's challenged testimony was not precluded by the court's pretrial order and was admissible. (*See Resp. Br.*, pp.9-10.)

This Reply Brief is necessary to address the State's arguments on preservation and the admissibility of the alleged victim's testimony. Mr. Brock preserved the argument that the district court erroneously did not allow him to request a mistrial. The alleged victim's testimony on her broken nose and concussion were outside the scope of the permitted testimony under the district court's order, and that testimony was therefore inadmissible.

Statement of the Facts and Course of Proceedings

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

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 its 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, the medical diagnosis statements by the alleged victim, Ms. Brock, constituted reversible error. Thus, the district court should have allowed Mr. Brock to request a mistrial, and then declared a mistrial.

B. 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.

Mr. Brock preserved the argument that the district court erroneously did not allow him to request a mistrial. The State argues that Mr. Brock "failed to preserve any argument that the district court somehow prevented him from moving for a mistrial." (Resp. Br., p.7.) According to the State, Mr. Brock's counsel "represented in his motion for a new trial that he 'simply forgot' to move for a mistrial." (Resp. Br., p.7.)

The Idaho Supreme Court “will not hold that a trial court erred in making a decision on an issue or a party’s position on an issue that it did not have the opportunity to address.” *State v. Gonzalez*, 165 Idaho 95, 99 (2019). “To be clear, both the issue and the party’s position on the issue must be raised before the trial court for it to be properly preserved for appeal.” *Id.*

Here, in the motion for a new trial, Mr. Brock asserted, “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.) He asserted, “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.) Thus, Mr. Brock took the position before the district court, much as he has on appeal, that the district court did not allow him to request a mistrial. Accordingly, the issue of whether the district court erred in its decision to not allow Mr. Brock to request a mistrial is preserved. *See Gonzalez*, 165 Idaho at 99.

Moreover, Ms. Brock’s testimony on her broken nose and concussion were outside the scope of the permitted testimony under the district court’s order on the motion in limine, and that testimony was therefore inadmissible. The State contends, “though the district court told the jury to ignore [Ms. Brock’s] challenged testimony, a closer review of the context and circumstances surrounding the testimony reveals that it was not precluded by the court’s pretrial order, and was not inadmissible.” (Resp. Br., p.9.) However, Mr. Brock 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 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.) Thus,

Ms. Brock's testimony that she had a broken nose and a concussion was outside the scope of the permitted testimony under the district court's order on the motion in limine. (*See* Tr., p.36, Ls.8-10, p.44, Ls.20-21.) That testimony was inadmissible.

The State argues, for the first time on appeal, that Ms. Brock's testimony was also "admissible pursuant to I.R.E. 701, which permits layperson opinion testimony that is rationally based on the witness's perception; is helpful to clearly understanding the witness's testimony or to determining a fact in issue; and is not based upon scientific, technical, or other specialized knowledge." (*See* Resp. Br., pp.9-10.) This Court should disregard this new argument by the State, because the State never took the position before the district court that the testimony on Ms. Brock's medical diagnoses was admissible under Rule 701. (*See* Tr., p.19, L.19 – p.20, L.14, p.21, Ls.8-17.) Thus, the State's new argument is not preserved for appellate review. *See Gonzalez*, 165 Idaho at 99.

During the course of the trial, the district court erred in its 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, the medical diagnosis statements by the alleged victim, Ms. Brock, constituted reversible error. *See State v. Johnson*, 163 Idaho 412, 421 (2018). Thus, the district court should have allowed Mr. Brock to request a mistrial, and then declared a mistrial. *See* I.C.R. 29.1. 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). 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, as well as the reasons contained in the Appellant's Brief, Mr. Brock respectfully requests that this Court vacate the order denying his motion for a new trial and the judgment of conviction, and remand the matter to the district court for further proceedings.

DATED this 18th day of March, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March, 2021, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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

BPM/eas