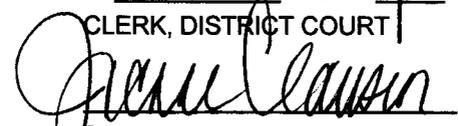


STATE OF IDAHO)
County of KOOTENAI)^{ss}

FILED 7/12/18

AT 2:10 O'clock P.M
CLERK, DISTRICT COURT


Deputy

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

STATE OF IDAHO,)
)
 Plaintiff/Respondent,)
 vs.)
)
 DENNIS WILLIAM HINRICHSEN,)
)
 Defendant/Appellant.)
)

Case No. **CR 2017 17610**

**MEMORANDUM DECISION AND
ORDER ON APPEAL AFFIRMING
MAGISTRATE'S DECISION**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On December 27, 2017, a jury trial was held regarding defendant/appellant Dennis Hinrichsen's (Hinrichsen) misdemeanor assault charge. The jury reached a guilty verdict. Judgment and sentence occurred the same day. Judge Caldwell granted Hinrichsen a withheld judgment and placed him on one year unsupervised probation. On February 6, 2018, Hinrichsen timely filed a Notice of Appeal.

On May 21, 2018, William Hinrichsen, through counsel, filed Brief Supporting Appeal. The issue on appeal is an evidentiary ruling made at trial by the Magistrate Judge. Hinrichsen appeals one evidentiary ruling when counsel for Hinrichsen objected on the ground that the answer was hearsay. Br. Supporting Appeal 1-2, Tr. 189:22 – 191:1. On June 6, 2018, the plaintiff/respondent, State of Idaho, (State) through counsel, filed its Response Brief. No reply brief has been filed by defendant/appellant.

On June 26, 2018, a Motion to Submit the Appeal Upon the Briefs was filed. This motion was brought by defendant, signed by defendant's counsel, and a "no objection" to the motion was signed on that motion by counsel for the plaintiff. The motion was made pursuant to I.A.R 37(a). An order granting that motion was entered by this Court on July 10, 2018.

II. STANDARD OF REVIEW.

Counsel for the State failed to articulate a standard of review. Hinrichsen set forth the standard of appellate review as follows: "An appellate court exercises free review over questions of law. *Rhoades v. State*, 148 Idaho 247, 250, 220 P.3d 1066, 1069 (2009)." Br. Supporting Appeal 3. While counsel for Hinrichsen is correct that this is an accurate quote from *Rhoades*, counsel for Hinrichsen has taken such quote out of context. The quote from *Rhoades* was made in the context of the trial court dismissing a post-conviction relief case without having an evidentiary hearing. *Id.* Such quote does not state the appropriate standard of appellate review on an evidentiary ruling.

The appropriate standard of appellate review is: "When reviewing the trial court's evidentiary rulings, the appellate court applies an abuse of discretion standard." *Edmunds v. Craner*, 142 Idaho 867, 871, 136 P.3d 338, 342 (2006). "At trial, the court has broad discretion in determining the admissibility of testimonial evidence. A decision to admit or deny such trial evidence will not be disturbed on appeal absent a clear showing of abuse of that discretion. *State v. Hoover*, 138 Idaho 414, 419, 64 P.3d 340, 345 (Ct. App. 2003) citing *State v. Smith*, 117 Idaho 225, 232, 786 P.2d 1127, 1134 (1990).

III. ANALYSIS.

Counsel for Hinrichsen has stated in her brief the question asked by the prosecutor and the witness' limited answer given before counsel or Hinrichsen

objected, but counsel for Hinrichsen failed to state in her brief *what the actual answer* was. As set forth in Hinrichsen's brief, the questioning of Coeur d'Alene Police Officer Henry Dunham on the State's rebuttal case was as follows:

MS. MCGOVERN: And do you have a sense for I guess the reputation that Mr. Hinrichsen has in that neighborhood and in relation to—I'll just leave it at that.

OFFICER DUNHAM: Um, yeah. When I've responded to that neighborhood in the past it's kind of been a —you have neighbors that come up to you and talk to you about the—

MS. HUDDLESTON: Objection based on hearsay, Your honor.

Br. Supporting Appeal 2; Tr. 189:15-21. Counsel for the State then argued this witness could testify as to Hinrichsen's reputation, presumably under I.R.E. 405.

Id. 3; 189:24-190:15. After hearing the argument by counsel for the State, the Court asked Hinrichsen's counsel for any response. Counsel for Hinrichsen stated: "Just that I'm assuming these statements are out-of-court, offered for their truth and therefore hearsay and not subject to any exception. Thank you." *Id.*; 190:16-21. The Court overruled the objection:

THE COURT: I guess in part I'm not going to let the statements come in, but I will overrule the objection. I think as far as the witness testifying as to the reputation, that issue is before the Court, so I'll overrule. Maybe you could rephrase.

Id.: 190:22-191:1. Now, up to this point, this is the only portion of the trial that counsel for Hinrichsen has raised in her brief. Because counsel for Hinrichsen has not raised any additional issues in her brief, this Court must affirm Judge Caldwell's ruling because, up to this point in time, there had been no hearsay response called for in the question by counsel for the State, and no hearsay answer given by the witness. Because nothing further was raised in Hinrichsen's brief, this Court will not consider any other argument that might be raised. An appellate court will not review the actions of a lower court which have not specifically been assigned as error, raised

by a party or argued in their briefs. *State v. Hoisington*, 104 Idaho 153, 159, 657 P.2d 17, 23 (1983); *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 93, 803 P.2d 993, 999 (1991). Thus, Judge Caldwell's evidentiary ruling is affirmed on this basis alone.

What occurred next at trial is set forth by the Court only in an abundance of caution. Counsel for the State then asked: "Officer Dunham, can you please testify, as best you can for the jury, as far as you are aware, the reputation that Mr. Hinrichsen has in that neighborhood?" *Id.* 191:4-7. To which Officer Dunham responded:

A. OFFICER DUNHAM: Um, I would say in general he was not well liked. Specifically earlier in that same week that this incident had occurred, um, Mr. Hinrichsen called law enforcement to respond to the area to deal with a parking problem that was going on in the neighborhood. Specifically, a vehicle had parked in front of a plot of land in which he had a couple trailers on. That plot of land he said belonged to somebody else. The trailers belonged to him, and he said he needed to get those trailers off the property and so the people parked there, he wanted them to move it.

During the course of my interaction with Mr. Hinrichsen he said that those people that that car belonged to, um -- I don't remember the specifics, but something along the lines of they're felons, they're, you know, essentially bad people that cause problems in the neighborhood all the time, and he wanted that car moved. It was at the time legally parked. The property that was in question doesn't even have a driveway or anything like that, so it was -- you know, it was kind of a hard situation to resolve to, you know, telling someone to park a legally-parked vehicle or, I'm sorry, move a legally-parked vehicle, so when I contacted those people, they spoke with me about Mr. Hinrichsen and said that he had -- has been continually bothering them with regards to --

MS. HUDDLESTON: I'm gonna object on hearsay again, Your Honor.

THE COURT: Sustained.

Q. (BY MS. McGOVERN): And my question to you, and I appreciate the specific instance, is that the only call by Mr. Hinrichsen to law enforcement in relation to the neighborhood?

A. OFFICER DUNHAM: No.

Id. 191:8-192:16. Only the last sentence of Officer Dunham's lengthy response is arguably hearsay. While she objected (and the objection was sustained), counsel for

Hinrichsen did not at that time move the Court to strike that last portion of Officer Dunham's answer. This Court's review of the rest of the trial transcript shows that at no time did counsel for Hinrichsen move to strike that last portion of Officer Dunham's answer.

So, even if this Court were to be able to reach an issue not brief by appellant (it can't), the only hearsay portion of Officer Dunham's response was "...so when I contacted those people, they spoke with me about Mr. Hinrichsen and said that he had—has been continually bothering them with regards to..." *Id.* 192:5-8.

Given the actual standard this Court must apply to Judge Caldwell's evidentiary ruling, the abuse of discretion standard, this Court simply cannot find that Judge Caldwell abused his discretion. Certainly, there is no clear showing of abuse of discretion in the portion of the trial counsel for Hinrichsen claims Judge Caldwell committed error. That is so because there is simply no hearsay in the portion of the trial for which counsel for Hinrichsen claims Judge Caldwell committed judicial error. And even if this Court on appeal could reach the end of Officer Dunham's response (it cannot), there is still no clear showing of abuse of discretion. This Court finds Judge Caldwell certainly was aware that evidentiary rulings were committed to his sound discretion, this Court finds Judge Caldwell could not have felt he was acting beyond the bounds of that discretion, and this Court finds Judge Caldwell made his rulings by exercising that discretion. *Hoover*, 138 Idaho at 419, 64 P.3d at 345, citing *Smith*, 117 Idaho at 232, 786 P.2d at 1134. Beyond a reasonable doubt, the jury's verdict of guilt would not have differed with the exclusion of any hearsay evidence. *Hoover*, 138 Idaho at 421, 64 P.3d at 347, citing *State v. Velasquez-Delacruz*, 125 Idaho 320, 323, 870 P.2d 673, 676 (Ct.App.1994). The verdict was for assault, and the statement that Hinrichsen, "has been continually bothering them with regards to...", could not have affected the jury's verdict for

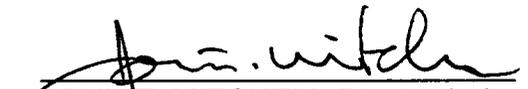
that charge.

IV. CONCLUSION AND ORDER.

Due to the narrow issue on appeal as a result of the brief on appeal, this appeal lacked any legitimate basis from its inception. Public resources have been plowed into an activity that was at all times, futile. There was no hearsay called for in the question by counsel for the State of Idaho and there was no hearsay in the response given in the portion of the trial specified by counsel for Hinrichsen in her Brief Supporting Appeal. Even if this Court could look beyond that limited portion of the trial, Judge Caldwell did not abuse his discretion and it is impossible that the jury's verdict of guilt would have been different had any hearsay evidence not come in.

IT IS HEREBY ORDERED that no appealable issue has been stated, and even if this Court looked beyond the issue brief on appeal, Judge Caldwell committed no error, he acted at all times within the bounds of his discretion, and a different jury verdict would not have occurred.

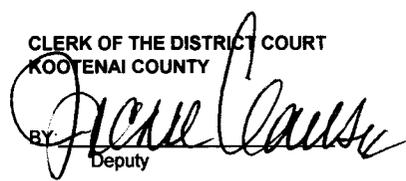
DATED this 12th day of July, 2018


JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 12 day of July, 2018 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Nichole J. Huddleston *pd fax@kc90*
Prosecuting Attorney - Eileen McGovern, Dep CDA
City Attorney *Fax 769-2326*
#6487
Honorable Robert Caldwell
I. O.

CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY
BY 
Deputy