State v. Hildreth, Docket No. 40936

On September 20, 2011, two officers on patrol discovered an animal foot trap near an ATV trail. As the officers continued searching the area, they found a site set up with a snare. Further down the trail, the officers found another snare setup, a large white block of salt, and a large, dead black bear. A trail camera was located near the snare site, containing a number of pictures of Nolan B. Hildreth setting the snare and carrying a rifle. As they continued to patrol the area, the officers found other similarly constructed snare sites, including one with a second dead black bear, which they believed had only been dead for two days. The fur around the bear's neck was damaged, indicating that it had been caught in a snare, although the snare was no longer around the bear's neck. This bear, which is the one in question on appeal, had a bullet wound in its head. Based on this evidence, Hildreth was charged with five counts of unlawfully taking wildlife and two counts of unlawful use of bait for taking big game animals. At the conclusion of a preliminary hearing, one count of unlawfully taking wildlife was dismissed. At trial before a jury, Hildreth was found guilty of two counts of unlawfully taking wildlife and two counts of unlawfully using bait. The jury acquitted Hildreth of two counts of unlawfully taking wildlife.

On appeal, Hildreth argues there was insufficient evidence to support the jury's finding of guilt.

IN THE SUPREME COURT, OF THE STATE OF IDAHO

STATE OF IDAHO,

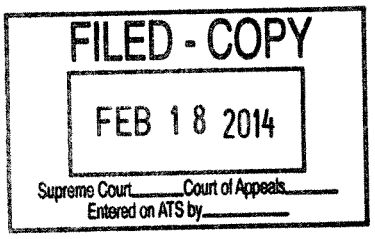
Plaintiff-Respondent,

v.

NOLAN B. HILDRETH,

Defendant-Appellant.

Idaho County No. CR-2012-0051637
Supreme Court No. 40936



BRIEF OF APPELLANT

On Appeal from the District Court of the Second Judicial District of the State of Idaho, in and for the County of Idaho

The Honorable Michael J. Griffin, District Judge, Presiding

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STATEMENT OF THE CASE

A. Nature of the Case.

Following a jury trial, Nolan Hildreth was convicted of two counts of misdemeanor unlawful use of bait for taking a big game animal and two counts of unlawful taking of wildlife. Prior to trial and even after the jury verdict, all parties believed that Mr. Hildreth would have to be convicted of three counts of unlawful taking of a black bear in order for the third count to become a felony. At the beginning of the sentencing hearing on what the parties believed to be four misdemeanors, the district court concluded that Mr. Hildreth's conviction on Count VI, the second charge of unlawful taking of a black bear, was a felony offense. On appeal, Mr. Hildreth contends that the State failed to offer sufficient evidence to prove beyond a reasonable doubt that Mr. Hildreth committed Count VI, the unlawful taking of a black bear on or about September 19, 2011.

B. Statement of the Facts and Course of Proceedings.

In March of 2012, the State alleged in a Complaint that Mr. Hildreth committed seven criminal offenses in 2011: (1) misdemeanor unlawful taking of wildlife on or about June 22, 2011; (2) misdemeanor unlawful taking of wildlife on or about June 24, 2011; (3) misdemeanor unlawful use of bait for taking big game animals on or about June 24, 2011; (4) felony unlawful taking of wildlife whose combined reimbursement value exceeded $1,000.00 by taking a bear on June 29, 2011; (5) felony unlawfully taking of wildlife whose combined reimbursement value exceeded $1,000.00 by taking a bear on September 17, 2011; (6) misdemeanor unlawful use of

bait for taking big game animals; (7) felony taking of wildlife whose combined reimbursement value exceeded $1,000.00 by taking a bear on September 19, 2011. (R., pp.9-12.) The case proceeded to preliminary hearing and Mr. Hildreth was bound over on two of the three felony charges, with Count IV, related to the allegation on June 29, 2011, being dismissed. (R., pp.17-24.)

The State then filed an Information charging Mr. Hildreth with (1) misdemeanor unlawful taking of wildlife on or about June 22, 2011; (2) misdemeanor unlawful taking of wildlife on or about June 24, 2011; (3) misdemeanor unlawful use of bait for taking big game animals on or about June 24, 2011; (4) felony unlawfully taking of wildlife whose combined reimbursement value exceeded $1,000.00 by taking a bear on September 17, 2011; (5) misdemeanor unlawful use of bait for taking big game animals; (6) felony taking of wildlife whose combined reimbursement value exceeded $1,000.00 by taking a bear on September 19, 2011. (R., pp.25-27.) Prior to trial, the State asserted that Mr. Hildreth had to be convicted of two counts of misdemeanor taking of a black bear within the same year and the third misdemeanor conviction would become a felony. (Tr., Vol. 1, p.30, Ls.16-19.)

Mr. Hildreth proceeded to trial and was acquitted of Counts I and II, but convicted of Counts III through VI. (R., pp.84-85.) After the district court read the verdict, the following colloquy occurred:

District Court:	My count is that means that all these ones that they've been found guilty are now misdemeanors. Is that - - anybody have any dispute with that?
Prosecutor	I concur.

Defense Counsel: That's what I understand, Your Honor.

(Tr., Vol. III, p.143, Ls.8-13.) The district court continued the case for a sentencing hearing after the prosecutor objected to immediately proceeding to sentencing and requested additional time to prepare. (Tr., Vol. III, p.144, Ls.12-19.) Defense counsel for Mr. Hildreth then filed a Motion for Judgment of Acquittal asserting that the evidence was insufficient to find Mr. Hildreth guilty of Count III, using bait for taking a big game animal on June 24, 2011, where the jury acquitted him of the unlawful taking of wildlife on June 24, 2011. (R., p.86.) Additionally, defense counsel argued that "the evidence to Count VI was insufficient to sustain a connection that Nolan Hildreth killed the bear on September 19, 2011." (R., p.87.)

At the sentencing hearing on October 25, 2012, the district court reversed its initial conclusion that Mr. Hildreth had only been convicted of misdemeanors:

> [W]hen we got done with the jury trial, I ran out and looked at the Fish and Game statutes, which, like I say, I hadn't looked at in five years, but, anyway, and came back in and through that because of the way the verdict came out that we were talking about misdemeanors. That's because the statute says that the reimbursable damage for a bear is 400 bucks so 400 and 400 is 800 as opposed to over a thousand. But there's another part of the statute that says that if they're within 12 months or within a year it's 400 and 800, so then you're talking about 1200, which is over a thousand. So I think I was wrong. In fact, I believe I'm wrong that it is, in fact, count six would actually be a felony instead of a misdemeanor. That puts a different twist on things because obviously if it's a felony then we need a presentence investigation before we can commence with sentencing.

(Tr., Vol. III, p.152, L.14 – p.153, L.3.) The district court heard argument on Mr. Hildreth's Motion for Judgment of Acquittal and continued the sentencing hearing. (Tr., Vol. III, p.156, L.1 – p.161, L.2.)

On November 8, 2012, the district court issued a Memorandum Opinion and Order Denying Judgment of Acquittal. (R., pp.96-102.) With regard to Mr. Hildreth's assertion that there was insufficient evidence for Count VI, the district court concluded:

> The defendant's wife testified that she killed one of the bears (Count VI), testified that she hunted with archery equipment, and testified that she carried a firearm when out for one of her frequent walks in the forest, but the jury was not bound to accept her testimony as credible. There was evidence (pictures) that the defendant set the snares and that the defendant carried a rifle near a snare.

(R., pp.97-98.) Mr. Hildreth then filed a Motion for a New Trial, which was denied by the district court. (R., pp.104, 106-107; Tr., Vol. II, p.331, L.13 – p.337, L.15.)

On the three misdemeanors, the district court imposed court costs, restitution, a fine, and a three-year loss of hunting privileges. (R., pp.108-109.) On Count VI, the felony charge of unlawful taking of a black bear, the district court imposed 90 days of jail time, all suspended, court costs, restitution, a fine, and a five-year loss of hunting privileges. (R., pp.109-110.) Mr. Hildreth filed a timely Notice of Appeal from the district court's Judgment of Conviction.

ISSUE PRESENTED ON APPEAL

Did the State offer sufficient evidence for a jury to find beyond a reasonable doubt that Mr. Hildreth unlawfully killed a black bear on or about September 19, 2011?

ARGUMENT

A. Introduction.

The evidence introduced at trial showed that Stacey Connerly was hiking alone with she came upon the bear in question. As the bear lunged toward Ms. Connerly, she shot and killed the bear. In Count VI, Mr. Hildreth was charged and convicted of unlawfully killing this black bear despite Ms. Connerly's admission. There is no evidence in the record to show that anyone other than Ms. Connerly was responsible for shooting and killing the black bear referenced in Count VI.

B. The State Failed to Prove Beyond a Reasonable Doubt that Mr. Hildreth Unlawfully Killed a Black Bear on or About September 19, 2011.

Mr. Hildreth asserts that there was insufficient evidence to convict him of felony unlawful taking of a black bear on or about September 19, 2011. Specifically, the evidence was insufficient to prove beyond a reasonable doubt that Mr. Hildreth killed the bear identified in Count VI, where the undisputed evidence offered to the jury was that Stacey Connerly shot and killed the black bear in question.

An accused's right to demand proof of the State's case beyond a reasonable doubt is of "surpassing importance." *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000). The right to demand proof beyond all reasonable doubt is a bedrock constitutional principle. *See, In re Winship*, 397 U.S. 358 (1970) ("Although virtually unanimous adherence to the reasonable-doubt standard in common-law jurisdictions may not conclusively establish it is as a requirement of due process, such adherence does 'reflect a profound judgment about the way in which law should be enforced and justice administered.'" (*quoting, Duncan v. Louisiana*, 391 U.S. 145, 155

(1968)). "Simply stated, the fact that defendant is 'probably' guilty does not equate with guilt beyond a reasonable doubt." *People v. Ehlert*, 811 N.E.2d 620, 631 (Ill. 2004).

In *State v. Crawford*, 130 Idaho 592 (Ct. App. 1997), it was stated that:

> [a]ppellate review of the sufficiency of the evidence is limited in scope. A judgment of conviction, entered upon a jury verdict, will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt . . . [w]e will not substitute our view for that of the jury as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence . . . [m]oreover, we will consider the evidence in the light most favorable to the prosecution.

Id. at 594-595 (citations omitted).

In *State v. Mitchell*, 130 Idaho 134, 937 P.2d 960 (Ct. App. 1997), it was noted that, "[e]vidence is regarded as substantial if a reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact has been proved." *Id.* at 135, 937 P.2d at 961. "The challenge to the sufficiency of the evidence is not based on a technical or subtle defect. The defense simply says that there was not enough admissible evidence to convict the defendant." *State v. Faught*, 127 Idaho 873, 877, 908 P.2d 566, 570 (Ct. App. 1995).

Count VI of the State's Information alleges:

> THAT on or about September 19, 2011, in Idaho County, State of Idaho the said Defendant NOLAN B. HILDRETH, did commit the crime of UNLAWFUL TAKING OF WILDLIFE, a felony, as follows:
>
> That the Defendant, NOLAN B. HILDRETH, on or about the 19th day of September, 2011, in the County of Idaho, State of Idaho, did then and there unlawfully take wildlife, to wit: a black bear, by killing such bear, a big game animal, during a closed season by an unlawful method. By taking said bear, the Defendant unlawfully killed a combination of

numbers or species of wildlife within a twelve (12) month period which has a single or combined reimbursement damage assessment of more than one thousand dollars ($1,000.00). All of which acts constitute a felony in violation of Idaho Code §36-1101(a) and 36-1401(c)(3).

(R., p.27.) On Count VI, the jury was instructed:

> In order for the defendant to be guilty of Unlawfully Taking of Wildlife on or about September 19, 2011, the state must prove beyond a reasonable doubt:
>
> 1. on or about September 19, 2011,
>
> 2. in the state of Idaho,
>
> 3. Nolan B. Hildreth killed a black bear, and
>
> 4. the killing of the black bear was during a closed season for the taking of black bears, or the killing was done using an unlawful method.

(Jury Instruction No. 14). The jury was further instructed that:

> You are advised that during 2011 a fish and game regulation was in effect that provided: black bears may be taken in Idaho Fish and Game Unit 15 from April 15, 2011, through May 31, 2011, and from August 30, 2011, through October 31, 2011, and that black bears may be taken in Idaho Fish and Game Unit 16 from April 15, 2011 through June 30, 2011, and from August 30, 2011through October 30, 2011.
>
> You are further advised that during 2011 a fish and game regulation was in effect that provided: no person may trap, snare or otherwise capture or hold black bears.

(Jury Instruction No. 21).

According to the Information and evidence at trial, it is undisputed that the bear referenced in Charge VI was taken on or about the 19th of September, 2011, when the season for black bear hunting was open. As such, the portion of the Jury Instruction 14 alleging the killing

of a black bear during a closed season is inapplicable to Charge VI. Rather, in order to convict Mr. Hildreth of Count VI, the State was required to prove, and the jury was required to find that Nolan Hildreth killed the bear by an unlawful method on or about September 19, 2011.

The State failed to offer any evidence that the bear referred to in Count VI, which is pictured in Exhibit 39, was killed by Mr. Hildreth. Rather, the only evidence the jury heard relating to that bear was that it was *not* killed by Mr. Hildreth, but was shot and killed by Stacey Connerly, Mr. Hildreth's wife, when Mr. Hildreth was not present. On September 20, 2011 Fish and Game Officers Jim Roll and Mark Hill were out on patrol in Unit 15 when they discovered what Officer Roll referred to as Bird Bait Site. (Tr., Vol. I, p.48, L.21 – p.50, L.3, p.94, Ls.13-24.) The Bird Bait Site is located on public land in an area frequented by hikers and people on ATVs. (Tr., Vol. I, p.236, Ls.2-9, p.271, Ls.11-16.) Officer Roll testified that he found a dead bear approximately twenty feet from a snare site in the area. (Tr., Vol. I, p.95, Ls.13-20.) Both Officer Roll and Officer Hill testified that the bear had been shot in the head. (Tr., Vol. I, p.100, L.13 – p.101, L.7; Vol. II, p.223, L.25 – p.224, L.224.) Officers Roll and Hill offered their opinions that the bear had been in a snare based upon broken or deformed hair around the bear's neck, but Officer Hill acknowledged that the bear was not in a snare when found. (Tr., Vol. I, p.100, L.20 – p.101, L.3; Vol II, p.223, Ls.11-23, p.233, Ls.14-15.) The bear had been dead for no longer than a couple of days. (Tr., Vol. I, p.224, Ls.11-18.)

Stacey Connerly testified that one of her main hobbies was taking pictures of wildlife through the use of tree cameras and sometimes her handheld camera. (Tr., Vol. II, p.255, L.20 – p.256, L.21.) Ms. Connerly also spends a lot of time hiking, often by herself, in the mountains

around her cabin. (Tr., Vol. II, p.260, L.25 – p.261, L.15.) Ms. Connerly told the jury that she has asked people not put out snares around her cabin for fear that her dog would get caught up in one, but stated she has come across snares on her hikes. (Tr., Vol. II, p.271, L.17 – p.272, L.9.) Ms. Connerly testified that, because of the insistence of Mr. Hildreth, she always carries a firearm when hiking alone because of the dangerous animals, including bears, wolves, and mountain lions, in the mountains where she likes to hike. (Tr., Vol. II, p.272, L.10 – p.273, L.1.)

On one particular occasion, Ms. Connerly testified that she was out hiking down a trail when the bear pictured in Exhibit 39, and charged in Count VI, "lunged at me and snapped its jaws and scared the life out of me." (Tr., Vol. II, p.292, Ls.3-14.) Ms. Connerly screamed and shot the bear, ultimately killing it. (Tr., Vol. II, p.292, Ls.14-21.) Ms. Connerly later discovered that the bear had been caught in a snare, but did not know it was in a snare at the time she shot it. (Tr., Vol. II, p.292, Ls.15-23.) Ms. Connerly left the bear, but when she returned later, the bear's head had been removed. (Tr., Vol. II, p.293, L.10 – p.294, L.12.) Ms. Connerly testified that she believes Mr. Hildreth returned to the site at some point of time and gathered the snare, which was later found at their cabin. (Tr., Vol. II, p.293, L.22 – p.294, L.4.)

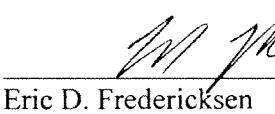
It is apparent that, even when the evidence is viewed in a light most favorable to the prosecutor, the State failed to offer *any* evidence, much less substantial evidence, that Mr. Hildreth killed the bear identified in Charge VI of the Information. Accordingly, in light of the foregoing, the State failed to prove beyond a reasonable doubt that Mr. Hildreth unlawfully killed a black bear on or about September 19, 2011. As such, this Court should vacate Mr. Hildreth's conviction for Count VI.

CONCLUSION

Mr. Hildreth respectfully requests that this Court vacate his conviction for Count VI for felony unlawful taking of wildlife and remand for further proceedings as necessary.

RESPECTFULLY SUBMITTED this 17th day of February, 2014.

BRADY LAW, CHARTERED



Eric D. Fredericksen
Attorneys for Defendant-Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of February, 2014, I caused two (2) true and correct copies of the foregoing BRIEF OF APPELLANT to be served upon the following person(s) in the following manner:

Kenneth K. Jorgensen Idaho Attorney General's Office Chief, Appellate Unit P.O. Box 83720 Boise, Idaho 83720-0010	[X] U.S. Mail, Postage Prepaid [ ] Express Mail [ ] Hand Delivery [ ] Facsimile Transmission [ ] Federal Express [ ] Electronic Mail

Eric D. Fredericksen

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, vs. NOLAN B. HILDRETH, Defendant-Appellant.	)	No. 40936 Idaho Co. Case No. CR-2012-51637

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

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STATEMENT OF THE CASE

Nature Of The Case

Nolan B. Hildreth appeals from the judgment entered upon the jury verdicts finding him guilty of two counts of felony unlawfully taking wildlife and two counts of unlawful use of bait for taking big game animals. Hildreth claims there was insufficient evidence to support his conviction on one of the felony counts of unlawfully taking wildlife.

Statement Of Facts And Course Of Proceedings

The state filed a criminal complaint charging Hildreth with five counts of unlawfully taking wildlife and two counts of unlawful use of bait for taking big game animals. (R., pp.9-12.) At the conclusion of the preliminary hearing, the court dismissed one of the counts of unlawfully taking wildlife, but but bound Hildreth over on the remaining counts. (R., pp.20, 24-27.) Hildreth pled not guilty and proceeded to trial. (R., pp.29, 61-76.)

A jury convicted Hildreth of two of the counts of unlawfully taking wildlife (Counts IV and VI) and the two counts of unlawfully using bait (Counts III and V), but acquitted him of the two other counts of unlawfully taking wildlife (Counts I and II). (R., pp.76, 84-85.) Hildreth filed a motion for judgment of acquittal, which the district court denied. (R., pp.86-87, 96-102.) Hildreth then filed a motion for a new trial, which the court also denied. (R., pp.104, 106.) The court imposed fines and costs on all misdemeanor counts and, on the felony count, the court imposed a 90-day jail sentence but suspended the sentence. (R., pp.108-109.) The court also "revoked and suspended" Hildreth's "hunting,

fishing, and trapping privileges" for five years. (R., p.109.) Hildreth filed a timely notice of appeal from the judgment of conviction. (R., pp.112-114.)

ISSUE

Hildreth states the issue on appeal as:

> Did the State offer sufficient evidence for a jury to find beyond a reasonable doubt that Mr. Hildreth unlawfully killed a black bear on or about September 19, 2011?

(Brief of Appellant, p.4.)

The state rephrases the issue on appeal as:

Did the state present sufficient evidence from which the jury could conclude, beyond a reasonable doubt, that Hildreth was guilty of unlawfully killing a black bear as alleged in Count VI?

ARGUMENT

Hildreth Has Failed To Show The Evidence Was Not Sufficient To Support His Conviction For Unlawfully Taking Wildlife As Alleged In Count VI

A. Introduction

Hildreth challenges the sufficiency of the evidence supporting his conviction on Count VI – unlawfully taking wildlife on or about September 19, 2011. (Brief of Appellant, pp.5-9.) Specifically, he contends the state failed to present sufficient evidence from which the jury could find beyond a reasonable doubt that he was guilty of the charged offense because his wife testified she killed the bear that was the subject of Count VI. (Brief of Appellant, p.5.) Hildreth's argument fails. Application of the correct legal standards to the evidence presented shows the state presented sufficient evidence from which the jury could find, beyond a reasonable doubt, that Hildreth was guilty of unlawfully killing a bear as alleged in Count VI.

B. Standard Of Review

An appellate court will not set aside a judgment of conviction entered upon a jury verdict if there is substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992); State v. Hart, 112 Idaho 759, 761, 735 P.2d 1070, 1072 (Ct. App. 1987). In conducting this review the appellate court will not substitute its view for that of the jury as to the credibility of witnesses, the weight to be given to the testimony, or the reasonable inferences to be drawn from the evidence. State v. Knutson, 121

Idaho 101, 822 P.2d 998 (Ct. App. 1991); Hart, 112 Idaho at 761, 735 P.2d at 1072. Moreover, the facts, and inferences to be drawn from those facts, are construed in favor of upholding the jury's verdict. State v. Hughes, 130 Idaho 698, 701, 946 P.2d 1338, 1341 (Ct. App. 1997); Hart, 112 Idaho at 761, 735 P.2d at 1072.

C. The State Presented Sufficient Evidence To Prove Hildreth Unlawfully Killed A Black Bear On Or About September 19, 2011

Count VI of the Information alleged, in relevant part, that, on or about September 19, 2011, Hildreth committed the offense of unlawfully taking wildlife by killing a black bear "during a closed season by an unlawful method." In support of this charge, the state presented testimony from James Roll, a Senior Conservation Officer for the Idaho Department of Fish and Game. (See generally Tr., Vol. 1, pp.47-128.) Officer Roll testified that, on September 20, 2011, while on ATV patrol in "Unit 15" of the Nez Perce National Forest, he discovered a leg hold trap that did not have identification to "denote ownership." (Tr., Vol. 1, p.47, L.9 – p.50, L.19.) From there, Officer Roll followed some ATV tracks down the ridge where he discovered a snare, also without identification. (Tr., Vol. 1, p.5, Ls.8-25, p.72, Ls.13-21; Exhibit 1.) Officer Roll explained that the snare is basically used to strangle an animal that gets caught in it. (Tr., Vol. 1, p.57, Ls.6-19.)

As Officer Roll continued walking down the trail, he found a clearing with some salt blocks and a second snare that also did not have any identification. (Tr., Vol. 1, p.61, Ls.9-20, p.71, L.22 – p.72, L.12.) Both snares had diverters

that were set up to channel animals through the trail into the snare. (Tr., Vol. 1, p.55, Ls.23-25, p.64, Ls.16-25, p.121, L.22 – p.122, L.16.) Officer Roll designated this site "big bear" because, just below the site, he found a "big dead bear." (Tr., Vol. 1, p.67, Ls.8-18.) The dead bear had cable marks around its neck, consistent with the cable at the big bear site; Officer Roll determined the bear had been dead for two to three days. (Tr., Vol. 1, p.68, L.19 – p.69, L.7.) The big bear site also had a trail camera mounted on a tree. (Tr., Vol. 1, p.74, Ls.19-25; Exhibit 6.) Officer Roll removed the trail camera as evidence. (Tr., Vol. 1, p.82, L.24 – p.83, L.6.)

After finding the big bear site, Officer Roll found what he identified as the "bird bait" site because there was a dead grouse placed there as bait. (Tr., Vol. 1, p.94, Ls.13-24, p.97, Ls.1-4.) This site also had diverter branches and a snare in the center of the trail with a dead bear located 20 feet to the side. (Tr., Vol. 1, p.95, Ls.13-20.) There was evidence that the dead bear at this location was caught in the snare, but not held there. (Tr., Vol. 1, p.100, L.21 – p.101, L.3.) This particular bear also had a bullet hole in its head. (Tr., Vol. 1, p.101, Ls.4-7; Exhibit 39.) Officer Roll believed the bird bait bear "had only been dead for a couple of days." (Tr., Vol. 1, p.101, Ls.10-11.)

Based on digital images on the trail camera Officer Roll found at the big bear site, officers obtained a search warrant for Hildreth's home. (Tr., Vol. 1, p.101, L.24 – p.102, L.16.) That search was conducted on September 22, 2011. (Tr., Vol. 1, p.104, Ls.6-10.) During the search, officers found a box of snares, a used snare with black bear hair on it, and blocks of salt that were like the ones

they discovered at the snare sites. (Tr., Vol. 1, p.104, L.2 – p.108, L.25, p.113, L.5 – p.115, L.14, p.118, L.18 – p.119, L.5; Exhibit 21.) They also discovered jugs of fryer grease, which had the same odor as "oily goo" found at the snare sites. (Tr., Vol. 1, p.109, L.18 – p.110, L.23; Exhibit 25.)

On September 24, 2011, four days after discovering the first snare sites and two days after searching Hildreth's home, Officer Roll found a third site with evidence indicating there had been snares present. (Tr., Vol. 1, p.85, Ls.15-23, p.87, Ls.16-25.) This site was referred to as "bear pit" because there "were some dead bear remains" on it. (Tr., Vol. 1, p.86, L.19 – p.87, L.1.)

All the snare sites Officer Roll found had the same set-up including the same snares and "some kind of oily goo," which is an "attractant," and is inconsistent with snares used to trap wolves or coyotes because trappers do not put a scent on snares if they are using them for that purpose. (Tr., Vol. 1, p.73, Ls.8-15, p.73, L.25 – p.74, L.18, p.88, Ls.1-17, p.97, Ls.5-12, p.98, Ls.11-19, p.110, Ls.4-23.) Officer Roll also testified that the salt located at the snare sites was not consistent with salt to attract animals solely for the purpose of taking pictures, but was instead consistent with attracting a "prey base that the bear would come to." (Tr., Vol. 1, p.120, L.21 – p.121, L.7, p.127, Ls.8-19.)

Images taken from the trail camera show Hildreth building a snare at the big bear site on September 18, 2011. (Tr., Vol. 1, p.139, L.10 – p.143, L.13; Exhibits 10-12.) Other images show this same location, with a salt block, a snare, and Hildreth in June 2011 and August 2011. (Tr., Vol. 1, p.145, L.21 – p.151, L.11; Exhibits 14, 16, 17, 18, 19.) Additional photographs found on

Hildreth's computer include: (1) one taken on September 17, 2011, that shows a black bear hanging by its neck from a snare at the big bear site (Tr., Vol. 1, p.152, L.24 – p.155, L.14 ; Exhibit 9); (2) one dated June 22, 2011, that shows a dead bear with a cable snare from the bird bait site (Tr., Vol. 1, p.155, L.23 – p.157, L.7; Exhibit 20); (3) one from the bear pit with two bears, that were alive at the time, and logs stacked over bear bait (Tr., Vol. 1, p.157, L.8 – p.160, L.20; Exhibit 29); (4) one dated June 24, 2011, from the bear pit, showing a bucket in the bait pail and "what looks to be a snare loop" (Tr., Vol. 1, p.160, L.21 – p.161, L.21; Exhibit 30); (5) another from the bear pit, dated June 23, 2011, depicting a bait bucket and Hildreth holding a rifle (Tr., Vol. 1, p.162, L.8 – p.163, L.4; Exhibit 31); and (6) four more dated June 24, 2011, two of which show a live bear at the bear pit and the snare, and two that show a dead bear – one with Hildreth's hat positioned as a prop on the bear's paws and one with the dead bear and Hildreth's dog (Tr., Vol. 1, p.166, L.18 – p.174, L.15; Exhibits 32, 33, 34, 35, 58).

Although Hildreth purchased a bear tag in 2011, he did not "check in a bear" for 2011 even though he was required to do so if he killed a bear. (Tr., Vol. 2, p.225, L.11 – p.226, L.5.) Hildreth also had a trapping license in 2011, but he did not purchase it until December 14, 2011, approximately three months after the snare sites and dead bears were found by Officer Roll. (Tr., Vol. 2, p.227, Ls.1-5.) Regardless, "[t]here is no bear trapping season in the State of Idaho." (Tr., Vol. 2, p.229, Ls.7-8.) And, a trapper must report "incidental catches" to Fish and Game if the trapper catches an unintended species; Hildreth made no such report. (Tr., Vol. 2, p.227, Ls.14-25.)

The foregoing evidence, viewed in the light most favorable to the prosecution, shows it was more than sufficient to find Hildreth guilty of unlawfully killing a bear on or about September 19, 2011, *i.e.*, the bear found at the bird bait site. Hildreth claims otherwise, relying solely on his wife's testimony that she shot the bear when she was out "scouting" and encountered the bear trapped in the snare. (Appellant's Brief, pp.8-9; Tr., Vol. 2, p.292, Ls.3-18.) According to Hildreth's wife, the "bear lunged at [her] and snapped its jaws and scared the life out of [her]" so she "shot it," not knowing it was caught in the snare. (Tr., Vol. 2, p.292, Ls.13-17.) Hildreth's wife further testified she put a tag on the bear, but when she came back later to take the head so she could check it in with Fish and Game, the head was already missing, so she did not bother reporting it at all. (Tr., Vol. 2, p.292, L.25 – p.293, L.3, p.294, Ls.7-16, p.296, L.22 – p.297, L.8, p.307, L.18 – p.308, L.12.) However, Hildreth removed the snare and brought it back to the cabin, which was the same used snare discovered during execution of the search warrant. (Tr., Vol. 2, p.293, L.22 – p.294, L.6.)

Hildreth's reliance on this wife's testimony to support his claim that the evidence was insufficient to convict him of Count VI fails. "It is within the province of the jury (in a criminal case) to believe or to disbelieve the testimony of any witness, or any portion of such testimony." State v. Olin, 103 Idaho 391, 398, 648 P.2d 203, 210 (1982) (quotations and citation omitted). As noted by the district court in denying Hildreth's post-verdict motion for a judgment of acquittal, "the jury was not bound to accept her testimony as credible." (R., p.98.) There was good reason to reject Hildreth's wife's testimony given the

weight of the evidence showing Hildreth's involvement in unlawfully snaring bears.

"This Court will defer to the jury's determinations of the credibility of witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence." State v. Hoffman, 137 Idaho 897, 902, 55 P.3d 890, 895 (Ct. App. 2002) (citations omitted). That the jury rejected Hildreth's defense to Count VI does not show the evidence was insufficient to support the jury's verdict. See id. ("This evidence, when viewed in the light most favorable to the prosecution, provided the jury a reasonable basis to reject Hoffman's 'attempted suicide' defense and to conclude that he intentionally used the weapon to shoot Montoya."); see also Olin, 103 Idaho at 398, 648 P.2d at 210 (1982) (jury entitled to reject claim of self-defense); State v. Peite, 122 Idaho 809, 823, 839 P.2d 1223, 1237 (Ct. App. 1992) (rejecting defendant's claim that evidence was insufficient because he did not think victim's testimony was credible); State v. Wolfe, 107 Idaho 676, 679, 691 P.2d 1291, 1294 (Ct. App. 1984) ("The jury was entitled to reject the defense counsel's contention that Wolfe was too intoxicated to form the intent to kill or to premeditate the killing."). Hildreth's sufficiency of the evidence claim therefore fails.

CONCLUSION

The state respectfully requests that this Court affirm the judgment entered upon the jury verdicts finding Hildreth guilty of two counts of unlawfully taking wildlife and two counts of unlawful use of bait for taking big game animals.

DATED this 13th day of May, 2014.

JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 13th day of May, 2014, served two true and correct copies of the attached RESPONDENT'S BRIEF by placing the copies in the United States mail, postage prepaid, addressed to:

ERIC D. FREDERICKSEN
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JML/pm