

## **SUMMARY STATEMENT**

*State v. Herrera*, Docket No. 41494

Joseph Herrera was convicted of second-degree murder by a Benewah County jury for killing his girlfriend, Stephanie Comack. Herrera pointed a gun at Comack's head and pulled the trigger, but claimed he was unaware the gun was loaded and had no intention of causing her harm. Herrera challenged the conviction on two grounds: (1) that one who believes a gun is unloaded cannot have the malice required for a second-degree murder conviction, and (2) that the prosecutor inappropriately elicited testimony that was inadmissible and highly prejudicial. The Supreme Court ruled against Herrera on the first issue and in his favor on the second. The Court vacated the conviction and remanded the case for further proceedings, based on its conclusion that the prosecutor's elicitation of inadmissible and prejudicial evidence had deprived Herrera of a fair trial.