

1-17-2013

## State v. Bettwieser Respondent's Brief Dckt. 39106

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

|                       |   |                  |
|-----------------------|---|------------------|
| STATE OF IDAHO,       | ) |                  |
|                       | ) | No. 39106        |
| Plaintiff-Respondent, | ) |                  |
|                       | ) | Ada Co. Case No. |
| vs.                   | ) | CR-2010-30032    |
|                       | ) |                  |
| MARTIN BETTWIESER,    | ) |                  |
|                       | ) |                  |
| Defendant-Appellant.  | ) |                  |

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**BRIEF OF RESPONDENT**

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

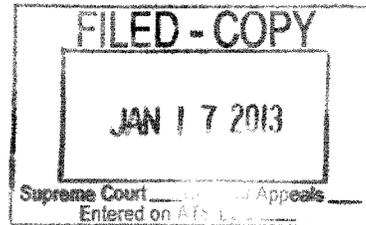
**HONORABLE L. KEVIN SWAIN, Magistrate Judge  
HONORABLE STICKLEN, District Judge**

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**ATTORNEYS FOR  
PLAINTIFF-RESPONDENT**

**PRO SE  
DEFENDANT-APPELLANT**

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## STATEMENT OF THE CASE

### Nature Of The Case

Martin H. Bettwieser appeals from the district court's dismissal of his appeal from his conviction in the magistrate court for driving without a seatbelt.

### Statement Of The Facts And Course Of The Proceedings

An officer cited Bettwieser for failing to wear a seatbelt. (R., p.4.) Bettwieser moved to dismiss the citation, asserting that he was a mail carrier and therefore exempt under Idaho Code § 49-673. (R., pp.6-11.) Following a bench trial, the magistrate found Bettwieser guilty. (R., pp.19-20.) Bettwieser filed a motion for new trial (R., pp.21-24), which was denied by the magistrate court (R., pp.21, 24). Bettwieser then filed a timely notice of appeal to the district court. (R., pp.25-26.)

On February 11, 2011, the district court entered an order which required Bettwieser to order and pay for a transcript of the November 3, 2010 bench trial in the magistrate court. (R., pp.29-30.) Bettwieser moved to amend the order so as not to require the transcript. (R., pp.32-33.) The district court entered an order conditionally dismissing Bettwieser's appeal unless he paid for the transcript of the bench trial within 14 days. (R., p.34.) Bettwieser moved the court to vacate its order conditionally dismissing his appeal. (R., pp.36-38.) The district court denied Bettwieser's motion to amend, but granted the motion to vacate the order conditionally dismissing his appeal. (R., pp.39-40.) The district court explained that, after reviewing the record, it deemed a transcript of the November 3, 2010 bench trial necessary to resolve Bettwieser's appeal and again ordered him to pay for the transcript within 14 days or his appeal would be dismissed. (R., p.40.) Bettwieser did not pay for a copy of the transcript, but instead

filed a motion to clarify and reconsider. (R., pp.42-43.) The district court denied the motion and dismissed the appeal. (R., p.45.) Bettwieser filed a motion to reconsider the dismissal of his appeal (R., pp.47-49), which was also denied by the district court (R., p.50).

Bettwieser filed a timely notice of appeal. (R., pp.52-53.)

## ISSUES

Bettwieser states the issues on appeal as:

- A. Was the citation properly issued and should the citation been [sic] dismissed before trial?
- B. Did Bettwieser, as a pro-se litigant receive equal access to the courts pursuant to the United States Constitution and/or was unjustly treated and denied that access and receive a proper pre-trial?
- C. Are the hand written [sic] orders by the Judges in the magistrates [sic] division considered legal and or proper orders?
- D. Does an appellant need a transcript in the District Court when the District Court is acting in an appellant [sic] capacity and he only raises issue of law and no fact to any proceeding that was recorded and should the District Court acting in an appellate capacity present the issues on appeal?
- E. Did the District Court abuse it's [sic] discretion in it's [sic] rulings acting in an appellant [sic] capacity?
- F. Does notification by phone and or answering machine or an acknowledgment letter of a completion of the clerks [sic] record constitute as "personal service" according to law?
- G. Is having a separate appeal record by the appeal clerk proper for due process in the appeal which is not part of the court appeal record?

(Appellant's brief, pp.3-4.)

The state rephrases the issue as:

Did the district court properly dismiss Bettwieser's appeal based on his failure to pay for a transcript of the proceedings in the magistrate court?

## ARGUMENT

### The District Court Properly Dismissed Bettwieser's Appeal Based On His Failure To Provide A Transcript Of The Proceedings In The Magistrate Court

#### A. Introduction

On appeal to this Court, Bettwieser argues issues relating to the actions of both the magistrate and district court. (See Appellant's brief, pp.4-9.) However, Bettwieser has appealed from the order of the district court dismissing his intermediate appeal. (R., pp.52-53.) The only issue raised by that order is whether the district court abused its discretion by dismissing Bettwieser's appeal for failure to provide a transcript of the proceedings in the magistrate court. Bettwieser has failed to establish an abuse of the district court's discretion.

#### B. Standard Of Review

Whether to sanction an appellant for failing to timely provide and pay for a transcript of the proceedings in the magistrate court is within the discretion of the district court. I.C.R. 54.13. Dismissal for noncompliance with the rules of appellate procedure is within the discretion of the appellate court and is reviewed for an abuse of that discretion. See McNett v. McNett, 95 Idaho 59, 60, 501 P.2d 1059, 1060 (1972).

#### C. The District Court Properly Dismissed Bettwieser's Appeal Based On His Failure To Provide A Transcript Of The Proceedings In The Magistrate Court

Idaho Criminal Rule 54.1, *et seq.*, governs the procedure for taking criminal appeals from the magistrate court to the district court. Rule 54.6(a) provides that, "[u]nless otherwise ordered by the district judge, a transcript shall be prepared as provided in Rule 54.7 and the appeal shall be heard as an appellate proceeding." I.C.R.

54.6(a). Rule 54.7 outlines the manner in which “the transcript shall be prepared.” In subsection (a), Rule 54.7 requires that, “[u]nless otherwise ordered by the district judge, the appellant shall pay the estimated fee for preparation of the transcript as determined by the transcriber within 14 days after the filing of the notice of appeal, and the appellant shall pay the balance of the fee for the transcript upon its completion.” I.C.R. 54.7(a).

Rule 54.13, which outlines the penalties for a party’s failure to comply with the procedural rules, provides in pertinent part:

Failure of a party to timely take any other step [besides timely filing the appeal] in the appellate process ... may be grounds only for such other action or sanction as the district court deems appropriate, which may include dismissal of the appeal.

I.C.R. 54.13.

Consistent with these rules, noting that it appeared “that a transcript of all the testimony of the original trial or hearing” was required to resolve the issues on appeal, the district court ordered Bettwieser to pay for the preparation of a transcript of the proceedings in the magistrate court within 14 days after filing the notice of appeal. (R., pp.29-30.) Bettwieser failed to pay for the transcript, instead filing a motion to amend the court’s order, asserting that “the issues on appeal were to be a matter of law only where no transcript was needed.” (R., p.32.) The district court entered an order conditionally dismissing Bettwieser’s appeal for failing to pay for the transcript, giving him an additional 14 days to comply with the court’s order. (R., p.34.) Bettwieser filed a motion to vacate the order conditionally dismissing his appeal, again asserting that a transcript was not needed. (R., pp.36-37.)

The district court denied Bettwieser’s motion to amend, but granted the motion to vacate. (R., p.39.) The court then explained that, “[a]lthough Bettwieser asserts that

the case involves issues of law only, the file and Bettwieser's motions indicate that some sort of proceeding was held at which certain motions were determined, but the clerk's record does not reveal the basis for those determinations." (Id.) Again finding that a transcript of the proceedings in the magistrate court was "necessary in order to ascertain exactly what happened" below, the court ordered Bettwieser to pay for the transcript and gave him an additional 14 days to comply, warning that "[f]ailure to pay the transcript fee within the time allowed will result in dismissal of this appeal without further notice." (R., p.40.) Ultimately, Bettwieser failed to pay for the preparation of the transcript, and the district court properly exercised its discretion and dismissed Bettwieser's appeal. (R., p.45.)

On appeal, Bettwieser argues that a transcript of the proceedings in the magistrate court was unnecessary because he "appealed the case to the District [Court] on issues of law." (Appellant's brief, p.7.) Idaho Criminal Rule 54.6(b)(1) provides that, when a *district judge* determines that the appeal can be heard as a question of law alone, a transcript will not be necessary and the appeal may be decided on the clerk's record. I.C.R. 54.6(b)(1). The rule, however, does not allow the appellant to make that determination. In this case, the district judge exercised its discretion and determined that a transcript was necessary to resolve Bettwieser's appeal. Bettwieser has failed to show an abuse of the district judge's discretion.

Bettwieser argues that he, as a mail carrier, is exempted from the seatbelt requirements of Idaho Code § 49-673. (Appellant's brief, pp.4-5.) Therefore, he argues, the magistrate erred by not dismissing his citation solely as a matter of law. (Id.) Bettwieser misunderstands the issue. Whether mail carriers are exempted,

generally, from the seatbelt requirements of Idaho Code § 49-673 may be a question of law. However, whether Bettwieser personally qualified as a mail carrier when he was cited for not wearing a seatbelt is a question of fact. The magistrate's findings of fact in this regard, and whether those findings are supported, are necessary to resolve any challenges Bettwieser may raise to his conviction for failing to wear a seatbelt. Therefore, the district court correctly concluded that a transcript of the proceedings in the magistrate court was necessary to resolve Bettwieser's appeal on the merits.

Moreover, even if Bettwieser's appeal could be heard as a pure question of law, a transcript would still be necessary in this case. The record reveals that, during the bench trial below, testimonial evidence and argument were presented, based on which the magistrate court made certain determinations. (See R., p.19.) However, as noted by the district court, "there is nothing in the file that sets forth the magistrate's reasoning" for those determinations. (R., p.50.) Therefore, as explained by the district court, a transcript of the proceedings in the magistrate court was necessary to review the magistrate's legal determinations.

Because Bettwieser failed to comply with the rules of appellate procedure by refusing to provide a transcript of the proceedings in the magistrate court, the district court was within its discretion to sanction him by dismissing his appeal. I.C.R. 54.13. Bettwieser has failed to show an abuse of the district court's discretion. The district court's order dismissing his appeal for failure to provide the necessary transcript should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order dismissing Bettwieser's appeal.

DATED this 17th day of January, 2013.

  
\_\_\_\_\_  
RUSSELL J. SPENCER  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of January, 2013, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

MARTIN BETTWIESER  
3862 Yorktown Way  
Boise, Idaho 83706

  
\_\_\_\_\_  
RUSSELL J. SPENCER  
Deputy Attorney General

RJS/pm