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State v. Schmierer Appellant's Brief Dckt. 40733

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) NO. 40733
)
 v.) CANYON COUNTY NO. CR 2009-1259
)
 ARTHUR GENE SCHMIERER,) APPELLANT'S BRIEF
)
 Defendant-Appellant.)
 _____)

COPY

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

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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Arthur Gene Schmierer pled guilty to two counts of internet enticement. On appeal, Mr. Schmierer asserts that the district court erred in denying his motion to correct an illegal sentence. Mr. Schmierer asserts that the prosecuting attorney had no authority to issue an amended superseding indictment which alleged a new crime (Count II) that was not charged in the original indictment and that was not an included offense of the crime initially charged by indictment. Thus, Mr. Schmierer asserts that charging instrument was insufficient to confer subject matter jurisdiction over Count II.

Statement of the Facts and Course of Proceedings

In 2006, over the course of three days, Mr. Schmierer chatted online with a detective in Idaho who was posing as a 13 year old girl. (R., p.7.) Mr. Schmierer and the detective engaged in sexually explicit conversations and arranged to meet. (R., p.7.) When Mr. Schmierer arrived at the designated meeting place, he was arrested. (R., p.8.)

The grand jury heard the testimony of Detective Matt Tucker, Detective Derrek Dofelmire, and Jennifer Perry. (1/21/09 Tr., p.2.) Detective Tucker testified that the reason a sting directed to Mr. Schmierer was set up was because he had received a tip regarding Mr. Schmierer from law enforcement in Utah.¹ (1/21/09 G. Jury Tr., p.4, L.22 – p.5, L.2.) Detective Dofelmire, posing as 13 year old Emily Kotter, initiated the online

¹ The substance of the tip was not presented to the grand jury, but Detective Tucker testified that they did obtain Mr. Schmierer's screen name from the authorities in Utah. (1/21/09 Tr., p.6, Ls.8-13.)

contact with Mr. Schmierer by adding him to the fictitious girl's "buddy list." (1/21/09 Tr., p.14, Ls.5-25, p.24, Ls.3-5.) Emily Kotter purportedly was in Idaho—Detective Dofelmire told Mr. Schmierer that she was staying with her grandmother in Nampa. (1/21/09 Tr., p.23, Ls.21-22.) Jennifer Perry embodied the fictitious 13 year old Idaho girl on the telephone and arranged to meet with Mr. Schmierer. (1/21/09 Tr., p.28, Ls.13-21, p.34, Ls.8-25.) Mr. Schmierer showed up at the designated meeting place and was arrested. (1/21/09 Tr., p.36, L.14 – p.37, L.4.) Based on these facts, Mr. Schmierer was indicted by a grand jury for one count of enticement of a minor over the internet and one count of attempted lewd conduct with a minor under the age of sixteen for his explicit internet communications and his attempt to meet with the fictitious Emily Kotter.² (5/18/09 Tr., p.23, L.12 – p.25, L.10; R., pp.27-29.)

² The Superseding Indictment accused Mr. Schmierer as follows:

Count I

That the defendant, ARTHUR G. SCHMIERER, on or about between January 6, 2009 and January 9, 2009, in the County of Canyon, State of Idaho, did knowingly use the internet to solicit, seduce, lure, persuade or entice by word or action or both, a person Defendant believes to be a minor child under the age of sixteen (16) years to engage in any sexual act with or against the child where such act is a violation of Chapter 15, 61, or 66, Title 18, Idaho Code, and that the Defendant is at least eighteen (18) years old.

All of which is contrary to Idaho Code, Section 18-1509A and against the power, peace and dignity of the State of Idaho.

Count II

That the Defendant, ARTHUR G. SCHMIERER, on or about the 9th day of January, 2009, in the County of Canyon, State of Idaho, did willfully and lewdly attempt to commit a lewd and/or lascivious act upon and/or with the body of a minor female, under the age of sixteen years, to wit: between the age of thirteen (13) and fourteen (14) years, by oral to genital and/or genital to genital contact with the intent to arouse, appeal to and/or gratify the lust, passion and/or sexual desire of the defendant and/or said minor child.

All of which is contrary to Idaho Code, Section 18-306, 18-1508 and against the power, peace and dignity of the State of Idaho.

(R., pp.27-28.)

Pursuant to plea negotiations, at the change of plea hearing, the prosecutor filed an amended superseding indictment in which Count II, attempted lewd conduct, was struck and a charge of internet enticement was substituted, for conduct between Mr. Schmierer and a fictitious minor in Utah.³ (5/8/09 Tr., p.7, L.16 – p.9, L.8; 5/18/09 Tr., p.21, L.18 – p.23, L.11; R., pp.49-51.) The Amended Superseding Indictment was signed only by the prosecutor, Erica Kallin.⁴ (R., pp.49-51.)

Mr. Schmierer agreed to plead guilty pursuant to a I.C.R. 11(f)(1)(C) plea agreement, in which both parties and the district court agreed to be bound by the plea agreement. (R., pp.56-59.) The plea agreement provided that Mr. Schmierer would plead guilty to the two counts of internet enticement contained in an amended superseding indictment, and in exchange, no federal charges would be filed in relation to these two known instances of enticement. (5/8/09 Tr., p.12, Ls.9-12; R., pp.57, 59.)

³ At Mr. Schmierer's sentencing hearing, the prosecutor explained the basis for Count II, and referred to it as "the count that arose through Utah." (5/18/09 Tr., p.21, Ls.20-25.) She advised the district court that the second count in the Amended Superseding Indictment was based on an investigation through the Perverted Justice Program, which is a program in which people get online and try to entice individuals, and further, that Mr. Schmierer believed he was corresponding with a minor in Utah. (5/18/09 Tr., p.21, L.20 – p.22. L.18.)

⁴ The Amended Superseding Indictment altered Count II to charge Mr. Schmierer as follows:

Count II

That the defendant, ARTHUR G. SCHMIERER, on or about between November 22, 2008 and January 9, 2009, in the County of Canyon, State of Idaho, did knowingly use the internet to solicit, seduce, lure, persuade or entice by word or action or both, a person Defendant believes to be a minor child under the age of sixteen (16) years to engage in any sexual act with or against the child where such act is a violation of Chapter 15, 61, or 66, Title 18, Idaho Code, and that the Defendant is at least eighteen (18) years old.

All of which is contrary to Idaho Code, Section 18-1509A and against the power, peace and dignity of the State of Idaho..

(R., p.50.)

The sentence set forth in the plea agreement was for five years fixed on each count, to be served consecutively, and the indeterminate portion of the sentence would be left to the district court's discretion.⁵ (5/8/09 Tr., p.11, Ls.16-25.) Mr. Schmierer also agreed to "waive any possible deficiencies in the original charging" as part of the plea agreement. (5/8/09 Tr., p.8, Ls.2-5; R., p.52.)

Mr. Schmierer entered a conditional guilty plea to two counts of enticement.⁶ (R., pp.52-58.) Mr. Schmierer was sentenced to periods of confinement of 10 years unified, with five years fixed, on each count, and the sentences were ordered to be served consecutively. (R., pp.66-67.)

Two years later Mr. Schmierer filed a motion to correct an illegal sentence pursuant to I.C.R. 35. (R., pp.72-85.) Through his briefing, Mr. Schmierer argued that the Amended Superseding Indictment was improperly signed by the prosecutor instead of the grand jury foreperson. (R., pp.75-76.) Mr. Schmierer asserted that because the Amended Superseding Indictment charged a crime that was not an included offense under the original indictment, and it was signed by the prosecutor instead of the grand jury, it was invalid and thus failed to confer subject matter jurisdiction. (R., pp.75-77.)

A hearing was held on Mr. Schmierer's motion. (*See generally* 2/5/13 Tr.) At the conclusion of the hearing, the district court denied the motion, finding that Mr. Schmierer waived any defects in the charging documents when he agreed to the plea agreement.⁷

⁵ The plea agreement also stated that the sentences were to be concurrent with that in an unrelated 2008 case, in which Mr. Schmierer was convicted of being an accessory to injury to child. (5/18/09 Tr., p.22, Ls.1-4; R., pp.66-67.)

⁶ The plea was conditioned on the district court's acceptance of the plea agreement and the court's agreement to implement the sentence as agreed on by the parties. (R., pp.56-58.)

⁷ The district court found that Mr. Schmierer "agreed to waive any defects and just – which was called an Amendment to Grand Jury Indictment. It essentially then became

(2/5/13 Tr., p.3, L.19 – p.4, L.15.) On February 14, 2013, the district court issued a written decision denying Mr. Schmierer's motion. (R., pp.107-109.) The district court ruled that where Mr. Schmierer "specifically waived any defects in the charging document," he could not now claim that his sentence was illegal. (R., p.108.) On February 11, 2013, Mr. Schmierer filed a Notice of Appeal.⁸ (R., pp.102-104.)

a criminal Information rather than Indictment on that. The defendant knowingly waived that, waived any defects in the charging documents." (2/5/13 Tr., p.4, Ls.1-7.)

⁸ Mr. Schmierer's Notice of Appeal was filed after the district court orally ruled on his I.C.R. 35 motion, but before the district court entered its written order denying Mr. Schmierer's motion. Therefore, his premature notice of appeal became valid on the date the order was entered. See I.A.R. 17(e)(2) ("A notice of appeal filed from an appealable judgment or order before formal written entry of such document shall become valid upon the filing and the placing of the stamp of the clerk of the court on such appealable judgment or order without refiling the notice of appeal.").

ISSUE

Did the district court err in denying Mr. Schmierer's I.C.R. 35 motion to correct an illegal sentence?

ARGUMENT

The District Court Erred When It Denied Mr. Schmierer's I.C.R. 35 Motion To Correct An Illegal Sentence

A. Introduction

Mr. Schmierer asserts that the district court erred in denying his I.C.R. 35(a) motion to correct an illegal sentence erred, because the district court lacked subject matter jurisdiction over Count II, the charge of internet enticement of a fictitious minor in Utah. The district court lacked subject matter jurisdiction because the Amended Superseding Indictment charged a crime that was not an included offense under the original indictment, and in fact was an entirely different incident, involving a different fictitious minor in Utah, than the facts voted on by the grand jury.

B. Standard Of Review

The question of whether the district court lacked subject matter jurisdiction is a question of law that this Court reviews *de novo*. *State v. Jones*, 140 Idaho 755, 757 (2004). Whether an information or indictment conforms to legal requirements is also a question of law that this Court reviews *de novo*. *Id.* The issue of whether the district court had subject matter jurisdiction over a case can be raised at any time, including for the first time on appeal or in a I.C.R. 35(a) motion to correct an illegal sentence. *Id.* at 758; *State v. Lute*, 150 Idaho 837, 838-39 (2011) (holding that the court properly had jurisdiction to consider defendant's I.C.R. 35 motion to correct an illegal sentence).

C. The District Court Erred In Denying Mr. Schmierer's I.C.R. 35 Motion Alleging An Illegal Sentence Because The Record In This Case Reveals That There Was No Subject Matter Jurisdiction As To The Second Count Of Internet Enticement

Mr. Schmierer asserts that the record in this case establishes that the trial court was without subject matter jurisdiction to accept Mr. Schmierer's guilty plea, or sentence

him upon his conviction on Count II. Therefore, because the district court did not have subject matter jurisdiction as to Count II—the offense of internet enticement as alleged in the Superseding Amended Indictment this case—Mr. Schmierer asks that this Court reverse the district court’s order denying his I.C.R. 35 motion and remand this case to the district court with instructions to vacate his conviction. *See Lute*, 150 Idaho at 840-841.

1. Subject Matter Jurisdiction

Article I, section 8 of the Idaho Constitution provides “[n]o person shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prosecutor....”

“The indictment or information filed by the prosecutor is the jurisdictional instrument upon which a defendant stands trial.” *Jones*, 140 Idaho at 757. It is the filing of an indictment or information that confers subject matter jurisdiction on the district court with regard to the charges contained therein. *Id.* In light of this, the district court’s subject matter jurisdiction over the charges brought against the defendant is dependent upon the legal sufficiency of the indictment or information containing those charges. *Id.* at 758.

“There may be two or more separate charges in a grand jury indictment, but each shall be voted upon separately by the grand jury.” I.C.R. 6.6(b). Further, although the district court may permit a complaint, an information or indictment to be amended, the Idaho Criminal Rules only permit such amendment “if no additional or different offense is charged.” I.C.R. 7(e).

A charging document confers jurisdiction if it alleges that the defendant committed a criminal offense within the State of Idaho. *State v. Severson*, 147 Idaho

694, 708 (2009); *State v. Jones*, 140 Idaho 755, 757–58 (2004). The Idaho Supreme Court, in *Jones*, analyzed what constitutes a “legally sufficient” indictment or information. 140 Idaho at 758. The *Jones* Court held that there are two standards to consider: (1) whether an indictment or information is legally sufficient for the purposes of due process; and (2) whether an indictment or information is legally sufficient for the purpose of imparting jurisdiction. *Id.* The charging document satisfies due process when it contains factual specificity sufficient to inform a person of common understanding of what is intended and to shield against double jeopardy. *Severson*, 147 Idaho at 708; *State v. Olin*, 153 Idaho 891, 894 (2012).

2. Mr. Schmierer Properly Challenged The Lack Of Subject Matter Jurisdiction As An Illegal Sentence

Idaho Criminal Rule 12(b)(2) provides that some defenses must be raised prior to trial. Among these are “[d]efenses and objections based on defects in the complaint, indictment or information (other than it fails to show jurisdiction of the court or to charge an offense which objection shall be noticed by the court at any time during the pendency of the proceedings).” I.C.R. 12(b)(2); *State v. Luke*, 134 Idaho 294, 300 (2000). Thus, only a failure to show jurisdiction or the failure to charge an offense cannot be waived and can be raised at any time. I.C.R. 12(b)(2); *Luke*, 134 Idaho at 300.

Idaho Criminal Rule 35(a) permits a district court to correct an illegal sentence at any time. *State v. Clements*, 148 Idaho 82, 84 (2009). “[T]he term ‘illegal sentence’ under I.C.R. 35 is narrowly interpreted as a sentence that is illegal from the face of the record, i.e., does not involve significant questions of fact or require an evidentiary hearing.” *Id.* at 86. Generally, whether a sentence is illegal or was imposed in an illegal

fashion is a question of law, over which an appellate court exercises free review. *Id.* at 84.

In *Lute*, the Idaho Supreme Court held that the court properly had jurisdiction to consider Lute's I.C.R. 35 motion, even though it was filed nearly fifteen years after he was indicted for the offenses. 150 Idaho at 838-39. The Court found that in cases where it is apparent that there is an issue concerning subject matter jurisdiction, the Court has the authority to address that issue. *Lute*, 150 Idaho at 840. The *Lute* Court held that the district court never had subject matter jurisdiction over the defendant's case because the grand jury never issued a valid indictment. *Id.* at 841. Thus the Court reversed the district court's denial of the defendant's I.C.R. 35 motion for correction of an illegal sentence and remanded the case with instructions to grant the I.C.R. 35 motion and vacate the conviction. *Id.*

Here, the first count of internet enticement in the Amended Superseding Indictment was the same as Count I in the Superseding Indictment; however, the second count of internet enticement contained in the Amended Superseding Indictment was apparently for previous communications with another law enforcement official pretending to be a minor in Utah. (5/18/09 Tr., p.21, L.20 – p.23, L.11.) The issue of whether the communications between Mr. Schmierer and the fictitious minor in Utah constituted a crime was never before the grand jury. (See *generally* 1/21/09 Tr.) Thus, the Amended Superseding Indictment was invalid as the issue of whether Mr. Schmierer could be charged with a crime based on his alleged internet contact with the fictitious minor in Utah was never before the grand jury.

3. Mr. Schmierer Could Not Waive The Lack Of Subject Matter Jurisdiction

The plea agreement contained a provision in which Mr. Schmierer purportedly waived “any possible deficiencies in the original charging.” (5/8/09 Tr., p.8, Ls.2-5.) It is unclear from this statement what exactly he was waiving, and the waiver was never clarified in subsequent hearings. (See, e.g., 5/18/09 Tr.) Thus we are left with what appears to be a waiver of defects to the original indictment, the appropriateness of which Mr. Schmierer is not challenging on appeal. On appeal, Mr. Schmierer is challenging only the Amended Superseding Indictment and asserts that the district court never had subject matter jurisdiction over Count II of the Amended Superseding Indictment.

A waiver is a voluntary relinquishment or abandonment of a right or privilege. See, e.g., *State v. Lopez*, 144 Idaho 349, 351 (Ct. App. 2007). However, a claim of subject matter jurisdiction cannot be waived. *State v. Armstrong*, 146 Idaho 372 (Ct. App. 2008); *State v. Jakoski*, 139 Idaho 352 (2003). In *Armstrong*, the Court of Appeals, relying on the Idaho Supreme Court’s decision in *Jakoski*, noted: “[A]n absence of subject matter jurisdiction is never waived and can be raised initially on appeal or even through a collateral attack on a judgment.” *Armstrong*, 146 Idaho at 377. The *Anderson* Court permitted the State to challenge an order from which there was no timely appeal and permitted the State to seek relief despite the fact that it had not filed a cross-appeal. *Id.*

The Idaho Supreme Court has explained regarding subject matter jurisdiction:

“Subject matter jurisdiction is the power to determine cases over a general type or class of dispute.” *Bach v. Miller*, 144 Idaho 142, 145 (2007). The source of this power comes from Article V, Section 20, of the Idaho Constitution, which provides that district courts “shall have original jurisdiction in all cases, both at law and in equity, and such appellate jurisdiction as may be conferred by law.” This issue is so fundamental to

the propriety of a court's actions, that **subject matter jurisdiction can never be waived or consented to**, and a court has a *sua sponte* duty to ensure that it has subject matter jurisdiction over a case. See Idaho R. Civ. P. 12(g)(4). Furthermore, judgments and orders made without subject matter jurisdiction are void and “are subject to collateral attack, and are not entitled to recognition in other states under the full faith and credit clause of the United States Constitution.” *Sierra Life Ins. Co. v. Granata*, 99 Idaho 624, 626-27 (1978). This Court exercises free review over questions of jurisdiction.

State v. Urrabazo, 150 Idaho 158, 163-64 (2010) (emphasis added) (abrogated on other grounds by *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889 (2011)).

Jurisdictional defects in an indictment are not waived by the entry of a guilty plea. See *State v. Byington*, 135 Idaho 621, 632 (Ct. App. 2001) (holding that indictment was jurisdictionally defective where the State failed to state facts essential to establish the offense charged and such a jurisdictional defect could not be waived); see also *State v. Grady*, 89 Idaho 204, 200-12 (1965) (stating that “[e]ven though a plea of guilty was entered by the appellant ..., that does not bar him from raising jurisdictional defects in the information”).

Thus, the district court erred when it relied upon Mr. Schmierer’s waiver of “any possible deficiencies in charging” as its basis to deny Mr. Schmierer’s motion to correct an illegal sentence because any waiver of subject matter jurisdiction was invalid.

4. Because the Amended Superseding Indictment Charges Mr. Schmierer With A New Crime, It Is A Nullity And Mr. Schmierer’s Conviction Is Void

In his motion to correct an illegal sentence, Mr. Schmierer asserted that the indictment failed to impart jurisdiction “[b]ecause the amended indictment charged a different crime under Count II than the crime charged in the original indictment.” (R., p.75.) Count II was a new charge and the facts comprising this charge were never put before the grand jury. Thus, the Amended Superseding Indictment filed in this case

was invalid as the district court never had subject matter jurisdiction over Mr. Schmierer's case regarding the second count of internet enticement. This charge must therefore be dismissed and Mr. Schmierer's conviction declared void.

In *State v. McKeehan*, 91 Idaho 808 (1967), the Idaho Supreme Court held as follows:

An accused is denied, therefore, his constitutional right to a preliminary hearing where an information is filed or subsequently amended charging him with a crime of a greater degree or of a different nature than that for which he was held by the committing magistrate.

It is, additionally, in this state, specifically provided by statute that a different and distinct offense may not be charged by way of amended information. I.C. § 19-1420. See, *State v. Thompson* [392 S.W.2d 617 (Mo.1965).]

State v. McKeehan, 91 Idaho at 817-18 (footnote omitted).

It is thus mandated, both statutorily and throughout Idaho's case law, that a new crime may not be charged simply by amending an indictment to include a new crime with distinctly different facts. *State v. O'Neill*, 118 Idaho 244, 249 (1990).

In *State v. Flegel*, 151 Idaho 525 (2011), the defendant was indicted by a grand jury for the crime of lewd conduct. During the jury trial, the district court instructed the jury regarding the crime of lewd conduct and, as an included offense, the crime of sexual abuse of a child under sixteen. *Id.* at 526. The lewd conduct charge was based upon the allegation that Flegel touched the minor's vagina, and the sexual abuse charge was based upon evidence that he also touched her buttocks. The jury found Flegel not guilty of lewd conduct, but could not reach a verdict on the sexual abuse charge. Without resubmitting the matter to a grand jury, the State filed an amended indictment charging Flegel with one count of sexual abuse. Flegel was then tried by a jury on that charge and found guilty. *Id.*

The Idaho Court of Appeals vacated the judgment and remanded the case for a new trial. *Flegel*, 151 Idaho at 526. The Idaho Supreme Court granted the State’s petition for review and held that the district court lacked subject matter jurisdiction over the sexual abuse charge. *Id.* at 526. The Court held that, because sexual abuse is not a lesser included offense of lewd conduct, Flegel could only have been validly charged by indictment if the matter was resubmitted to a grand jury and it returned an amended indictment for sexual abuse. *Id.* The Court further held, “[t]he prosecuting attorney had no authority to issue an amended indictment for a crime that was not an included offense of that crime.” *Id.* The Court found that Flegel’s conviction was void and the judgment must be vacated and the case dismissed. *Id.* at 526.

In crafting its holding, the *Flegel* Court first set forth the statutory and constitutional basis underlying its decision:

Article I, Section 8 of the Idaho Constitution states that “[n]o person shall be held to answer for any felony . . . unless on presentment or indictment of a grand jury or on information of the public prosecutor, after a commitment by a magistrate” Because a felony can only be prosecuted by an indictment found by a grand jury or by an information based upon the commitment of a magistrate (following a preliminary hearing or its waiver), Idaho Code section 19-1420 provides: “An information or indictment cannot be amended so as to charge an offense other than that for which the defendant has been held to answer.” To allow a prosecutor to amend an indictment to charge an offense other than that for which the defendant was held to answer would permit the prosecutor to, in essence, become the grand jury.

Flegel, 151 Idaho at 526-27. The *Flegel* Court went on to analyze whether the sexual assault was a lesser included offense of lewd conduct, ultimately finding that sexual abuse was not a lesser included offense of lewd conduct. *Id.* at 527-29.

Here, it is not necessary to analyze whether one of the two crimes Mr. Schmierer pled guilty to was a lesser included offense of the other crime, because the new crime that was charged by “amended indictment” was an entirely new crime—one that was

never before the grand jury. (See 1/21/09 Tr.) In his motion to correct an illegal sentence, Mr. Schmierer asserted that the indictment failed to impart jurisdiction “[b]ecause the amended indictment charged a different crime under Count II than the crime charged in the original indictment.” (R., p.75.) Idaho Code § 19-1401 provides, “An indictment cannot be found without the concurrence of at least twelve (12) grand jurors.” No grand jurors concurred in Count II of the Amended Superseding Indictment. The Court held in *Flegel*, as it should in this case, “[b]ecause the amended indictment charged a different crime than the crime charged in the original indictment, the amended indictment is a nullity.” *Id.* at 530. Further, the *Flegel* Court held as to the remedy in that case:

Not having been issued by a grand jury, the amended indictment was invalid, the district court never had subject matter jurisdiction over Flegel’s case regarding the charge of Sexual Abuse, and this case must therefore be dismissed.

Id. at 531.

Similarly, the Amended Superseding Indictment filed in this case was invalid; thus the district court never had subject matter jurisdiction over the second count of internet enticement and this charge must therefore be dismissed and Mr. Schmierer’s conviction declared void.

CONCLUSION

Mr. Schmierer respectfully requests that this Court remand his case to the district court with instructions to vacate his judgment of conviction and sentence for Count II because the district court never had subject matter jurisdiction over this charge.

DATED this 11th day of February, 2014.



SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11th day of February, 2014, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

ARTHUR GENE SCHMIERER
INMATE #91753
ICC
PO BOX 70010
BOISE ID 83707

GEORGE A SOUTHWORTH
DISTRICT COURT JUDGE
E-MAILED BRIEF

RYAN DOWELL
CANYON COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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