4-15-2014

State v. Eliasen Respondent's Brief Dckt. 41428

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 41428
Plaintiff-Respondent,	)	
	)	Bannock Co. Case No.
vs.	)	CR-2008-17128-MD
	)	
DESIREE B. ELIASEN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE**

STATUTES

STATEMENT OF THE CASE

Nature Of The Case

Desiree Eliasen appeals from the judgment entered upon the jury verdict finding her guilty of stalking. Eliassen claims there was insufficient evidence to support her conviction.

Statement Of Facts And Course Of Proceedings

The state charged Eliasen with, and a jury found her guilty of, second-degree stalking. (R., pp.96, 160-161, 270.) On April 28, 2009, the magistrate imposed 180 days in jail with 140 days suspended and placed Eliasen on probation for two years. (R., p.278.) Eliasen filed a timely notice of appeal from the judgment of conviction. (R., pp.312-316.)

For reasons which are unclear from the record, Eliasen's intermediate appeal to the district court languished until August 1, 2012, at which time Eliasen filed an amended notice of appeal after the magistrate court denied her request for relief pursuant to I.C. § 19-2604. (R., pp.11-13.) In fact, in her amended notice of appeal, which was actually captioned "Amended Notice of Appeal Denying Motion to Dismiss; Motion to Set Aside Guilty Plea; and the Motion to Reconsider," Eliasen stated the issue on appeal as whether the court erred in denying her motion to dismiss and set aside her guilty plea, which the court originally denied on June 1, 2012, and again on June 20, 2012, in response to Eliasen's motion to reconsider. (R., pp.11-12, 377-380, 381-386.) Six months later, however, Eliasen filed a "Second Amended Notice of Appeal" indicating she was appealing from the "1) Judgment of Conviction entered on April 28,

2008; 2) Decision and Order entered on June 1, 2012; 3) Decision and Order entered on June 20, 2012." (R., pp.22-24.)

On appeal to the district court, Eliasen only challenged the sufficiency of the evidence to support her conviction. (R., pp.26-42.) The district court affirmed. (R., pp.69-88.) Eliasen filed a timely notice of appeal from the district court's Memorandum Decision on appeal. (R., pp.90-92.)

ISSUE

Eliasen states the issue on appeal as:

> Did the state present sufficient evidence to prove that Ms. Eliasen engaged in a "course of conduct" that seriously alarmed, annoyed or harassed the victim?

(Opening Brief of Appellant ("Appellant's Brief"), p.6.)

The state rephrases the issue on appeal as:

Did the district court correctly conclude that the state presented sufficient evidence from which the jury could conclude, beyond a reasonable doubt, that Eliasen was guilty of second-degree stalking?

ARGUMENT

Eliasen Has Failed To Show The District Court Erred In Concluding The Evidence Was Sufficient To Support Her Conviction For Second-Degree Stalking

A. Introduction

Eliasen challenges the district court's intermediate appellate decision rejecting her claim that the evidence was insufficient to support her conviction for second-degree stalking. (Appellant's Brief, pp.6-11.) Specifically, she contends the court erred in concluding her behavior constituted a "course of conduct as required by statute." (Appellant's Brief, p.7.) Eliasen's argument fails. A review of the plain language of the second-degree stalking statute, I.C. § 18-7906, and the evidence presented shows the district court correctly concluded there was sufficient evidence to support Eliasen's conviction.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). The appellate court "examine[s] the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." Id. "If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, [the appellate court] affirm[s] the district court's decision as a matter of procedure." Id. (citing Losser, 145

Idaho 670, 183 P.3d 758; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)).

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 District Court Correctly Concluded There Was Sufficient Evidence To Prove The Essential Elements Of Second-Degree Stalking

The magistrate instructed the jury that in order to find Eliasen guilty of second-degree stalking, the state was required to prove the following elements beyond a reasonable doubt:

1. On or about the 26th day of September, 2008,
2. in the City of Pocatello, County of Bannock, State of Idaho
3. the defendant Desiree Eliasen,

4. knowingly and maliciously

5. engaged in a course of conduct

6. that seriously alarmed, annoyed or harassed Lynette Sampson

7. in a manner that would cause a reasonable person substantial emotional distress.

(R., p.300; see also I.C. § 18-7906.)

Eliasen claims, as she did below, that the state failed to meet its burden of proof with regard to the fifth element – that her actions constituted a course of conduct for purposes of the second-degree stalking statute. (Appellant's Brief, pp.7-11.) The district court disagreed.

Idaho Code § 18-7906(2)(a) defines "course of conduct" as "repeated acts of nonconsensual contact involving the victim or a family or household member of the victim" unless the conduct is "constitutionally protected activity." With respect to Eliasen's "course of conduct," the district court found the "record establishes the following facts":

> The victim is married to Officer Richard Sampson, a Pocatello Police officer. They have two young children. On Friday, September 26, 2008, the victim took her three-year-old daughter with her to make a donation at the local Goodwill store and to shop at Fred Meyer. As the victim backed out of her driveway she noticed a brown Chevy Blazer stopped in the road facing east. The victim waited for the vehicle to proceed down the street, but when the Blazer did not move, the victim proceeded to back out and head west down Wyldwood Lane. The Blazer made a U-turn and followed the victim down Wyldwood. Ms. Sampson traveled several blocks making four turns and eventually stopping at the Goodwill store on Yellowstone Ave. The Blazer followed the victim the entire way. At Goodwill, the victim exited her vehicle and carried her donations to the door where a Goodwill employee took the donations from her.

> The victim then got back in her vehicle, proceeded to exit the Goodwill parking lot onto Pine Street, and then stopped at the traffic light on Yellowstone. At this point, the victim became concerned about the Blazer following her. When the light changed, the victim turned on to Yellowstone heading north towards Fred Meyer. The Blazer followed. Instead of proceeding to Fred Meyer, the victim made a right turn onto Cedar Street and the Blazer followed. Upon realizing that she was being followed, the victim became "really frightened" and attempted to call her husband, Officer Sampson. The first call was unsuccessful, but the victim successfully contacted her husband via a second phone call. The victim and her husband then decided the [sic] she should proceed to the police station to meet her husband there. The victim made a right turn onto Jefferson Ave, a subsequent right onto Oak St. and finally a left on to Sherman, where the police station is located. It was not until the victim turned on to Sherman, right in front of the police station, that the Blazer ceased following. Instead, the Blazer continued down Oak Street. The victim remained concerned about being followed all the way to the police station. The victim later identified Ms. Eliasen as the driver of the Blazer.

(R., pp.70-71.)[1]

Eliasen asserts "the evidence was insufficient" because, she contends, "there was only a single occurrence of non-consensual contact between [herself] and Ms. Sampson." (Appellant's Brief, p.8.) According to Eliasen, "the principles of statutory interpretation require that conclusion." (Appellant's Brief, p.8.) The district court correctly rejected this argument.

[1] By way of background, the state also presented evidence that, approximately six weeks prior, Eliasen was involved in an incident where Officer Sampson was one of the responding officers. (Trial Tr., p.36, Ls.1-14.) During that incident, Eliasen, while looking toward the parking lot where Officer Sampson and other were standing, told another individual, that she "hoped those guys don't have wives or kids at home because we know what's going to happen when . . . I make a phone call or like the phone call I made last time and someone took care of it." (Trial Tr., p.41, L.24 – p.42, L.19.) Eliasen was "mad and angry and sharp tongued" when she made the statement. (Trial Tr., p.42, Ls.11-12.)

"The interpretation of a statute 'must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole.'" Verska v. St. Alphonsus Regional Medical Center, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) (quoting State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003). "'If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.'" Id.

As noted, I.C. §18-7906(2)(a) defines course of conduct for purposes of second-degree stalking as requiring "repeated acts of nonconsensual contact." Section 18-7906(2)(c) in turn defines the term "nonconsensual contact." It includes, but is not limited to:

> (i) Following the victim or maintain surveillance, including by electronic means, on the victim;
>
> (ii) Contacting the victim in a public place or on private property;
>
> (iii) Appearing at the workplace or residence of the victim;
>
> . . .

I.C. § 18-7906(2)(c).[2]

The district court found the evidence presented satisfied the repeated acts of nonconsensual contact element because Eliasen engaged in more than one type of prohibited contact – conducting surveillance, following Sampson, and appearing at Sampson's residence. (R., pp.83-84.) The district court reasoned:

> In the facts before the Court today, the victim intended to conduct charitable business at Goodwill. The stop at Goodwill was

[2] The statute includes other types of nonconsensual contact that are not pertinent here. I.C. § 18-7906(2)(c)(iv)-(vii).

> not merely a brief pause in the victim's movements during the travel to a destination. Instead, the stop at Goodwill was the reaching of a destination. When the victim stopped at Goodwill and began conducting her business there, [Eliasen] was no longer following the victim. Instead [Eliasen] was maintaining surveillance, a separate form of prohibited conduct explicitly mentioned in the stalking statute. When the victim left the Goodwill, the surveillance ended and a new instance of following began and continued until [Eliasen] broke off her pursuit of the victim.
>
> Additionally, the issue before this court is not limited to whether the stop at Goodwill created a break in the following sufficient to create two instances of following. . . . In addition to the Court finding that the stop at Goodwill was sufficient to create a break in the following, it is also true that prior to ever following the victim, [Eliasen] was waiting outside the victim's house. Appearing at a victim's residence is explicitly recognized as prohibited under the statute and separate from following. That means that before ever following the victim, [Eliasen] had already committed one instance of conduct. Even if the episode of following were not broken up by the stop at Goodwill, the following itself could reasonably have been seen by the trier of fact as the second instance of prohibited conduct.
>
> The facts of this case amount to not only two instances of prohibited conduct, but instead four instances of prohibited conduct. First, [Eliasen] appeared at the victim's residence before ever following the victim. Second, [Eliasen] followed the victim to Goodwill. Third, [Eliasen] conducted surveillance on the victim while the victim conducted her business at Goodwill. And fourth, [Eliasen] followed the victim from the Goodwill store nearly the entire way to the police station.

(R., pp.83-85 (footnotes omitted).)

Eliasen claims the district court's rationale was erroneous, contending that "[w]hile the type of prohibited contact changed during the course of the nonconsensual contact, there was still only one contact." (Appellant's Brief, p.10.) In other words, Eliasen contends, there was "no break in the contact." (Appellant's Brief, p.11.) However, the plain language of the statute does not require a "break in the contact." Rather, it only requires "repeated acts of

nonconsensual contact," with "nonconsensual contact" being further defined as including certain types of actions. Repeated, when read in context, means more than one nonconsensual contact, which the district court found existed in this case. Nonetheless, even if a break was required, one occurred at Goodwill.

The district court correctly concluded that the state presented sufficient evidence from which the jury could find the state met its burden with respect to this element. Eliasen has failed to show otherwise.

CONCLUSION

The state respectfully requests that this Court affirm the judgment entered upon the jury verdict finding Eliasen guilty of second-degree stalking.

DATED this 15th day of April 2014.

JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 15th day of April, 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:

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