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State v. Strange Appellant's Brief Dckt. 35032

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)

Plaintiff-Respondent,)

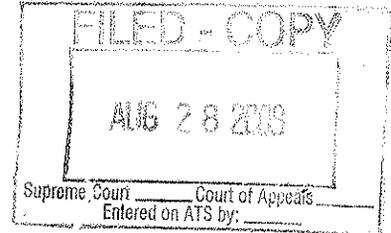
vs.)

CALVIN CHAMP STRANGE,)

Defendant-Appellant.)

NO. 35032/35061

APPELLANTS BRIEF



BRIEF OF APPELLANT

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

HONORABLE STEPHEN W. DRESCHER
DISTRICT COURT JUDGE

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STATEMENT OF THE CASE

On January 5, 2006, a criminal complaint was filed against Calvin Champ Strange. The Defendant-Appellant was charged with three criminal counts. The first was a felony, Possession of a Controlled Substance, methamphetamine, Count II was Felon in Possession of a Firearm, and Count III was Possession of Drug Paraphernalia, a misdemeanor. A Preliminary Hearing was held and Defendant-Appellant was bound over to the District Court on all three charges. A Motion to Dismiss was filed in regards to the firearms charge the court after a hearing dismissed the firearm charge. On August 9, 2007, a jury trial was held and the Defendant-Appellant was found guilty of the two remaining counts. On November 9, 2007, the counsel for the Defendant filed a Motion for New Trial. On December 10, 2007, a hearing was held on the Motion for a new trial. The court denied the Motion for a new trial. The Defendant was sentenced on January 14, 2008 to 1 1/2 years fixed and 3 1/2 years indeterminate on the Felony Possession charge and to 30 days concurrent in the Washington County jail on the misdemeanor charge.

ISSUES ON APPEAL

- I Whether the Court erred in not setting aside the Defendant's conviction because the jury's decision was tainted by the manner in which the jury was able to receive and hear the evidence.

- II Whether the evidence presented and the manner in which it was presented could sustain the Defendant's conviction on the charge.

ARGUMENT

In the present case, following a guilty verdict by a jury, the court summoned the jury back. The basis for summoning the jury back was that a member of the jury wrote a letter to the court stating: "A gentleman seated beside me during the trial had difficulty hearing, and was given a device to help him. However, I too had difficulty in hearing all that was being said, and others serving on the jury indicated the same thing." (Page 000084 Record on Appeal) The attorneys and court questioned the jury regarding the ability to hear the testimony offered at the trial. Counsel for the Defendant-Appellant argued to the court that the letter written by the juror differs from the testimony from the hearing held on the Motion to Set Aside Verdict. However, statements by the jurors still indicate a difficulty in hearing the evidence.

Idaho Code section 19-2406 sets forth the grounds for a new trial, it states in pertinent parts the following:

19-2406 GROUNDS FOR NEW TRIAL.

When a verdict has been rendered against the defendant the court may, upon his application, grant a new trial in the following cases only:

4. When the verdict has been decided by lot or by any means other than a fair expression of opinion on the part of all the jurors.

The decision of whether to grant a new trial rests in the sound discretion of the trial court. *State v. Priest*, 128 Idaho 6, 15, 909 P.2d 624, 633 (Ct. App. 1995). This Court will not reverse the trial court's decision on such a motion absent a showing of abuse of discretion. *Id.* When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether

the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

Idaho Criminal Rule 34 sets forth the standard that the trial court "may grant a new trial to the defendant if required in the interest of justice." However, I.C. § 19-2406 promulgates the only permissible substantive bases for the grant of a new trial in a criminal case. *State v. Cantu*, 129 Idaho 673, 675, 931 P.2d 1191, 1193 (1997); *State v. Gomez*, 126 Idaho 83, 86, 878 P.2d 782, 785 (1994). A trial court has wide discretion to grant or refuse to grant a new trial. *Cantu* 129 Idaho at 674, 931 P.2d at 1192. That discretion is not abused unless a new trial is granted for a reason that is not delineated in the code or unless the decision to grant or deny a new trial is contrary to the interest of justice. I.C.R. 34; *Gomez* 126 Idaho at 86, 878 P.2d at 785. To prevail on a motion for a new trial based upon a claim of jury misconduct "by which a fair and due consideration of the case has been prevented," the defendant must present clear and convincing evidence that juror misconduct has occurred and the trial court must be convinced that the misconduct reasonably could have prejudiced the defendant. *State v. Reutzel*, 130 Idaho 88, 96, 936 P.2d 1330, 1338 (Ct. App. 1997);

In the present case the trial court received a letter from one of the jurors in the case indicating two issues it had with the jury process. One issue was that there was a question regarding the sufficiency of the evidence against Defendant-Appellant and that the juror as well as others had difficulty hearing the evidence presented in the trial. Defense trial counsel upon receipt of the forwarded correspondence filed a Motion to Set Aside the verdict and a request for a new trial. After a hearing on the motion was held, the court denied Defendant-Appellant's motions. On Page 134 of the transcript of the proceedings, Ms. Muir, the juror who wrote to the judge noted in response to a question by Mr. Darrington, counsel for the Defendant-Appellant, as

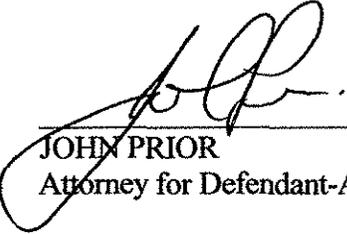
follows:

Ms. Muir: "It was when you were sitting at the desk, you weren't speaking into the microphone or something. I remember somebody asked you to speak up a couple of times, and because it sounded like you were mumbling. But I think it was the sound system." Ms. Muir later acknowledged she could hear all the questions however could not hear conversations with the judge. (Pg 135 line 1-10.) On page 136 line 8 in response to defense counsels inquiry a juror noted "I could hear then but up till then there was times I was not sure what they said I hadn't- I think the judge, when I was going like this, I think he said can you hear? And I said no, I can't. And if you can't hear, you know it makes a difference. I'm not sure what they said you know." Transcript on Appeal page 136 line 8. The court upon addressing the jury noted to them the *inadequacy of the facility and acknowledged that there was a problem.* The court noted, "I am aware, I think I told you that this is an antiquated, out of date facility, this courthouse doesn't measure up to standards of 2007. If you go to a courthouse in this state that's been built in the last four or five years they are radically different from this one. But we're out here in the country and we have to live with what we got." Transcript on appeal page 139 line 18-25, page 140 line 1. During the trial the court reminded Counsel for Defendant-Appellant, Mr. Darrington, to speak louder. (Transcript on Appeal Page 40 line 1) The Court Reporter requested for Mr. Darrington counsel for the Defendant-Appellant to speak louder and to adjust the microphone. (Transcript on appeal Page 48 line 2-4) It is unclear from the transcript and the Record on Appeal when the juror was given the hearing device, but clearly any time jurors are unable to understand or decipher statements by all parties involved in a criminal trial calls into question the validity of the verdict.

CONCLUSION

Defendant-Appellant represents that the jurors could not understand or hear all of the testimony and proceedings. That a juror sent in a letter to the court noting a lack of sufficient evidence and acknowledging that jurors could not always understand the proceedings. The court itself acknowledged the inadequacy of the facilities. A jury that is unable to hear any testimony in a criminal trial calls into question whether the evidence was sufficient to uphold the conviction. Based upon the representations as set forth in the transcript on Appeal and the Record on Appeal, Defendant-Appellant respectfully requests that this court grant his appeal.

DATED this 28th day of August, 2008.



JOHN PRIOR
Attorney for Defendant-Appellant

CERTIFICATE OF MAILING

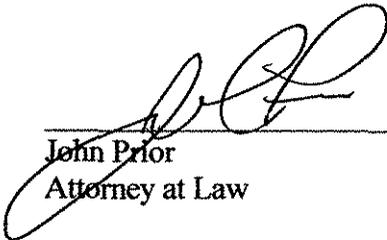
I HEREBY CERTIFY that on the 28th day of August, 2008, I served a true and correct copy of the above and foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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