3-14-2018

State v. Caldrer Respondent's Brief Dckt. 45081

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45081**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR-FE-2016-2977**
	)	
DALE FRANCIS CALDRER,	)	
	)	
Defendant-Appellant.	)	
	)	

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 RICHARD D. GREENWOOD
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Dale Francis Caldrer appeals from the judgment of conviction for enticement of a child through the internet (etc.), sexual abuse of a child under the age of sixteen years, and disseminating material harmful to minors, following a jury trial, claiming the district court erred in not making a ruling on whether there was "good cause" or "excusable neglect" for the untimely filing of his motion to suppress.

Statement Of Facts And Course Of Proceedings

In 2016, the state filed an Indictment charging Caldrer with Enticement of a Child through the Use of the Internet or Other Communication Device (Count I), Sexual Abuse of a Child under the Age of Sixteen (16) Years (Count II), and Disseminating Material Harmful to Minors (misdemeanor) (Count III). (R., pp.22-24.) The state subsequently charged Caldrer in an Information Part II with being a persistent violator of the law. (R., pp.37-39.) On April 5, 2016, Caldrer entered a plea of "not guilty." (R., pp.36, 40.) While Caldrer was represented by appointed counsel, the district court issued a Scheduling Order setting a jury trial to commence on August 29, 2016. (R., pp.40-43.)

On August 9, 2016, a private attorney entered a Notice of Appearance on Caldrer's behalf (R., pp.62-63), and at a hearing a week later, he informed the district court that he had not received discovery and was not prepared to go to trial (R., p.69). However, the district court ordered that the jury trial would proceed as originally scheduled. (Id.) At a hearing held on August 23, 2016, six days before the scheduled trial, defense counsel renewed his request to continue the trial, which was granted – the court re-set the jury trial for January 30, 2017. (R., pp.77-80.)

On December 27, 2016, Caldrer filed a Motion to Suppress, seeking suppression of statements he made while in custody. (R., pp.89-92.) The state filed a response in which it objected to the suppression motion being heard, arguing it was untimely under Idaho Criminal Rule 12(b), and that Caldrer failed to show "cause why a motion filed one month before trial should be heard." (R., pp.93-99.) During the pre-trial conference, after the prosecutor told the court that Caldrer's attorney's explanation for the late filing did not rise "to good cause under the law," the judge said he would make a ruling at some point, but not then. (Tr., p.20, Ls.12-18.)

On the first day of trial, Caldrer's counsel asked the judge to "give a ruling as to why this suppression motion was not heard." (Tr., p.24, Ls.3-17.) The judge answered:

> Well, I thought I had, Mr. Smith. But just to make the record clear, I declined to hear it for two reasons: First, it was untimely. And that led to the second reason which was I literally did not have time on my calendar because of my trial schedule and my other schedule to hear the motion. So that was the ruling that I thought I had given at the pretrial conference. But just in case, it is further of record.

(Tr., p.24, L.18 – p.25, L.2.) The prosecutor then interjected:

> And, Your Honor, if I could just make some record, too. I would note that that motion to suppress was not ever noticed up, it wasn't timely, and then it was his job to show good cause. And he, at the last hearing, simply said he just didn't get around to it and it was late. He didn't give any good cause.

(Tr., p.25, Ls.10-17.) The judge replied, "Well, Mr. Dinger, I'll let the record stand on that." (Tr., p.25, Ls.18-19.)

After four days of trial, the jury convicted Caldrer on all three Counts of the Indictment, and Caldrer admitted the persistent violator allegation. (R., pp.181-183; Tr., p.939, L.2 - p.941, L.25.) The court imposed unified 25-year sentences with 10 years fixed for Count I (Enticement of a Child (etc.) and Count II (Sexual Abuse of a Child (etc.), and

one year (all fixed) for Count III (Disseminating Material Harmful to Minors). (R., pp.187-191.) Caldrer filed a timely notice of appeal. (R., pp. 196-199.)

ISSUE

Caldrer states the issue on appeal as:

> Did the district court abuse its discretion when it refused to consider Mr. Caldrer's late-filed motion to suppress without ruling on whether Mr. Caldrer presented good cause or excusable neglect for the late filing?

(Appellant's Brief, p.4.)

The state rephrases the issue on appeal as:

Has Caldrer failed to show that the district court did not make a ruling on whether he demonstrated good cause to file an untimely suppression motion? Further, should the district court's denial of Caldrer's suppression motion be affirmed on the alternative ground that he failed to notice his motion for hearing?

ARGUMENT

Caldrer Has Failed To Show That The District Court Did Not Make A Ruling On Whether He Demonstrated Good Cause To File An Untimely Suppression Motion

A. Introduction

Caldrer argues that "[t]he district court never ruled on whether [he] presented good cause or excusable neglect for the late filing, as required by Idaho Criminal Rule 12(d)[.]"[1] (Appellant's Brief, p.5.) He asks this Court to vacate his convictions and remand this case "to determine whether [he] presented good cause or excusable neglect for the late filing, and, if he presented good cause or excusable neglect, to hold a hearing on the motion and consider it on its merits." (Id.)

Caldrer's argument fails. The record shows the district court made the requisite factual finding regarding "good cause." Further, the court's denial of Caldrer's motion to suppress should be upheld on the alternative ground that he failed to notice his motion for hearing.

B. Standard Of Review

In reviewing a discretionary decision, the appellate court considers whether the district court (1) correctly perceived the issue as one of discretion, (2) acted within the boundaries of discretion and consistent with any applicable legal standards, and (3)

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[1] Idaho Criminal Rule 12(d) reads:

> **Motion Date.** Motions under Rule 12(b) must be filed within 28 days after the entry of a plea of not guilty or seven days before trial whichever is earlier. In felony cases, motions under Rule 12(b) must be brought on for hearing within 14 days after filing or 48 hours before trial, whichever is earlier. The court may shorten or enlarge the time and, for good cause shown or for excusable neglect, may relieve a party of failure to comply with this rule.

exercised reason in reaching its decision. State v. Hedger, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989). Interpretation of court rules is a question of law reviewed de novo. See State v. Moore, 131 Idaho 814, 821, 965 P.2d 174, 181 (1998).

C. The District Court Ruled That Caldrer Did Not Show Good Cause For The Untimely Filing Of His Motion To Suppress

Caldrer claims that the district court did not "rule[] on whether [he] presented good cause or excusable neglect for the late filing" of his suppression motion, and that his case should be remanded for that purpose.[2] (Appellant's Brief, p.5.) A review of the record disproves Caldrer's claim.

On December 27, 2016, more than eight months after entering his pleas, Caldrer filed a Motion to Suppress, seeking suppression of "statements made during the course of an interrogation of the Defendant while he was in custody in the Ada County Jail." (R., pp.89-92.) The state filed a response in which it objected to the suppression motion being heard, arguing it was untimely under Idaho Criminal Rule 12(b), and that Caldrer failed to show "cause why a motion filed one month before trial should be heard." (R., pp.93-99.) On December 30, 2016, Caldrer filed a Motion in Limine seeking to preclude the state from introducing certain evidence at trial. (R., pp.100-106.) During the January 17, 2017 pre-trial conference, Caldrer's counsel told the court that after he filed the two motions, he "apparently . . . put the wrong case number on the motion for hearing[,]" and asked the court to hear the suppression motion on January 23, 2017. (Tr., p.11, Ls.6-22.)

[2] Caldrer only challenges whether the district court *made a ruling* on good cause or excusable neglect. He does not argue that he demonstrated, in the district court, good cause or excusable neglect for the untimely filing of his suppression motion. (See Appellant's Brief, pp.5-9.)

When the judge asked Caldrer's counsel why he was so late in filing the motion to suppress, he responded:

> It's my fault, Your Honor. And I had done – I had done some legal research, and I'd gone over it with my client. And we came to the conclusion, after we discussed everything, [sic] that we need to go forward with that. The issue with it is – rather, is whether my client invoked his right to an attorney . . . .

(Tr., p.15, Ls.12-20.) The judge explained, "I don't know how we are going to hear the motion to suppress. I don't know how I am going to take testimony. I literally do not have time on my calendar . . . ." (Tr., p.20, Ls.2-8.) Shortly thereafter, the prosecutor said, "Your Honor, I would note that his explanation, I don't think, rises to good cause under the law, so I assume you just would not hear it." (Tr., p.20, Ls.12-15.) The judge replied that he would have to make a ruling on that at some point, but not then. (Tr., p.20, Ls.16-18.) The judge concluded, "your motion is untimely and I am not going to be able to hear it. It's that simple." (Tr., p.21, Ls.15-17.)

On the first day of trial, January 30, 2017, Caldrer's counsel reminded the judge that he had filed a motion to suppress, and asked him "to address that and give a ruling as to why this suppression motion was not heard." (Tr., p.24, Ls.3-17.) The judge answered:

> Well, I thought I had, Mr. Smith. But just to make the record clear, I declined to hear it for two reasons: First, it was untimely. And that led to the second reason which was I literally did not have time on my calendar because of my trial schedule and my other schedule to hear the motion. So that was the ruling that I thought I had given at the pretrial conference. But just in case, it is further of record.

(Tr., p.24, L.18 – p.25, L.2.) The prosecutor then interjected:

> And, Your Honor, *if I could just make some record, too*. I would note that that motion to suppress was not ever noticed up, it wasn't timely, and then *it was his job to show good cause*. And he, at the last hearing, simply said he just didn't get around to it and it was late. *He didn't give any good cause*.

(Tr., p.25, Ls.10-17 (emphasis added).) The judge replied, "Well, Mr. Dinger, I'll let the record stand on that." (Tr., p.25, Ls.18-19.)

By telling the prosecutor, "I'll let the record stand *on that*," the trial judge clearly adopted the prosecutor's preceding statement, presented to make "some record," that "it was [Caldrer's] "job to show good cause" and he "didn't give any good cause." (Tr., p.25, Ls.10-17.) Although the trial court had previously focused on the untimeliness of Caldrer's motion and its unavailability to hear it, in the end the court ruled that Caldrer failed to demonstrate good cause. Caldrer has failed to show that the district court did not make such a ruling.

Even if the trial court did not explicitly (or by adoption) find that Caldrer failed to show "excusable neglect" for the untimely filing of his suppression motion, such a finding is implicit in the court's adoption of the prosecutor's "good cause" comments, and may be considered by this Court on appeal. See State v. Middleton, 114 Idaho 377, 757 P.2d 240 (Ct. App. 1988) ("[T]he failure of the trial court to make findings of fact, when ruling on a suppression motion, does not automatically constitute reversible error.").

Because the district court made the necessary finding that Caldrer failed to show good cause or excusable neglect, Caldrer has failed to establish any basis for remand or reversal.

D. The District Court's Denial Of Caldrer's Suppression Motion Should Be Affirmed On The Alternative Ground That He Failed To Notice His Motion For Hearing

Although Caldrer represented in his suppression motion that he was requesting oral argument, he never "brought [the motion] on for hearing" by noticing it for hearing as

required. See Rule 12(d), I.C.R.[3] As discussed above, during the hearing on January 17, 2017, Caldrer's attorney said that he apparently "put the wrong case number on the [suppression] motion for hearing[,]" and that the motion could possibly be heard on January 23, 2017. (Tr., p.11, Ls.9-22.) However, the prosecutor informed the court that he was unavailable on that day (Tr., p.12, Ls.4-11), and following more discussion, the court stated, "[b]ut filing a motion to suppress that late and then not having it set for hearing – so I even don't really know about them until I see a notice of hearing or for some other reason it gets brought to my attention." (Tr., p.16, Ls.2-6.)

On January 30, 2017, the first day of trial, Caldrer's attorney asked the court for a ruling on whether there was "good cause" or "excusable neglect" for the untimely filing of the suppression motion. (Tr., p.24, Ls.14-17.) In an attempt to "make some record," the prosecutor said, "I would note that *that motion to suppress was not ever noticed up*, it wasn't timely, and then it was his job to show good cause." (Tr., p.25, Ls. 12-14 (emphasis added).) The district court embraced the prosecutor's comments, stating, "I'll let the record stand on that." (Tr., p.25, Ls.18-19.) Just as the district court acknowledged in adopting the prosecutor's comments, the record on appeal does not include a notice of hearing for Caldrer's motion to suppress. The court's denial of Caldrer's motion should be affirmed on that alternative basis.

The Idaho Supreme Court addressed a similar issue, albeit in a civil context, in Bettwieser v. New York Irrigation Dist., 154 Idaho 317, 297 P.3d 1134 (2013). On appeal

[3] Idaho Criminal Rule 12(d)'s requirement that, in felony cases, motions to suppress must "be brought on for hearing" within 14 days after filing or 48 hours before trial," can only mean that the moving party must file notice of such hearing.

from an adverse judgment following a bench trial in a breach of contract action, Bettwieser argued that "the district court erred by failing to rule on all of his pre-trial motions." Id. at 327, 297 P.3d at 1144. The Idaho Supreme Court rejected Bettwieser's argument because the record showed Bettwieser, a *pro se* litigant, never noticed the pretrial motions for hearing. Id. The Court reasoned:

> Attorneys are expected to know the rules of the forum, and pro se litigants are not afforded a more lenient standard. *Michalk v. Michalk*, 148 Idaho 224, 229, 220 P.3d 580, 585 (2009). As explained above, the Rules of Civil Procedure permit a district court to set a party's motion for hearing sua sponte. I.R.C.P. 6(e)(2). However, we also explained that under the local rules of the Fourth Judicial District, parties are required to schedule motion hearings with the clerk of the presiding judge and "only those civil matters which have been scheduled for hearing by the clerks as provided by this rule and noticed for hearing pursuant to Rules 5(a) and 7(b), I.R.C.P., will be heard by the court." Idaho 4th Jud. Dist. Rule 2.
>
> Here, the district court reminded Bettwieser on more than one occasion that he must schedule a hearing before the court would rule on a motion. Bettwieser has not identified any instance where the district court failed to address and rule on any motion that Bettwieser had properly scheduled and noticed for hearing. *The district court did not err in declining to rule on motions that Bettwieser failed to notice for hearing.*

Bettwieser, 154 Idaho at 327, 297 P.3d at 1144 (emphasis added).

The reasoning and result of Bettwieser are persuasive in this case. Caldrer's trial counsel was expected to know the rules for setting up a hearing on his suppression motion. If Caldrer's attorney desired a hearing on his suppression motion, it was his obligation to schedule it – i.e., cause it to "be brought on for hearing" within the proper timeframe. Rule 12(d), I.C.R. Because he failed to do so, Caldrer cannot show that the district court erred by (allegedly) failing to render a ruling on whether there was good cause or excusable neglect for filing his untimely suppression motion. Even if the district court did not rule on whether Caldrer showed good cause or excusable neglect for the untimely filing of his

suppression motion, the denial of the motion was correct, although on different grounds, and should be upheld on this alternative basis. State v. Stewart, 149 Idaho 383, 234 P.3d 707, 712 (2010) (affirming denial of motion on correct theory, one not reached by trial court); McKinney v. State, 133 Idaho 695, 700, 992 P.2d 144, 149 (1999) (if trial court reaches the correct result by erroneous theory, appellate court will affirm upon the correct theory).

CONCLUSION

The state respectfully requests that this Court affirm Caldrer's convictions and sentences.

DATED this 14th day of March, 2018.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of March, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

JCM/dd