

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

4-23-2018

State v. Caldrer Appellant's Reply Brief Dckt. 45081

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Caldrer Appellant's Reply Brief Dckt. 45081" (2018). *Not Reported*. 4303.
https://digitalcommons.law.uidaho.edu/not_reported/4303

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|-----------------------|---|---------------------|
| STATE OF IDAHO, |) | |
| |) | |
| Plaintiff-Respondent, |) | NO. 45081 |
| |) | |
| v. |) | ADA COUNTY |
| |) | NO. CR-FE-2016-2977 |
| DALE FRANCIS CALDRER, |) | |
| |) | |
| Defendant-Appellant. |) | |
| _____ |) | |

REPLY BRIEF OF APPELLANT

**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**

**ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555**

**ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
I.S.B. #9525
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us**

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

**KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534**

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

TABLE OF CONTENTS

| | <u>PAGE</u> |
|---|-------------|
| TABLE OF AUTHORITIES | ii |
| STATEMENT OF THE CASE | 1 |
| Nature of the Case | 1 |
| Statement of Facts and Course of Proceedings | 1 |
| ISSUE PRESENTED ON APPEAL | 2 |
| ARGUMENT | 3 |
| The District Court Abused Its Discretion When It Refused To Consider Mr. Caldrex’s Late-Filed Motion To Suppress Without Ruling On Whether Mr. Caldrex Presented Good Cause Or Excusable Neglect For The Late Filing | 3 |
| A. Introduction | 3 |
| B. The District Court Did Not Implicitly Adopt The Prosecutor’s Position That Defense Counsel Failed To Present Good Cause For His Late-Filed Motion To Suppress | 3 |
| C. This Court Should Not Affirm On The Ground That Mr. Caldrex Failed To Properly Notice His Motion For Hearing | 5 |
| CONCLUSION | 7 |
| CERTIFICATE OF MAILING | 8 |

TABLE OF AUTHORITIES

Cases

Bettwieser v. New York Irrigation District, 154 Idaho 317 (2013)6
State v. Hedger, 115 Idaho 598 (1989)5

Rules

I.C.R. 12(d).....3, 5, 7
I.R.C.P. 5(a).....6
I.R.C.P. 7(b).....6

STATEMENT OF THE CASE

Nature of the Case

Mr. Caldrex appeals from his judgment of conviction, challenging the district court's refusal to consider his late-filed motion to suppress. Mr. Caldrex submits this Reply Brief to respond to the State's legal argument.

Statement of Facts and Course of Proceedings

Mr. Caldrex included a statement of facts and course of proceedings in his Appellant's Brief, which he relies on and incorporates herein. (*See Appellant's Br.*, pp.1-3.)

ISSUE

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

ARGUMENT

The District Court Abused Its Discretion When It Refused To Consider Mr. Calderer's Late-Filed Motion To Suppress Without Ruling On Whether Mr. Calderer Presented Good Cause Or Excusable Neglect For The Late Filing

A. Introduction

In his Appellant's Brief, Mr. Calderer argued the district court abused its discretion when it refused to consider his late-filed motion to suppress without ruling on whether he presented good cause or excusable neglect for the late filing, as required by Idaho Criminal Rule 12(d). (Appellant's Br., pp.5-8.) In its Respondent's Brief, the State first argues the district court made the requisite factual finding regarding good cause because it implicitly adopted the prosecutor's position that defense counsel failed to present good cause. (Respondent's Br., pp.6-8.) The State next argues this Court should affirm on the alternative ground that Mr. Calderer failed to properly notice his motion for hearing. (Respondent's Br., pp.8-11.) The State's arguments are unavailing, and should be rejected by this Court.

B. The District Court Did Not Implicitly Adopt The Prosecutor's Position That Defense Counsel Failed To Present Good Cause For His Late-Filed Motion To Suppress

The district court refused to consider Mr. Calderer's late-filed motion to suppress because it was untimely, and the court "literally did not have time on [its] calendar . . . to hear the motion." (Tr., p.24, L.18 – p.25, L.2.) Contrary to the State's argument on appeal, the district court did not implicitly adopt the prosecutor's position that defense counsel failed to present good cause for the late filing. (*See* Respondent's Br., p.9.) Instead, the district court never ruled on whether Mr. Calderer presented good cause or excusable neglect for the late-filed motion, as required by Idaho Criminal Rule 12(d).

At the pretrial conference on January 17, 2017, the district court said it “literally [did] not have time on [its] calendar” to consider the motion. (Tr., p.20, Ls.2-8.) The prosecutor then said he did not think defense counsel’s explanation for the late filing “rises to good cause under the law.” (Tr., p.20, Ls.12-15.) The district court expressly reserved a ruling on this point, saying it would have to make a ruling at some point. (Tr., p.20, Ls.16-18.) The district court did not make a ruling at the pretrial conference, and said to defense counsel simply that the motion was “untimely” and the court “was not going to be able to hear it.” (Tr., p.21, Ls.14-18.)

On January 30, 2017, counsel for Mr. Caldrex asked the district court to “give a ruling as to why the suppression motion was not heard.” (Tr., p.24, Ls.14-17.) The district court said:

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 said he would like to “make some record, too” and noted the motion to suppress “was not ever noticed up” and defense counsel “didn’t give any good cause.” (Tr., p.25, Ls.10-17.) The district court responded, “Well, Mr. Dinger, I’ll let the record stand on that.” (Tr., p.25, Ls.18-19.)

The State argues the district court’s statement that it would “let the record stand” constitutes a “clear[] adoption” by the district court of the prosecutor’s statement that defense counsel did not present good cause for the late filing. (Respondent’s Br., p.8.) This argument strains credulity. If the district court wanted to make a finding regarding good cause, it surely could have done so. This Court cannot read the district court’s statement that it would “let the record stand” as indicating an implicit adoption of the prosecutor’s position. As it stands, the record shows the district court never ruled on whether Mr. Caldrex presented good cause or

excusable neglect for the late filing of his motion. Instead, the record shows the district court reserved ruling on the issue of good cause, and refused to consider the late-filed motion simply because it was untimely, and the court “literally did not have time on [its] calendar . . . to hear the motion.” (Tr., p.24, L.18 – p.25, L.2.)

A district court abuses its discretion when, among other things, it fails to act within the outer boundaries of its discretion and consistently with the applicable legal standards. *See State v. Hedger*, 115 Idaho 598, 600 (1989). The district court abused its discretion because it did not act consistently with Idaho Criminal Rule 12(d) in that it did not consider whether Mr. Caldrex presented good cause or excusable neglect for the late filing of his motion to suppress.

C. This Court Should Not Affirm On The Ground That Mr. Caldrex Failed To Properly Notice His Motion For Hearing

The State argues, in the alternative, that this Court should affirm the denial of Mr. Caldrex’s motion to suppress on the alternative ground that although he requested oral argument, he never properly filed a notice of hearing. (Respondent’s Br., pp.8-11.) In support of this argument, the State cites Idaho Criminal Rule 12(d), which states, in pertinent part, that “[i]n 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.” I.C.R. 12(d). The State acknowledges in a footnote that Rule 12(d) does not require the filing of a notice of hearing, and certainly does not provide that a motion may be denied for failure to file a notice of hearing. (*See* Respondent’s Br., p.9, note 3 (stating the pertinent portion of Rule 12(d) “can only mean that the moving party must file notice of such hearing.”))

The State does not cite any criminal cases in support of its argument on this issue, but cites instead to a civil case involving a *pro se* litigant, *Bettwieser v. New York Irrigation District*, 154 Idaho 317 (2013). Mr. Bettwieser raised fourteen issues in his *pro se* appeal, including “[w]hether the district court failed to hear and rule on all of [his] pre-trial motions.” *Id.* at 322. The Idaho Supreme Court concluded the district court did not err in failing to rule on Mr. Bettwieser’s pre-trial motions, noting the local rules of the Fourth Judicial District state that “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.” *Id.* at 327. *Bettwieser* has no bearing on this case, as the State has not cited to any rule which provides that a criminal motion which is not properly noticed will not be heard by the district court.

Moreover, and unlike in *Bettwieser*, the record reflects that counsel for Mr. Calderer attempted to file a notice of hearing, but did not do so successfully due to a clerical error. The State filed in the district court an Objection to Defendant’s Notice of Hearing, in which the prosecutor informed the district court that after he alerted defense counsel that a notice of hearing had not been filed, defense counsel faxed a notice of hearing to the prosecutor. (R., p.112.) The prosecutor informed the district court that the notice was not properly filed electronically likely because it had the wrong case number on it. (R., p.112.) At the pretrial conference on January 17, 2017, defense counsel told the district court he had indeed put the wrong case number on the notice of hearing, and asked to get the motion to suppress on the court’s calendar. (Tr., p.11, Ls.6-22.) There is absolutely no indication that the district court would have or should have denied Mr. Calderer’s motion to suppress because of the clerical error on his notice of hearing, and this Court should not affirm on this alternative basis.

CONCLUSION

For the reasons stated above, as well as those set forth in his Appellant's Brief, Mr. Caldrex respectfully requests that the Court vacate his judgment of conviction, and remand this case to the district court to determine whether he presented good cause or excusable neglect for his failure to comply with the time limits set forth in Idaho Criminal Rule 12(d), and, if he presented good cause or excusable neglect, to hold a hearing on his motion to suppress and consider the motion on its merits.

DATED this 23rd day of April, 2018.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd day of April, 2018, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

DALE FRANCIS CALDRER
INMATE #122962
ISCI
PO BOX 14
BOISE ID 83707

RICHARD D GREENWOOD
DISTRICT COURT JUDGE
E-MAILED BRIEF

JEFFREY K SMITH
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas