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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)	
	)	<b>NO. 45081</b>
<b>Plaintiff-Respondent,</b>	)	
	)	<b>ADA COUNTY</b>
<b>v.</b>	)	<b>NO. CR-FE-2016-2977</b>
	)	
<b>DALE FRANCIS CALDRER,</b>	)	
	)	
<b>Defendant-Appellant.</b>	)	
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**BRIEF OF APPELLANT**

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**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 Caldrex appeals from his judgment of conviction, challenging the district court's refusal to consider his late-filed motion to suppress. The district court refused to consider the motion because it was untimely and the court "literally did not have time on [its] calendar." The district court never considered whether Mr. Caldrex presented good cause or excusable neglect for the late filing, as required by Idaho Criminal Rule 12(d). This Court should vacate Mr. Caldrex's conviction and remand this case to the district court to determine whether Mr. Caldrex presented good cause or excusable neglect for his late filing, and, if he presented good cause or excusable neglect, to hold a hearing on Mr. Caldrex's motion to suppress and consider the motion on its merits.

### Statement of Facts and Course of Proceedings

Mr. Caldrex was charged by Indictment with enticement of a child through the use of the internet or other communication device, sexual abuse of a child under the age of sixteen years, and disseminating material harmful to minors. (R., pp.22-24.) The State filed an Information Part II alleging Mr. Caldrex was a persistent violator within the meaning of Idaho Code § 19-2514. (R., pp.37-39.) Mr. Caldrex entered a plea of "not guilty" on April 5, 2016. (R., p.36.) Mr. Caldrex was originally represented by a public defender, but retained a private attorney, who entered an appearance on Mr. Caldrex's behalf on August 9, 2016. (R., pp.62-63.) On that same day, Mr. Caldrex's new attorney filed a motion to vacate and reset the jury trial, stating he had not yet received any discovery in the matter and had not had sufficient time to determine whether there was a basis for any pre-trial motions. (R., pp.56-58.) Counsel told the district court at a hearing on August 16, 2016 that he had still not received the discovery materials. (R., p.69.)

On December 27, 2016, Mr. Caldrex filed a motion to suppress statements made during an interrogation at the Ada County Jail, on the grounds that he was questioned after requesting an attorney. (R., pp.89-92.) The State filed an objection to Mr. Caldrex's motion, arguing the motion should be denied on its merits, and was untimely under Idaho Criminal Rule 12(d). (R., pp.93-99.) The State also filed an objection to Mr. Caldrex's notice of hearing stating the notice had not been properly filed, likely because Mr. Caldrex's counsel put the wrong case number on it. (R., pp.111-14.)

At the pretrial conference on January 17, 2017, counsel for Mr. Caldrex told the district court he had put the wrong case number on the notice of hearing, and would like to get the motion to suppress and a motion *in limine* on the court's calendar. (Tr., p.11, Ls.6-22.) The district court stated, "I literally do not have time on my calendar . . . ." (Tr., p.20, Ls.2-8.) The district court later told defense counsel the "motion is untimely and I am not going to be able to hear it." (Tr., p.21, Ls.14-18.) The parties appeared before the district court for trial on January 30, 2017, and defense counsel asked the court to "give a ruling as to why this 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 case proceeded to trial, and, in his opening statement, the prosecutor emphasized the statements Mr. Caldrex made that were the subject of the suppression motion. The prosecutor argued:

So Detective Brady took him down to the police station and interviewed him. And while his story changed many times and he denied many times, ultimately, at the end he admitted to sending all the sexual messages to [the child]. He even told the detective how he dictated them into his phone, and that's how they were made.

(Tr., p.176, Ls.16-23.) Detective Brady testified for the State regarding his interrogation of Mr. Caldrex. (Tr., p.428, L.25 – p.446, L.21.) Among other things, Detective Brady testified, “He eventually stated that, in reference to having sex with [the child], that anything was possible, was his quote.” (Tr., p.443, Ls.8-11.) Detective Brady also testified that Mr. Caldrex “eventually disclosed that he had sent all the [electronic messages at issue].” (Tr., p.444, Ls.13-14.) The State also called Detective Brady in rebuttal, and he testified again about statements Mr. Caldrex made during the interrogation. (Tr., p.838, L.18 – p.840, L.15.)

The jury found Mr. Caldrex guilty on all three counts. (Tr., p.934, L.9 – p.935, L.22; R., pp.181-83.) Mr. Caldrex maintained his innocence, and did not participate in the presentence investigation process. (Tr., p.944, Ls.14-19; Presentence Investigation Report (“PSI”), p.5.) The district court sentenced Mr. Caldrex as follows: for enticement of a child through the use of the internet or other communication device, a unified term of 25 years, with 10 years fixed; for sexual abuse of a child under the age of sixteen years, a unified term of 25 years, with 10 years fixed; and for disseminating material harmful to minors, one year fixed; all to be served concurrently. (R., p.188.) The judgment of conviction was filed on April 7, 2017, and Mr. Caldrex filed a timely notice of appeal on May 4, 2017. (R., pp.187-91, 196-99.)

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. Caldrrer's Late-Filed Motion To Suppress Without Ruling On Whether Mr. Caldrrer Presented Good Cause Or Excusable Neglect For The Late Filing

#### A. Introduction

The district court refused to consider Mr. Caldrrer's late-filed motion to suppress because it was untimely, and the court "literally did not have time on [its] calendar." (Tr., p.24, L.18 – p.25, L.2.) The district court never ruled on whether Mr. Caldrrer presented good cause or excusable neglect for the late filing, as required by Idaho Criminal Rule 12(d). This Court should vacate Mr. Caldrrer's conviction and remand this case to the district court to determine whether Mr. Caldrrer 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.

#### B. Standard Of Review

Idaho Criminal Rule 12(d) provides specific deadlines for filing pre-trial motions, and grants the district court discretion to "shorten or enlarge the time" and to "relieve a party of failure to comply with this rule" if that party shows "good cause" or "excusable neglect." I.C.R. 12(d). Here, the district court refused to exercise its discretion to hear Mr. Caldrrer's late-filed motion to suppress. This Court reviews a district court's discretionary decision for an abuse of discretion. *State v. Hedger*, 115 Idaho 598, 600 (1989). 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 id.*

C. The District Court Failed To Act Within The Outer Boundaries Of Its Discretion And Consistently With The Applicable Legal Standards When It Refused To Consider Mr. Caldrer's Late-Filed Motion Without Ruling On Whether Mr. Caldrer Presented Good Cause Or Excusable Neglect For The Late Filing

Under Idaho Criminal Rule 12(d), a district court may excuse a party's failure to comply with the deadline for filing pre-trial motions if it finds good cause or excusable neglect. I.C.R. 12(d). Here, the district court 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. This was an abuse of discretion.

At the pretrial conference, the district court asked counsel for Mr. Caldrer, "Why so late in filing the motion to suppress?" (Tr., p.15, Ls.10-11.) Counsel responded, "It's my fault, Your Honor. And 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, that we need to go forward with that." (Tr., p.15, Ls.12-16.) The district court did not address defense counsel's explanation, but later said, "I don't know how we are going to hear the motion to suppress. I don't know how I'm going to take testimony. I literally do not have time on my calendar . . . ." (Tr., p.20, Ls.2-8.)

The prosecutor alerted the district court to the good cause or excusable neglect exception contained in Idaho Criminal Rule 12(d), but the district court did not make a ruling with respect to good cause or excusable neglect. 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 district court said, "That, I will have to make a ruling on at some point, but right now—let me get back to where I was—for right now the—What's the State's motion *in limine*?" (Tr., p.20, Ls.16-19.) Despite the district court's statement that it would "have to make a ruling . . . at some point," it failed to do so. At the end of the pretrial

conference, the district court told defense counsel, “[Y]our motion is untimely and I am not going to be able to hear it. It’s that simple.” (Tr., p.21, Ls.14-18.)

The parties appeared again before the district court two weeks later, and defense counsel asked the district court to “give a ruling as to why this 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.”

(Tr., p.25, L.11.) The prosecutor continued:

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.12-17.) The district court still did not make a ruling as to whether defense counsel presented good cause or excusable neglect for the late-filed motion. Instead, the district court responded to the prosecutor, “Well . . . I’ll let the record stand on that.” (Tr., p.25, Ls.18-19.)

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 to suppress. Instead, the record shows the district court refused to consider the late-filed motion because, first, “it was untimely,” and second, the court “literally did have time on [its] calendar.” (Tr., p.24, L.18 – p.25, L.2.) Despite being informed by the prosecutor of the good cause and excusable neglect exception, and despite stating it intended to make a ruling on that exception at some point, the district court never did so. Ultimately, the district court refused to consider Mr. Caldrex’s motion

simply because it had a busy calendar. This was not within the outer boundaries of the court's discretion, and was not consistent with the applicable legal standards.

A district court can consider a late-filed motion, even with a busy calendar, if it finds good cause or excusable neglect for the late filing. *See State v. Alanis*, 109 Idaho 884, 888 (1985); *State v. Dice*, 126 Idaho 595, 597 (Ct. App. 1994). As explained by the Court of Appeals in *Dice* in addressing a late-filed motion to suppress:

The district court should have entertained an explanation by [defense] counsel for the delay [in filing a motion to suppress] and then should have determined whether good cause or excusable neglect was shown based on the reasons given. If no good cause or excusable neglect was established to the satisfaction of the district court, the motion should not have been heard.

126 Idaho at 597. Here, the district court did not rule on whether defense counsel presented good cause or excusable neglect. The Court of Appeals has affirmed district courts that have refused to hear late-filed motions, finding excuses given by counsel to be insufficient to support a finding of good cause or excusable neglect. *See, e.g., State v. Cutler*, 143 Idaho 297, 301 (Ct. App. 2006) (affirming district court's finding that "mere assertion of a heavy caseload was insufficient to support finding of excusable neglect or good cause under Rule 12(d)"). But Mr. Caldrex is not aware of any decision from the Idaho Supreme Court or Court of Appeals affirming a district court's refusal to consider a late-filed motion to suppress absent a finding of no good cause or excusable neglect.

CONCLUSION

This Court should vacate Mr. Caldrex's judgment of conviction, and remand this case to the district court to determine whether Mr. Caldrex 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 Mr. Caldrex's motion to suppress and consider the motion on its merits.

DATED this 22<sup>nd</sup> day of November, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of November, 2017, 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:

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