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State v. L'Abbe Respondent's Brief 2 Dckt. 41212

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 41212
Plaintiff-Respondent,)	
)	Ada Co. Case No.
vs.)	CR-IN-2012-21020
)	
STEPHEN D. L'ABBE,)	
)	
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

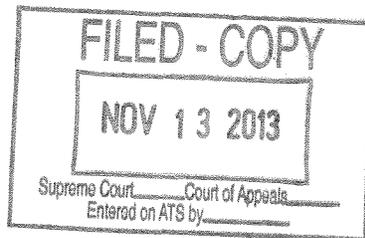
HONORABLE THERESA GARDUNIA, Magistrate Judge
HONORABLE MICHAEL R. MCLAUGHLIN, District Judge

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STATEMENT OF THE CASE

Nature of the Case

Stephen D. L'Abbe appeals, *pro se*, from the district court's intermediate appellate decision that affirmed the magistrate's judgment finding L'Abbe guilty of speeding.

Statement of Facts and Course of Proceedings

The district court set forth the facts and procedural history of the underlying case as follows:

On May 14, 2012, L'Abbe received a uniform citation for speeding by Boise Police Officer Jeff Stiles, alleging L'Abbe drove thirty-eight miles per hour in the twenty-five mile per hour zone on Ustick Road in Boise, Idaho. [R., p.5.] L'Abbe pleaded not guilty and the case was set for a Court Trial. [R., p.46.] Prior to the Court Trial, L'Abbe filed several motions challenging the Magistrate Court's jurisdiction, including a "Demand for a Verified Complaint," to "Dismiss with Prejudice," to "Reprimand to Restore Appearance of Credability [sic]," and for "Mandatory Judicial Notice" of purely legal, rather than factual, matters. [R., pp.7-45, 54-58, 62-69.] At the time of the court trial, L'Abbe made a record of his arguments about the court's jurisdiction, all of which were overruled. [Exhibit: audio recording of 10/10/12 court trial.]

The State presented its case through the testimony of Officer Stiles, which is not challenged in this appeal. [Exhibit: audio recording of 10/10/12 court trial.] The magistrate found L'Abbe in violation of speeding, Idaho Code § 49-654(2), and entered judgment against him. [R., p.77.] L'Abbe filed a timely Notice of Appeal from the entry of judgment[.] [R., pp.78-81.]

(R., pp.232-33 (parenthetical record citations omitted, bracketed record citations added, "[sic]" original).) The district court affirmed the magistrate's judgment finding L'Abbe guilty of speeding. (R., pp.232-39.) L'Abbe again timely appeals. (R., pp.244-49.)

ISSUE

L'Abbe has failed in his Appellant's brief to set forth a concise statement of the issues presented on appeal as required by I.A.R. 35(a)(4).

The state phrases the issue on appeal as:

Has L'Abbe failed to establish that the district court erred in affirming the magistrate's judgment finding L'Abbe guilty of speeding?

ARGUMENT

L'Abbe Has Failed To Establish That The District Court Erred In Affirming The Judgment

A. Introduction

The district court affirmed the magistrate's judgment finding L'Abbe guilty of speeding. (R., pp.232-39.) On appeal, L'Abbe reasserts the arguments he advanced to the magistrate and district courts, claiming: (1) the magistrate was without personal or subject matter jurisdiction to adjudicate the infraction (see generally Appellant's brief), and (2) he was constitutionally entitled to a jury trial (Appellant's brief, pp.6-7, 30). For the reasons that follow, L'Abbe has failed to carry his appellate burden of showing error in the lower courts' rulings.

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 reviews 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 at 670; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)).

Whether a court has jurisdiction is a question of law, given free review. State v. Kavajecz, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003).

C. The District Court Correctly Determined That L'Abbe's Jurisdictional Arguments Were Without Merit

Before a defendant can be held to answer in a criminal case, the court in which the proceeding is commenced must have both personal and subject matter jurisdiction. State v. Rogers, 140 Idaho 223, 228, 91 P.3d 1127, 1132 (2004). Personal jurisdiction refers, generally, "to the court's authority to adjudicate the claim as to the person." Id. at 227, 91 P.3d at 1131 (quoting Matter of Hanson, 121 Idaho 507, 509, 826 P.2d 468, 470 (1992)). Subject matter jurisdiction, on the other hand, refers to the court's authority to adjudicate the case. Id. As he did below, L'Abbe appears to claim that the magistrate lacked personal and subject matter jurisdiction to adjudicate the prosecution against him for speeding, in violation of Idaho Code § 49-654(2). (See generally Appellant's brief.) Contrary to L'Abbe's assertions, however, correct application of the law to the facts shows that the magistrate had both personal and subject matter jurisdiction in the underlying case.

"In a criminal case, the court properly acquires personal jurisdiction over the defendant when the defendant appears at the initial court setting on a complaint or arraignment on the indictment." Rogers, 140 Idaho at 228, 91 P.3d at 1132 (citing I.C.R. 4, 10; State v. Cronin, 923 P.2d 694, 697 (Wash. 1996)); see also State v. Jones, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004) ("Idaho courts obtain personal jurisdiction over a criminal defendant when the defendant

initially appears in court.”). In this case, the magistrate acquired personal jurisdiction over L’Abbe when he appeared at the pretrial conference on the citation charging him with speeding, in violation of I.C. § 49-654(2). (See R., p.46.) It does not matter that the offense for which L’Abbe was being prosecuted was an infraction; “[U]nder Idaho law, a traffic infraction is a violation of law which is criminal in nature.” State v. George, 127 Idaho 693, 698-99, 905 P.2d 626, 631-32 (1995)). Nor does it matter that L’Abbe objected to the court’s jurisdiction over him. “Idaho Code § 18-202 establishes the court’s personal jurisdiction over *all* individuals who commit a crime in this state.” Rogers, 140 Idaho at 228, 91 P.3d at 1132 (emphasis added). The mere unwillingness of a criminal defendant to assent to the court’s authority does not defeat the court’s lawful exercise of personal jurisdiction once the defendant personally appears in court. See State v. Simmons, 115 Idaho 877, 878, 771 P.2d 541, 542 (Ct. App. 1989) (citations omitted) (rejecting defendant’s claim that personal jurisdiction could not exist without a contract or his agreement thereto, stating, “[w]e have consistently and unequivocally rejected the notion that a state must contract with a citizen either to obtain personal jurisdiction or to subject the citizen to its laws”).

The magistrate also had subject matter jurisdiction. “Subject matter jurisdiction in a criminal case is conferred by the filing of an ‘information, indictment, or complaint alleging an offense was committed within the State of Idaho.’” Jones, 140 Idaho at 757-58, 101 P.3d at 701-02 (citing Rogers, 140 Idaho at 227, 91 P.3d at 1131). In this case, the state filed a uniform citation, and then a criminal complaint, alleging that L’Abbe committed a speeding

infraction in violation of I.C. § 49-654(2), and that he did so in Ada County, Idaho. (R., pp.5, 60-61.) Because the charging documents alleged an offense committed in the State of Idaho, they conferred on the magistrate subject matter jurisdiction to hear and determine the case. Jones, 140 Idaho at 757-58, 101 P.3d at 701-02; Rogers, 140 Idaho at 228, 91 P.3d at 1132. L'Abbe's assertions to the contrary are without merit.

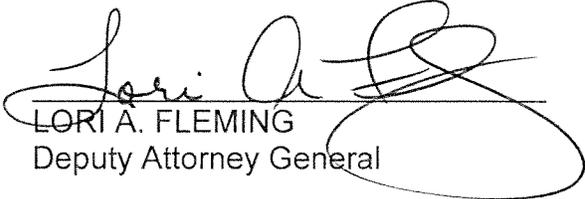
D. The District Court Correctly Determined L'Abbe Had No Right To A Jury Trial On The Speeding Infraction

As he did below, L'Abbe argues on appeal to this Court that he had a constitutional right to a jury trial on the speeding charge. (Appellant's brief, pp.6-7, 30.) L'Abbe's argument fails. The constitutional right to a jury trial does not apply to traffic infractions. State v. Bennion, 112 Idaho 32, 46, 730 P.2d 952, 966 (1986). See also State v. Hines, 117 Idaho 198, 200, 786 P.2d 589, 591 (Ct. App. 1990). The state adopts as its remaining argument on this issue the district court's analysis, as set forth at pages 5-6 of the court's "Memorandum Decision And Order" (R., pp.236-37). For this Court's convenience, a copy of the district court's appellate decision is appended to this brief.

CONCLUSION

The state respectfully requests this Court to affirm the district court's appellate decision affirming the magistrate's judgment finding L'Abbe guilty of speeding.

DATED this 13th day of November, 2013.


LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of November, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

STEPHEN D. L'ABBE
1614 MANITOU AVE.
BOISE, ID 83706


LORI A. FLEMING
Deputy Attorney General

LAF/pm

Appendix A

JUN 07 2013

CHRISTOPHER D. RICH, Clerk
By AMY LYCAN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff/Respondent)	Case No. CR-IN-2012-0021020
)	
vs.)	
)	
STEPHEN DAVID L'ABBE,)	MEMORANDUM DECISION
)	
Defendant/Appellant.)	
_____)	

Defendant/Appellant Stephen David L'Abbe Pro Se

Attorney for Plaintiff/Respondent: Ralph R. Blount, Assistant Boise City Attorney

A. NATURE OF THE CASE

Stephen D. L'Abbe (L'Abbe) appeals from the judgment of the Magistrate Court finding him in violation of Idaho Code § 49-654(2), speeding. The Court heard Oral Argument on May 29, 2013 and took the matter under advisement. The Court will affirm the decision of Judge Gardunia.

COURSE OF PROCEEDINGS

On May 14, 2012, L'Abbe received a uniform citation for speeding by Boise Police Officer Jeff Stiles, alleging L'Abbe drove thirty-eight miles per hour in the twenty-five mile per hour zone on Ustick Road in Boise, Idaho. (Register of Action in Ada County Case CR-IN-2012-0021020). L'Abbe pleaded not guilty and the case was set

for a Court Trial. (Register of Action in Ada County Case CR-IN-2012-0021020). Prior to the Court Trial, L'Abbe filed several motions challenging the Magistrate Court's jurisdiction, including a "Demand for a Verified Complaint," to "Dismiss with Prejudice," to "Reprimand to Restore Appearance of Credability [sic]," and for "Mandatory Judicial Notice" of purely legal, rather than factual, matters. (Register of Action entries on June 1, 2012, July 20, 2012, and August 17, 2012, in Ada County Case CR-IN-2012-0021020). At the time of the court trial, L'Abbe made a record of his arguments about the court's jurisdiction, all of which were overruled. (Mot. to Augment the Record, Court Trial Audio (October 10, 2012)).

The State presented its case through the testimony of Officer Stiles, which is not challenged in this appeal. (Mot. to Augment the Record, Court Trial Audio (October 12, 2012)). The magistrate found L'Abbe in violation of speeding, Idaho Code § 49-654(2), and entered judgment against him. (Mot. to Augment the Record, Court Trial Audio (October 12, 2012)). L'Abbe filed a timely Notice of Appeal from the entry of judgment (Register of Action entry November 7, 2012, in Ada County Case CR-IN-2012-0021020). L'Abbe later filed a motion indicating a transcript of the court trial was not necessary for his appeal, reflected in an Amended Order governing the appeal proceedings. (Register of Action entries December 20, 2012, and January 17, 2013, in Ada County Case CR-IN-2012-0021020).

ISSUES ON APPEAL

L'Abbe's brief contains a wide variety of statements attributed to state and federal rules, statutes, case law, and constitutional provisions asserting two general legal arguments: that the magistrate court was without jurisdiction to try him for a variety of reasons (App. Br., pp. 24-32) and erred in ruling he was not entitled to a jury trial on his speeding citation (App. Br., pp. 3-8).

STANDARD OF REVIEW

An appellate court will exercise free review over questions of law. See *Dennett v. Kuenzli*, 130 Idaho 21, 25, 936 P.2d 219, 223 (Ct.App. 1997); *Ficarro v. McCoy*, 126 Idaho 122, 126, 879 P.2d 30, 34 (Ct.App. 1994); *Staggie v. Idaho Falls Consol. Hospitals*, 110 Idaho 349, 351, 715 P.2d 1019, 1021 (Ct.App. 1986).

DECISION

L'Abbe challenges to the magistrate's jurisdiction and asserts that he has the right to a jury trial on his speeding citation.

1. Jurisdiction of the Court

The magistrate court had proper jurisdiction over him and this speeding infraction case. Whether a court has jurisdiction is a question of law, over which the appellate court exercises free review. *State v. Kavajecz*, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003); *State v. Savage*, 145 Idaho 756, 758, 185 P.3d 268, 270 (Ct.App. 2008). L'Abbe's two general bases for his challenge to the magistrate court's jurisdiction: (1) his Sixth Amendment right was violated because he has the right to face his accusers

and “[n]o Mr. Idaho” appeared in court; and (2) he “is not evidenced in earlier affidavits a 14th Amendment slave as cited above” (App. Br., p. 24.)

L’Abbe’s arguments are similar to the arguments raised in *State v. Wilder*, 138 Idaho 644, 67 P.3d 839 (Ct.App. 2003). There, the appellant claimed that “he is not subject to any Court wherein the Supreme Law of the land cannot be argued or applied in his defense.” *Id.* at 645, 67 P.3d at 840. In resolving that issue, the court stated:

Wilder’s argument that the magistrate court lacked jurisdiction to try him for driving a motor vehicle without a valid license is easily resolved by review of Idaho’s constitutional and statutory provisions. Article V, § 2, of the Idaho Constitution provides, in part: “The judicial power of the state shall be vested in a court for the trial of impeachments, a Supreme Court, district courts, and such other courts inferior to the Supreme Court as established by the legislature The jurisdiction of such inferior courts shall be as prescribed by the legislature.” The legislature has prescribed the assignment of misdemeanor proceedings to the magistrate division of the district court, I.C. § 1-2208(3)(a), and driving a motor vehicle without a valid license is a misdemeanor. I.C. § 49-301. Thus, the magistrate court had jurisdiction to try Wilder in this proceeding.

Id. at 645-46, 67 P.3d 840-41.

Here, the law at issue before the magistrate division was a speeding violation pursuant to Idaho Code § 49-654(2) and the citation and complaint, as amended at the beginning of the State’s case, alleged L’Abbe drove his car at thirty-eight miles per hour in a twenty-five mile per hour limit zone, which is an infraction. See Idaho Code §§ 1-2208(5), 18-111, 18-113; Idaho Infraction Rules 1 and 4. Thus, the magistrate division had jurisdiction to try L’Abbe in this proceeding.

L’Abbe also contends that he made a special appearance in this matter solely to challenge the magistrate’s jurisdiction. The personal jurisdiction in this case is established in the Idaho Traffic Infraction Act:

The procedure for processing an infraction citation and the trial thereon, if any, shall be the same as provided for the processing of a misdemeanor citation under rules promulgated by the Supreme Court, except there shall be no right to a trial by jury. An infraction is a civil public offense, but in order to insure the maximum protection of the laws to the citizens charged with having committed an infraction, the burden of proof and the rules of evidence applied to an infraction proceeding shall be those provided in a criminal trial.

Idaho Code § 49-1502(1). This section requires the court to enter judgment against any defendant who admits or is found to have committed the infraction after a trial before the court. An infraction is a civil public offense not constituting a crime, Idaho Code § 18-111, the violation of which is "only a penalty not exceeding one hundred dollars (\$100) and no punishment. Idaho Code § 18-113A.

In addition the court had jurisdiction over him pursuant to Idaho Code § 18-202 ("[t]he following persons are liable to punishment under the laws of this state: (1) All persons who commit, in whole or in part, any crime within this state.") The Idaho Supreme Court has stated that "[I.C.] § 18-202 establishes the court's personal jurisdiction over all individuals who commit a crime in this state." *State v. Rogers*, 140 Idaho 223, 228, 91 P.3d 1127, 1132 (2004).

Thus the court acquired personal jurisdiction over L'Abbe at the time of his first appearance in the case and subject matter jurisdiction over infractions pursuant to the Idaho Traffic Infraction Act.

2. RIGHT TO A JURY TRIAL THE INFRACTION CITATION.

L'Abbe argues he had a right to be tried by an Article III judge pursuant to the United States (U.S.) Constitution. (App. Br., pp. 2-4.) He also argues he is entitled to a Seventh Amendment Court. (App. Br., p. 4.) Article III of the United States Constitution

governs the creation and specifies the jurisdiction of federal trial courts. The Seventh Amendment to the U.S. Constitution refers to common law suits, not statutory offenses. Because L'Abbe's traffic violation is purely a state law matter, not common law, he had no right to a jury trial in federal court.

Article V, Section Two, of the Idaho Constitution provides for the formation of state trial courts by the Idaho Legislature:

SECTION 2. JUDICIAL POWER -- WHERE VESTED. The judicial power of the state shall be vested in ..., a Supreme Court, district courts, and such other courts inferior to the Supreme Court as established by the legislature. The courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court. The jurisdiction of such inferior courts shall be as prescribed by the legislature. Until provided by law, no changes shall be made in the jurisdiction or in the manner of the selection of judges of existing inferior courts.

As empowered by the Idaho State Constitution, the Idaho Legislature constitutionally created the magistrate division of state courts. Idaho Code § 1-101 enumerates all of the courts of justice in Idaho and includes the magistrate division of the district court. Idaho Code § 1-2201 specifically establishes the magistrate court division. Idaho Code § 1-2208 enumerates the jurisdictional limits of the magistrate, which include "[p]roceedings under the Idaho traffic infractions act, chapter 15, title 49, Idaho Code." See Idaho Code § 1-2208(5). Idaho Code § 49-654(2) is a State statute within the motor vehicle title governed by the Idaho Traffic Infractions Act. Pursuant to the Act, "[t]he procedure for processing an infraction citation and the trial thereon, if any, shall be the same as provided for the processing of a misdemeanor citation under rules promulgated by the supreme court, except there shall be no right to a trial by jury." Idaho Code § 14-1502(1). L'Abbe had no right to a jury trial.

CONCLUSION

The magistrate's judgment finding L'Abbe in violation of Idaho Code § 49-654(2), speeding, is affirmed.

IT IS SO ORDERED.

Dated this 7th day of June 2013.



Michael McLaughlin
Senior District Judge

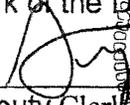
CERTIFICATE OF MAILING

I hereby certify that on the 7th day of June 2013, I mailed (served) a true and correct copy of the within order to:

STEPHEN D. L'ABBE
1614 MANITOU AVENUE
BOISE, IDAHO 83706

BOISE CITY ATTORNEY
INTERDEPARTMENTAL MAIL

HON. THERESA GARDUNIA
INTERDEPARTMENTAL MAIL

By 
Deputy Clerk

CHRISTOPHER D. RICH
Clerk of the District Court
OF THE STATE OF IDAHO
DISTRICT COURT IN AND FOR ADA COUNTY