

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

3-26-2018

State v. Dougherty Respondent's Brief Dckt. 45414

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

Recommended Citation

"State v. Dougherty Respondent's Brief Dckt. 45414" (2018). *Not Reported*. 4485.
https://digitalcommons.law.uidaho.edu/not_reported/4485

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,)
) No. 45414
 Plaintiff-Respondent,)
) Kootenai County Case No.
 v.) CR-2015-6329
)
 WILLIAM PATRICK DOUGHERTY, III,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

HONORABLE GREGORY FITZMAURICE
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

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

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

DANIEL G. COOPER
Conflict Public Defender
P. O. Box 387
Coeur d'Alene, Idaho 83816-0387
(208) 664-5155

**ATTORNEY FOR
DEFENDANT-APPELLANT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case	1
Statement Of The Facts And Course Of The Proceedings	1
ISSUE	4
ARGUMENT	5
The Trial Court Did Not Err In Giving An Instruction On The Law Regarding Presenting Driver’s Licenses To Police Officers	5
A. Introduction.....	5
B. Standard Of Review	5
C. The District Court Properly Affirmed The Magistrate	6
CONCLUSION.....	9
CERTIFICATE OF MAILING.....	9

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Borley v. Smith</u> , 149 Idaho 171, 233 P.3d 102 (2010)	5
<u>Losser v. Bradstreet</u> , 145 Idaho 670, 183 P.3d 758 (2008)	5
<u>State v. Hallenbeck</u> , 141 Idaho 596, 114 P.3d 154 (Ct. App. 2005).....	6
<u>State v. Hollon</u> , 136 Idaho 499, 36 P.3d 1287 (Ct. App. 2001).....	6, 7
<u>State v. Severson</u> , 147 Idaho 694, 215 P.3d 414 (2009).....	5, 6, 8
<u>State v. Wiedenheft</u> , 136 Idaho 14, 27 P.3d 873 (Ct. App. 2001)	6
<u>State v. Wilkerson</u> , 114 Idaho 174, 755 P.2d 471 (Ct. App. 1988)	6, 7
 <u>STATUTES</u>	
I.C. § 18-705	6
I.C. § 49-316	1, 2, 7
 <u>OTHER AUTHORITIES</u>	
ICJI 1260.....	6

STATEMENT OF THE CASE

Nature Of The Case

William Patrick Dougherty, III, appeals from the district court's intermediate appellate decision affirming his conviction for resisting and obstructing officers.

Statement Of The Facts And Course Of The Proceedings

The state charged Dougherty by citation with resisting and obstructing officers, failure to carry a driver's license, and possession of drug paraphernalia. (R., p. 9.) The state dismissed the driver's license charge. (R., p. 37.) It also filed a complaint charging resist and obstruct, open container, possession of paraphernalia, and possession of marijuana. (R., pp. 52-53, 56.) The state later amended the complaint to charge only the resist and obstruct and dismissed the other charges. (R., pp. 105-09.) The allegations in the complaint were that Dougherty obstructed or delayed an officer in the attempt to discharge his duty by "failing to produce his driver's license and/or proof of insurance and/or registration when requested and otherwise delaying the officer." (R., p. 105.)

Prior to trial the prosecutor requested several jury instructions (R., pp. 110-16), including an instruction based on I.C. § 49-316 that a driver is required to have a driver's license in his possession and surrender it to the officer upon demand (R., p. 114). The defense also requested instructions "in addition to the Court's and State's instructions." (R., pp. 117-19.)

At trial Trooper Grady testified that he stopped Dougherty's car for an illegal turn. (Tr., p. 192, L. 22 – p. 195, L. 3; p. 200, Ls. 11-18; State's Exhibit 1.) He asked for Dougherty's license, registration and insurance. (Tr., p. 195, Ls. 4-9; State's Exhibit 1.) Trooper Grady testified Dougherty refused to provide his license, registration or insurance,

stating that he “did not want to incriminate himself.” (Tr., p. 196, Ls. 3-19; State’s Exhibit 1.) Dougherty admitted he did not provide a driver’s license, but claimed it was because he did not have it with him. (Tr., p. 240, L. 21 – p. 241, L. 14.) He testified that the reason he did not provide insurance or registration is that they never got around to it and because he had to grab his cell phone to record the contact with the officer. (Tr., p. 271, L. 18 – p. 272, L. 9; p. 274, L. 7 – p. 275, L. 24.) Trooper Grady arrested Dougherty for obstructing and delaying a police officer. (Tr., p. 199, Ls. 5-21; State’s Exhibit 1.) He only learned Dougherty’s name on the way to the jail by matching a driver’s license photograph on record to the Defendant. (Tr., p. 200, Ls. 1-10.)

At the jury instruction conference the parties stipulated to withdrawal of jury instruction 12, the instruction based on I.C. § 49-316. (Tr., p. 257, L. 20 – p. 258, L. 24.) The trial court overruled the stipulation, concluding the instruction was an accurate statement of the law and properly informed the jury on the law regarding lawfulness of the officer’s request for the driver’s license. (Tr., p. 260, L. 3 – p. 261, L. 6.) Dougherty then objected to the giving of the instruction on the basis that it related to “a separate misdemeanor” that had been “charged and then dismissed” and was therefore likely to confuse the jury. (Tr., p. 261, Ls. 7-15.) The trial court overruled the objection, rejecting the claim that a reasonable jury was likely to be confused and that the instruction was “a good instruction to give to the jury so that they understand what the officer’s actions were as far as giving legal context to that.” (Tr., p. 261, L. 16 – p. 262, L. 3.)

The jury found Dougherty guilty. (R., p. 181.) The trial court entered judgment (R., p. 201) from which Dougherty timely appealed (R., pp. 202-04).

On intermediate appeal the district court considered several claims of error. (R., p. 277.) Relevant to the current appeal, the district court concluded that the trial court did not err in giving Jury Instruction 12. (R., pp. 280-81.) Dougherty filed a notice of appeal timely from the district court's appellate decision. (R., pp. 283-85.)

ISSUE

Dougherty states the issue on appeal as:

Did the trial court err in giving the jury Instruction No. 12, and thereby permitting the jury to improperly find Dougherty guilty of obstructing or delaying an officer on the grounds that Dougherty either did not have a driver's license or did not have his driver's license in his immediate possession?

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Dougherty failed to show that the district court erred when, on intermediate appeal, it affirmed the judgment of the trial court?

ARGUMENT

The Trial Court Did Not Err In Giving An Instruction On The Law Regarding Presenting Driver's Licenses To Police Officers

A. Introduction

The trial court concluded that Jury Instruction 12 was a correct statement of the law and helpful to the jury regarding the legality of the officer's request for a driver's license and other documents. (Tr., p. 260, L. 3 – p. 261, L. 6; p. 261, L. 16 – p. 262, L. 3.) The district court affirmed, finding no error in giving Jury Instruction 12. (R., pp. 280-81.) Dougherty claims the trial court erred because "Instruction No. 12 permitted the jury to erroneously find Dougherty guilty of obstructing or delaying an officer for his failure to provide Trooper Grady his driver's license irrespective of whether Dougherty's conduct amounted to a willful refusal to produce his license." (Appellant's brief, p. 9.) Application of the relevant law shows Dougherty has failed to show error in the district court's appellate decision affirming the judgment for obstruct and delay.

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 to determine whether it correctly decided the issues presented to it on appeal." Borley v. Smith, 149 Idaho 171, 176, 233 P.3d 102, 107 (2010); see also Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008).

Whether a jury was properly instructed is a question of law over which this Court exercises free review. State v. Severson, 147 Idaho 694, 710, 215 P.3d 414, 430 (2009). "An error in jury instructions only constitutes reversible error when the instruction misled

the jury or prejudiced the party challenging the instruction.” Id. (citation omitted). “If the instructions, considered as a whole, fairly and adequately present the issues and state the applicable law, then no error has been committed.” Id. (quotations, citation and brackets omitted).

C. The District Court Properly Affirmed The Magistrate

The state charged Dougherty with obstructing or delaying an officer. (R., p. 105.)

That misdemeanor is defined as follows:

Every person who wilfully resists, delays or obstructs any public officer, in the discharge, or attempt to discharge, of any duty of his office ... is punishable by a fine not exceeding one thousand dollars (\$1,000), and imprisonment in the county jail not exceeding one (1) year.

I.C. § 18-705. The word “duty,” as used in this statute, encompasses only lawful and authorized acts of a public officer. State v. Hollon, 136 Idaho 499, 502, 36 P.3d 1287, 1290 (Ct. App. 2001); State v. Wilkerson, 114 Idaho 174, 180, 755 P.2d 471, 477 (Ct. App. 1988). Consequently, where an individual refuses to obey an unlawful order or peacefully obstructs an act of a public officer that is contrary to the law, that individual does not commit the offense of delaying or obstructing an officer in the performance of his duty. State v. Hallenbeck, 141 Idaho 596, 599, 114 P.3d 154, 157 (Ct. App. 2005); State v. Wiedenheft, 136 Idaho 14, 16, 27 P.3d 873, 875 (Ct. App. 2001).

This law was synthesized into ICJI 1260, which lists the following six elements:

In order for the defendant to be guilty of [Resisting] [Delaying] [or] [Obstructing] an Officer, the state must prove each of the following:

1. On or about [date]
2. in the state of Idaho
3. the defendant [name] willfully
4. [resisted] [delayed] [obstructed]
5. [name of officer], a public officer,

6. in the discharge, or attempt to discharge, any duty of [name of officer's] office.

This instruction, as modified for the case, was given as the elements instruction in this case. (R., p. 142.) The jury was further instructed that to prove Dougherty “willfully” delayed or obstructed Trooper Grady the state had to prove that Trooper Grady “was attempting to perform, or was engaged in the performance of, some official duty.” (R., p. 144.) It was in relation to this latter requirement that the trial court concluded Instruction No. 12 would assist the jury by setting forth “the officer’s legal reason for doing what the officer was doing.” (Tr., p. 260, L. 3 – p. 261, L. 6; p. 261, L. 16 – p. 262, L. 3.)

In this case the state alleged Dougherty obstructed or delayed Trooper Grady by “failing to produce his driver’s license and/or proof of insurance and/or registration when requested and otherwise delaying the officer.” (R., p. 105.) The state therefore had the burden of proving the request for the driver’s license, proof of insurance and registration was a lawful and authorized act. Hollon, 136 Idaho at 502, 36 P.3d at 1290; State v. Wilkerson, 114 Idaho at 180, 755 P.2d at 477. Instructing the jury with the language of I.C. § 49-316, requiring a motorist to carry and surrender a driver’s license “upon demand” of a peace officer, was a correct statement of the law and literally was the legal authorization for Trooper Grady’s demand to see Dougherty’s license. The district court did not err by affirming the magistrate’s conclusion that the instruction was proper under the facts of this case.

Dougherty argues that “Instruction No. 12 permitted the jury to erroneously find Dougherty guilty of obstructing or delaying an officer for his failure to provide Trooper Grady his driver’s license irrespective of whether Dougherty’s conduct amounted to willful refusal to produce his license” because it let the jury find he delayed or obstructed by

merely not having a license or not having it on him at the time. (Appellant’s brief, p. 9.) This argument does not withstand analysis.

“If the instructions, considered as a whole, fairly and adequately present the issues and state the applicable law, then no error has been committed.” Severson, 147 Idaho at 710, 215 P.3d at 430 (quotations, citation and brackets omitted). Here the jury was instructed that, to find Dougherty guilty, they had to find proved beyond a reasonable doubt that on the relevant date, in the state of Idaho, “Dougherty willfully delayed or obstructed Trooper Shane Grady, a public officer, in the discharge, or attempt to discharge, any duty of Trooper Shane Grady’s office.” (R., p. 142 (numbering of elements omitted).) They were also instructed that they had to find “a joint operation of act or conduct and criminal intent.” (R., p. 136.) These instructions make it clear that the delaying and obstructing had to be willfully done and that there had to be a joint operation of delaying or obstructing and willfulness. The instructions did not, as argued by Dougherty, allow a conviction if the jury determined the delay or obstruction was a mere side-effect of a violation of the duty to carry a license and surrender it on demand.

Dougherty has failed to show that instructing the jury that he had a duty to carry a driver’s license and surrender it on demand altered the state’s obligation to prove that he willfully delayed or obstructed Trooper Grady in the execution of his duties. He has therefore failed to show error in the district court’s decision affirming the trial court’s instructions.

CONCLUSION

The state respectfully requests this Court to affirm Dougherty's conviction for delaying or obstructing an officer.

DATED this 26th day of March, 2018.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 26th day of March, 2018, served two true and correct paper copies of the foregoing BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

DANIEL G. COOPER
CONFLICT PUBLIC DEFENDER
P. O. BOX 387
COEUR D'ALENE, ID 83816-0387

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd