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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45692**
Plaintiff-Respondent,	)	
	)	**Canyon County Case No.**
v.	)	**CR-2017-5562**
	)	
JONATHAN R. CHRISTIAN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Jonathan R. Christian appeals from the district court's judgment of conviction entered after Christian entered Alford[1] pleas to battery with the intent to commit murder and attempted strangulation. Christian argues that the district court erred when it denied his motion to withdraw his Alford pleas.

Statement Of The Facts And Course Of The Proceedings

On April 13, 2017, officers from the Caldwell Police Department responded to a reported disturbance. (R., p.18.) "[T]he reporting party had stated a female was being beaten and that the female is begging for mercy." (Id.) When the first officer arrived at the residence, "he could hear a female say 'please…please…please' followed by a male say[ing] 'its [sic] gonna be murder suicide.'" (R., p.19.) The officers entered the residence and found Jonathan R. Christian, who was completely nude, and his wife. (R., pp.18-19.) Christian's wife "was bleeding from the face and had numerous bruises all over her." (R., p.18.) She told the officers that, over the course of the last three days, Christian had held her against her will at the residence, repeatedly beat her, choked her with his hands, choked her with a cell phone charging cord until it broke, and repeatedly told her "'[y]our [sic] going to die now bitch.'" (R., pp.18-19.)

A grand jury indicted Christian on numerous offenses: battery with the intent to commit a serious felony, two counts of attempted strangulation, two counts of felony domestic battery, false imprisonment, and intentional destruction of a telecommunication

[1] North Carolina v. Alford, 400 U.S. 25 (1970).

device. (R., pp.29-32.) The state also charged Christian with being a persistent violator under I.C. § 19-2514. (R., pp.54-55.) Christian pled not guilty to all of the charges on April 28, 2017. (R., pp.6-7.)

Christian noticed a change-of-plea hearing for July 20, 2017. (R, p.9.) At the start of the hearing, Christian's attorney informed the district court that Christian was "not prepared to change his plea now." (Tr., p.1, Ls.13-14.) The district court informed Christian that his case had been set for trial the following week and arraigned Christian on the persistent violator charge. (Tr., p.1, L.15 – p.3, L.2.) At the end of the hearing, Christian asked the district court, "how can I get like a different counsel" because "I feel insufficient counsel." (Tr., p.3, Ls.9-12.) The district court noted for the record that Christian had requested different counsel but denied his request. (Tr., p.3, L.13 – p.4, L.6.)

On July 28, 2017, the parties stipulated to mediation. (R., pp.61-62.) The district court appointed District Judge Christopher S. Nye to mediate the case and set the case for mediation on August 8, 2017. (R., pp.63-64.) The result of the mediation was a binding Rule 11 plea agreement. (Tr., p.6, L.7 – p.7, L.7; see R., pp.69-73.) Christian agreed to plead guilty to one count of battery with the intent to commit a serious felony and one count of attempted strangulation. (R., p.69.) The state agreed to dismiss the remaining counts, including the persistent violator charge. (Id.) The parties agreed that the district court would "impose a unified sentence of fifteen years with two years fixed and thirteen years indeterminate." (R., p.70.) The plea agreement also stated "[t]he Defendant acknowledges that he is entering into this stipulated, binding plea agreement knowingly, voluntarily and intelligently . . . ." (R., p.70.) And that "[t]he Defendant specifically states that he has read this agreement, that he has had this agreement read and explained to him by his attorney,

and that he is entering into this agreement knowingly, intelligently and voluntarily, and with a full understanding of its contents." (R., p.72.) The prosecutor, Christian's counsel, and Christian all signed the plea agreement. (R., pp.72-73.)

On the same day as the mediation, August 8, 2017, Christian filled out a guilty plea advisory form. (R., pp.74-87.) Among other things, Christian indicated on the form that (1) he was "capable of understanding these proceedings," (2) there was nothing "going on in [his] life that affects [his] ability to enter a voluntary guilty plea," (3) he was not "having any difficulty in understanding what [he was] doing by filling out this form," (4) there was no "reason that [he could not] make a reasoned and informed decision in this case," (5) he had "discussed the elements of the offense(s) for which [he was] charged with [his] attorney," (6) he was "entering [his] plea freely and voluntarily," (7) he did not have "any trouble answering any of the questions in [t]his form," (8) he did not "need any additional time before [he] entere[ed] [his] guilty plea(s)," and (9) he understood "that if the Court accepts [his] guilty plea(s) that [he] may not be able to withdraw [his] plea(s) at a later date." (R., pp.77-78, 80, 84-85.)

The guilty plea advisory form also had an entire section dedicated to Christian's relationship with his attorney. (R., pp.83-84.) In that section, among other things, Christian agreed that (1) he "had sufficient time to discuss [his] case with [his] attorney," (2) he "had the opportunity to review the discovery provided by [his] attorney," (3) he did not "want [his] attorney to take any further action in this case," and (4) he was "satisfied with [his] attorney's representation." (Id.) Christian signed and dated the guilty plea advisory form. (R., p.85.)

Later that same day, the district court held a change-of-plea hearing. (Tr., p.6, Ls.1-9.) The district court confirmed that Christian had read the plea agreement and that it was consistent with his understanding of the agreement that had been reached in mediation. (Tr., p.6, L.21 – p.7, L.7.) Christian's counsel explained to the district court that Christian was entering Alford pleas because "there's a lot of this he doesn't recall and remember." (Tr., p.8, L.17 – p.9, L.6.) Christian told the district court that he had reviewed the state's evidence and determined that "there is a likelihood that a jury would convict [him]." (Tr., p.9, Ls.12-25.) Christian also told the district court that he was entering his pleas voluntarily. (Tr., p.11, Ls.2-4.)

The district court accepted Christian's pleas. (Tr., p.11, Ls.5-22.) The district court informed Christian that "[t]he charge in Count One is battery with the intent to commit a serious felony" and explained that the state alleged he "attempted to strangle [his wife] by a cell phone cord with the intent to commit murder." (Tr., p.11, Ls.5-10.) The district court asked Christian if he pled guilty. (Tr., p.11, L.10.) Christian answered yes. (Tr., p.11, L.11.) The district court informed Christian that "in Count Two it accuses you on April 12, 2017, of willfully and unlawfully choking and or attempting to strangle [your wife] with a cell phone cord." (Tr., p.11, Ls.12-15.) The district court asked Christian if he pled guilty. (Tr., p.11, L.15.) Christian answered yes. (Tr., p.11, L.16.)

On August 28, 2017, the district court held a sentencing hearing. (Tr., p.13, Ls.1-10.) At the start of the hearing, Christian's counsel informed the district court that Christian wanted to withdraw his guilty plea and asked for some time to put together a motion "to cite a basis for his wanting to withdraw his plea." (Tr., p.13, L.17 – p.14, L.10.) The state

indicated that it would oppose any motion to withdraw. (Tr., p.14, Ls.13-17.) The district court ended the hearing without imposing a sentence. (Tr., p.14, L.18 – p.15, L.13.)

On September 7, 2017, Christian filed a motion to withdraw his guilty plea. (R., pp.94-95.) In the brief accompanying the motion, Christian argued "that his plea was involuntary due to his lack of understanding the gravity of what he was signing while under stress from immense pain." (R., p.92.) He explained that, while incarcerated, "he had been regularly taking prescribed medications and that on the day he was in the mediation and ultimately entered his guilty plea that he had not been given his pain medication." (Id.) He claimed "[t]hat without the medication he was not able to make an intelligent decision and did not understand that he was waiving a jury trial." (Id.)

On October 16, 2017, the district court held a hearing on Christian's motion to withdraw. (Tr., p.24, Ls.1-10.) The district court informed Christian that it was "his burden to demonstrate that his plea was not made knowingly, intelligently, and voluntarily." (Tr., p.24, Ls.11-13.) Christian provided medical records showing that he "was prescribed three medications on the date of the mediation, specifically Gabapentin, 600 milligrams; meloxicam, 7.5 milligrams, and Tramadol, 50 milligrams" and that "he was not given those medications as he otherwise would have [been] at 8:00 in the morning, but that he was given his prescribed Gabapentin and Tramadol at 2:00 p.m. in the afternoon" and his meloxicam "somewhere later in the evening." (Tr., p.24, L.21 – p.25, L.13.) "[T]he hearing for the change of plea was at 2:30 p.m." that day. (Id.)

Christian testified that, on the day of the mediation and the change-of-plea hearing, he "felt a lot of pressure" and experienced pain that "feels like a toothache" in his leg. (Tr., p.29, L.24 – p.30, L.7.) On cross examination, Christian admitted that, on the day of the

change-of-plea hearing, he did not tell the judge or his attorneys about his pain. (Tr., p.30, L.23 – p.31, L.6.) The district court asked Christian about questions in his guilty plea advisory form that should have elicited answers about his pain but did not. (Tr., p.32, L.10 – p.34, L.19.) Christian claimed that he did not refer to his pain in responding to those questions because he "felt like pressured to hurry up and just to please the court" and that "[i]t's hard to explain because there's a lot going on in my body." (Tr., p.32, L.19 – p.33, L.12.)

The state called Dr. Gary Dawson as an expert witness in the areas of pharmacology and toxicology as it relates to the effects of drugs on performance and behavior. (Tr., p.35, L.17 – p.36, L.7.) Dr. Dawson has a doctorate in pharmacology, and he reviewed Christian's medical records from the Canyon County jail. (Tr., p.36, Ls.12-17.) Dr. Dawson testified that he had "done a lot of clinical work with chronic pain patients, and under these circumstances I have not seen a circumstance where missing one dose resulted in a debilitation." (Tr., p.40, Ls.2-6.) In Dr. Dawson's opinion, "the defendant could have entered a knowing and voluntary guilty plea even having missed [his] morning dose." (Tr., p.40, Ls.7-12.)

Dr. Dawson based his opinion on the nature of the three drugs that Christian had been taking. Dr. Dawson testified that "[m]eloxicam is a fairly long-acting anti-inflammatory agent" that "has a very long half-life," which means "it takes a long time to eliminate from the body." (Tr., p.38, L.3 – p.39, L.12.) "[B]ased upon that," in Dr. Dawson's opinion, "missing one dose wouldn't be catastrophic in any way, shape, or form." (Tr., p.39, Ls.9-14.) Dr. Dawson also explained that "Tramadol has about an 8- to 9-hour half-life" and that on the day of the mediation "there would still be some therapeutic

benefit" from the Tramadol Christian had taken the day before. (Tr., p.39, L.22 – p.40, L.1.) According to Dr. Dawson, "Gabapentin has a fairly short half-life" but "missing one dose . . . would not lead to a dramatic increase in the pain level because there's other medications still on board." (Tr., p.39, Ls.15-21.)

Dr. Dawson also gave two additional reasons to support his opinion. First, "the therapy had been ongoing for some period of time" and "[t]his was not very early in the treatment period." (Tr., p.38, Ls.14-22.) Second, Christian had just completed "short-course therapy" or "pulse therapy" using a drug called prednisone just a few days before the mediation and change-of-plea hearing. (Tr., p.38, L.14 – p.39, L.8.) That means "the benefits of the prednisone would still be there because of the way that it acts"—namely, "the benefits of the prednisone as a very potent anti-inflammatory can persist for several days to weeks." (Id.)

In a written decision, the district court denied Christian's motion to withdraw his guilty plea. (R., pp.102-05.) The district court relied on the "uncontroverted evidence" presented by the state through Dr. Dawson, the fact that Christian took two of his three prescribed medications prior to the change-of-plea hearing, the fact that Christian had been administered prednisone, the effects of which would have lasted days to weeks, and Christian's responses to questions on the guilty plea advisory form and from the district court at the change-of-plea hearing. (R., pp.103-04.) The district court concluded that Christian "failed to demonstrate that he did not understand the consequences of pleading guilty." (R., p.104.)

Pursuant to the binding Rule 11 plea agreement, the district court sentenced Christian to a unified term of fifteen years, with two years fixed, on each count and ran the sentences concurrently. (R., pp.113-14.) Christian timely appealed. (R., pp.121-25.)

ISSUE

Christian states the issue on appeal as:

> Did the district court abuse its discretion by denying Mr. Christian's motion to withdraw his *Alford* pleas?

(Appellant's brief, p.8.)

The state rephrases the issue as:

Has Christian failed to show the district court abused its discretion by denying his motion to withdraw his Alford pleas?

ARGUMENT

Christian Has Failed To Show That The District Court Abused Its Discretion By Denying Christian's Motion To Withdraw His *Alford* Pleas

A. Introduction

The district court properly denied Christian's motion to withdraw his Alford pleas. Christian had the burden of presenting a just reason to withdraw his Alford pleas. The only reason Christian presented the district court was that his pain rendered the Alford pleas involuntary. The district court properly rejected this reason based on statements made by Christian at the change-of-plea hearing, in his guilty plea advisory form, and in the binding plea agreement, as well as on Dr. Dawson's testimony that, based on the medications Christian had been taking, he would not have been in the kind of pain alleged and, if he had been, it would have been obvious to everyone in the courtroom. Having properly rejected the only reason Christian presented, the district court did not abuse its discretion by denying Christian's motion to withdraw.

Christian has now, for the first time on appeal, asserted a number of new reasons why the district court should have allowed him to withdraw his guilty plea. He failed to preserve these arguments by presenting them to the district court in the first instance. In any event, the record contradicts all of the new reasons asserted by Christian. Specifically, the record reveals no conflict between Christian and his counsel at the time Christian entered his Alford pleas and confirms that Christian understood the elements of his crimes, the maximum (and actual) punishment that could (and would) be imposed, and the rights he would waive by entering his Alford pleas.

B. Standard Of Review

"The standard of review on appeal in cases where a defendant has attempted to withdraw a guilty plea is whether the district court has properly exercised judicial discretion as distinguished from arbitrary action." State v. Dopp, 124 Idaho 481, 483, 861 P.2d 51, 53 (1993). "'[T]he good faith, credibility, and weight of the defendant's assertions in support of his motion to withdraw his plea are matters for the trial court to decide.'" State v. Hartsock, 160 Idaho 639, 641, 377 P.3d 1102, 1104 (Ct. App. 2016) (quoting State v. Hanslovan, 147 Idaho 530, 537, 211 P.3d 775, 782 (Ct. App. 2008)).

C. The District Court Properly Denied Christian's Motion To Withdraw After Rejecting The Only Reason For Withdrawal Christian Presented

The district court did not abuse its discretion when it denied Christian's motion to withdraw his guilty plea. "Withdrawal of a presentence guilty plea is not an automatic right, and the defendant has the burden of proving that the plea should be allowed to be withdrawn." Dopp, 124 Idaho at 485, 861 P.2d at 55 (citation omitted). "[D]efendants seeking to withdraw a guilty plea before sentencing must show a just reason for withdrawing the plea." Id. If the defendant shows his plea was not knowing, intelligent, and voluntary, a "'just reason' will be established as a matter of law." State v. Stone, 147 Idaho 330, 333, 208 P.3d 734, 737 (Ct. App. 2009). The only reason Christian presented the district court for withdrawing his guilty plea was that his plea was not knowing, intelligent, and voluntary because, on the day of the mediation and change-of-plea hearing, "he had not been given his pain medication" and was in "immense pain." (R., p.92.) That reason is not supported by the record.

The state "produced uncontroverted evidence" that Christian missing a single dose of his prescribed medication would not have caused pain sufficient to render his plea

unknowing, unintelligent, or involuntary. (R., p.104.) At the time of Christian's change-of-plea hearing, the only prescribed drug he had not taken for the day was meloxicam. (Id.) As Dr. Dawson explained, "missing one dose [of meloxicam] wouldn't be catastrophic in any way, shape, or form" because meloxicam "has a very long half-life," which means "it takes a long time to eliminate from the body," and Christian had just taken meloxicam the day before. (Tr., p.39, Ls.9-14; see Defendant's Exhibit C.)

Moreover, meloxicam is an anti-inflammatory (Tr., p.38, Ls.3-8), and, "just a few days before" Christian missed his meloxicam dose, he had finished "pulse therapy" using prednisone, a "very potent anti-inflammatory." (Tr., p.38, L.23 – p.39, L.8.) According to Dr. Dawson, "the benefits of the prednisone would still [have been] there because . . . prednisone . . . can persist for several days to weeks." (Id.) Based on his review of Christian's medical records, Dr. Dawson opined that missing one dose of meloxicam would not "result[] in a debilitation" and "the defendant could have entered a knowing and voluntary guilty plea even having missed the morning dose." (Tr., p.38, L.14 – p.40, L.12.)

Christian did not challenge Dr. Dawson's interpretation of his medical records or explanation of the relevant prescription drugs other than by testifying himself that he was in pain on the day of the change-of-plea hearing. (Tr., p.26, L.12 – p.30, L.7.) But as Dr. Dawson explained, if Christian had been in the kind of pain he claimed from his sciatica, it would have been obvious to everyone in the courtroom. (Tr., p.40, L.15 – p.41, L.5; see R., p.104.) "Yet no one, including the defendant, brought up the matter of pain at the change of plea hearing." (R., p.104.)

Furthermore, Christian's claim of pain is inconsistent with multiple responses he gave on his guilty plea advisory form, and Christian could not provide a credible

explanation for the inconsistencies. For example, question ten asked "[a]re you capable of understanding these proceedings?" (R., p.77.) Christian marked yes. (Id.) When asked about his answer at the motion-to-withdraw hearing, Christian gave a response that had nothing to do with his alleged pain: "I just felt like pressured to hurry up and just to please the court." (Tr., p.32, Ls.19-25.) Question twelve asked "[i]s there anything going on in your life that affects your ability to enter a voluntary guilty plea?" (R., p.78.) Christian marked no. (Id.) When asked about his answer at the motion-to-withdraw hearing, Christian gave a response that had no basis in the text of the question: "I thought it was talking about my immediate family and stuff on that question."[2] (Tr., p.33, Ls.13-18.) Given Dr. Dawson's testimony and the inconsistencies between Christian's behavior and responses to questions on the day of the change-of-plea hearing and his testimony at the motion-to-withdraw hearing, the district court did not abuse its discretion when it found pain did not render Christian's Alford pleas unknowing, unintelligent, or involuntary.

[2] Christian attempts to bolster his credibility by claiming that, at the sentencing hearing held one month after the district court denied his motion to withdraw, his testimony was "consistent with his posture at the plea and motion to withdraw hearing[s]." (Appellant's brief, p.6.) Even if testimony given one month after the district court denied Christian's motion to withdraw were relevant to whether the district court abused its discretion, Christian's testimony at the sentencing hearing was anything but consistent with what he told the district court at the motion-to-withdraw hearing. At the sentencing hearing, he claimed he "d[id]n't remember signing a Rule 11" and "d[id]n't remember the day of mediation" and "[t]hat's why [he] tried to get it withdrawn." (Tr., p.56, Ls.22-25.) But at the motion-to-withdraw hearing, Christian readily admitted that he "recall[ed] on August 8th where [he] [was] engaged in a mediation and then later the change of plea" (Tr., p.27, Ls.8-11); provided details about the mediation (Tr., p.28, Ls.14-22); and admitted that he "remember[ed] filling out a document called a guilty plea advisory form" (Tr., p.32, Ls.10-14). In any event, "the credibility . . . of the defendant's assertions in support of his motion to withdraw his plea are matters for the trial court to decide," Hartsock, 160 Idaho at 641, 377 P.3d at 1104 (internal quotations and citation omitted), and the trial court, at least implicitly, found Christian's testimony incredible (R., pp.103-04).

Christian erroneously argues that the district court abused its discretion by applying a knowing, intelligent, and voluntary standard instead of the "less[] stringent . . . just reason" standard. (Appellant's brief, pp.18-19.) Typically, determining whether a plea was knowingly, intelligently, and voluntarily made is just "[t]he first step in analyzing a motion to withdraw a guilty plea." State v. Anderson, 156 Idaho 230, 233, 322 P.3d 312, 315 (Ct. App. 2014). The next step is to "determine whether the defendant has shown another just reason for withdrawing the plea." Id. Here, however, the district court had no reason to proceed past the first step because the only potential just reason that Christian chose to present the district court was that his plea was not knowing, intelligent, or voluntary because he did not take his medication. (R., pp.92, 103.) There could be no second step in the district court's analysis because Christian did not even assert "another just reason for withdrawing the plea." Anderson, 156 Idaho at 233, 322 P.3d at 315. The district court did not abuse its discretion by limiting its analysis to the only potential just reason Christian presented. See Dopp, 124 Idaho at 485, 861 P.2d at 55 (explaining "the defendant has the burden" and "must show a just reason for withdrawing the plea").

For the first time on appeal, Christian offers a number of new reasons why he should have been allowed to withdraw his guilty plea. (Appellant's brief, pp.13-18.) He failed to preserve these arguments by presenting them to the district court and cannot raise them now. See State v. Garcia-Rodriguez, 162 Idaho 271, 275, 396 P.3d 700, 704 (2017) ("We have long held that '[a]ppellate review is limited to the evidence, theories and arguments that were presented below.'" (quoting Nelson v. Nelson, 144 Idaho 710, 714, 170 P.3d 375, 379 (2007))); Stone, 147 Idaho at 333-34, 208 P.3d at 737-38 (refusing to address new reason for withdrawing guilty plea on appeal where defendant failed to present it to the

district court). Even if Christian could raise his new theories for the first time on appeal, they are contradicted by the record.

Christian argues, for the first time on appeal, that his "pleas were undermined by the apparent conflict between Mr. Christian and his counsel." (Appellant's brief, p.13.) But Christian's only evidence of the so-called conflict is a colloquy that took place between Christian and the district court approximately two weeks before Christian entered his Alford pleas in which Christian asked for new counsel because "[i]t's insufficient finding evidence" and "[n]obody has tried to get any of it." (Appellant's brief, p.14 (quoting Tr., p.3, L.3 – p.4, L.22).) The district court noted that Christian had asked for new counsel, but denied the request and told Christian and his counsel "to work out your differences." (Tr., p.3, L.13 – p.4, L.2.)

Nothing in the record suggests Christian and his counsel were unable to work out their differences before Christian entered his Alford pleas.[3] On the contrary, Christian stated in his guilty plea advisory form, on the same day he entered his Alford pleas, that he had "an opportunity to review the discovery provided by [his] attorney"; that he did not "want [his] attorney to take any further action in this case"; and that he was "satisfied with [his] attorney's representation." (R., pp.83-84.) Christian has failed to show any conflict

[3] Christian seems to suggest that he switched attorneys shortly after his discussion with the district court. (Appellant's brief, pp.14-15.) That is not accurate. Christian was represented by multiple attorneys from the Canyon County Public Defender's Office throughout the proceedings below, including Mr. Gatewood, Mr. McCabe, and Mr. Woolf. (R., pp.2, 24, 52, 58, 62, 73.) The same attorney who represented Christian at the hearing when Christian asked for a new attorney, Mr. Gatewood, also represented Christian at the mediation, the change-of-plea hearing, the hearing on the motion to withdraw, and the sentencing hearing. (R., pp.56, 66, 73, 88, 94, 98, 100, 106.) Moreover, Mr. Gatewood is listed as "Lead Attorney[]" for Christian on the district court's case summary. (R., p.2.)

between himself and his counsel at the time he entered his Alford pleas, let alone a conflict sufficient to provide a just reason to withdraw his pleas.

Christian also argues, for the first time on appeal, that he failed to correctly understand an element of the crime. (Appellant's brief, pp.17-18.) A plea is invalid "[w]here a defendant pleads guilty to a crime without having been informed of the crime's elements." State v. Gonzales, 158 Idaho 112, 116, 343 P.3d 1119, 1123 (Ct. App. 2015). "[T]he constitutional prerequisites of a valid plea may be satisfied where the record accurately reflects that the nature of the charge and the elements of the crime were explained to the defendant by his own, competent counsel." Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005). "In such a circumstance, a defendant seeking relief from a guilty plea must satisfactorily counter the 'natural inference' that his counsel's advice was accurate." Gonzales, 158 Idaho at 119, 343 P.3d at 1126.

The evidence shows Christian's attorney explained to him the elements of the crimes, and Christian has not countered "the 'natural inference' that his counsel's advice was accurate." Id. Christian informed the district court in his guilty plea advisory form that he had "discussed the elements of the offense(s) for which [he was] charged with [his] attorney." (R., p.80.) He has provided no evidence that his attorney's explanation of any element was not accurate. Cf. Gonzales, 158 Idaho at 115, 119, 343 P.3d at 1122, 1126 (finding defendant "submitted evidence that his attorney's explanation of the mental element of the crime was incorrect" where he "filed an affidavit stating that his defense counsel misinformed him of [the intent] element").

Instead of presenting such evidence, Christian asks this Court to infer that his counsel misinformed him of the intent elements of his crimes from statements he made

during the change-of-plea hearing that he "didn't mean to do this to her" and he "wish[ed] [he] never . . . got put [o]n Xanax because that's what did it." (Appellant's brief, p.17 (quoting Tr., p.10, Ls.10-15).) Read in context, however, Christian's statements that he did not mean to attack his wife are best understood as statements of remorse rather than "protestations of innocence." (Appellant's brief, p.15.) In fact, immediately after Christian made the statements, the district court observed: "Well, you seem pretty remorseful today." (Tr., p.10, Ls.16-18.)

Furthermore, the record does not support Christian's suggestion that he was telling the district court that he lacked the requisite intent when he attacked his wife. As Christian's counsel explained at the change-of-plea hearing, Christian had to enter Alford pleas because "there's a lot of this he doesn't recall and remember." (Tr., p.8, Ls.17-25.) Christian told the district court that he had "no recollection" of the event and that he "took a polygraph just so [he] could show [he] wasn't lying because *[he] do[esn't] remember any of it*." (Tr., p.9, Ls.7-11, p.10, Ls.21-23 (emphasis added).) Christian's contradictory claim that he remembers only that he did not have the requisite intent is, at the very least, suspect. But even assuming Christian truly believed that he did not intend to attack his wife, his pleas do not suggest he misunderstood the intent elements of the crimes because he entered Alford pleas, which means he did not necessarily believe he was guilty of the crimes, just "that there [was] a likelihood that a jury would convict [him]." (Tr., p.9, Ls.19-25.)

Moreover, Christian's argument that he did not understand the intent elements of the crimes is belied by the charging document. A defendant has been properly informed of an element of a crime where the element is stated in the charging document and is "'a

self-explanatory legal term or so simple in meaning that it can be expected or assumed that a lay person understands it.'" Gonzales, 158 Idaho at 116 n.1, 343 P.3d at 1123 n.1 (quoting State v. Mayer, 139 Idaho 643, 647, 84 P.3d 579, 583 (Ct. App. 2004)). For the first charge, the grand jury indictment clearly and correctly informed Christian that the state would have to prove he strangled his wife with a cell phone cord "with the intent to commit murder." (R., p.30); see ICJI 1210; I.C. § 18-911.[4] For the second charge, the grand jury indictment clearly and correctly informed Christian that the state would have to prove that he "did willfully and unlawfully choke and/or attempt to strangle" his wife. (Id.); see State v. Williston, 159 Idaho 215, 221-22, 358 P.3d 776, 782-83 (Ct. App. 2015) (holding charging document sufficiently informed defendant of intent element for attempted strangulation where it "provided that [the defendant] did 'willfully and unlawfully choke or attempt to strangle' the victim"). Because Christian's counsel and the grand jury indictment both explained the intent elements of the charges to Christian, he cannot invalidate his plea on the basis that he did not understand the intent elements. See Gonzales, 158 Idaho at 116, 343 P.3d at 1123.

Christian also cobbles together, for the first time on appeal, a list of other errors allegedly committed by the district court that he believes entitle him to withdraw his guilty pleas. (Appellant's brief, pp.15-16.) Specifically, Christian alleges that the district court did not confirm whether Christian understood "the maximum and minimum punishments," "that his plea was voluntary," or "his right to confront and cross-examine his accusers and his right to compulsory process" or confirm "whether anyone had pressured him,

[4] See also Mayer, 139 Idaho at 648, 84 P.3d at 584 ("[A] layperson of normal intelligence would understand that murder means to kill another human without justification.").

threatened him, or coerced him into pleading." (Id.) The record contradicts Christian's allegations.

The district court confirmed Christian understood the punishment. Christian handwrote the maximum fine and imprisonment for both charges in his guilty plea advisory form. (R., p.80.) He also confirmed that he understood that, "if the District Court does not impose the specific sentence as recommended by both parties, [he] [would] be allowed to withdraw [his] plea of guilty and proceed to a jury trial." (R., p.79.) He confirmed in the binding plea agreement that "he is aware of the maximum penalty associated with" both charges. (R., p.71.) He also "stipulate[d] and agree[d]" that "[t]he Court will impose a unified sentence of fifteen years with two years fixed and thirteen years indeterminate." (R., p.70.) At the change-of-plea hearing, the district court confirmed that Christian understood "[t]his Rule 11 states that the court will impose a unified sentence of 15 years with 2 years fixed and 13 years indeterminate." (Tr., p.7, Ls.12-16.) As the district court observed, "[t]he record in this case clearly reflects that the defendant understood . . . not only the possible consequences but the exact penalty that would be imposed." (R., p.104.)

The district court confirmed Christian entered his pleas voluntarily. Christian acknowledged in his guilty plea advisory form that neither his "attorney [n]or anyone else forced or coerced [him] in any way into accepting this plea agreement" and that he "enter[ed] [his] plea freely and voluntarily." (R., pp.79, 84.) In the binding plea agreement, he also "acknowledge[d] that he [was] entering into this stipulated, binding plea agreement knowingly, voluntarily and intelligently, and that his decision [was] not the result of threats or coercion by any individual, including his attorneys, any representative of the State, or this Court." (R., pp.70-71.) At the change-of-plea hearing, the district court asked

Christian whether, "by pleading guilty today you're doing this voluntarily," and Christian answered "Yes." (Tr., p.11, Ls.2-4.)

Christian confirmed that he understood his constitutional right to confront his accusers and call witnesses. The guilty plea advisory form explained these rights to Christian, and he signed his initials next to this statement: "I understand that by pleading guilty I am waiving my right to question (confront) the witnesses against me, and present witnesses and evidence in my defense." (R., p.76.) Similarly, in the binding plea agreement, Christian "acknowledge[d] that he [was] aware of . . . the right to confront and cross-examine witnesses and to present witnesses and evidence on his own behalf" and that he understood "that, by pleading guilty, . . . he [would] give[] up the right to confront and cross-examine witnesses and to present witnesses and evidence on his own behalf in defense of the charges." (R., p.71.) Because the record shows Christian understood the consequences of entering Alford pleas, including the punishment that would be imposed and the rights he would be waiving, he cannot rely on a lack of understanding the consequences as a just reason to withdraw his guilty plea.

In sum, Christian presented the district court with a single potential just reason to withdraw his Alford pleas: that his pleas were involuntary due to pain. (R., p.92.) Relying on the evidence presented at the hearing on Christian's motion to withdraw, including Dr. Dawson's expert testimony and Christian's own statements at the change-of-plea hearing, the district court properly rejected Christian's proposed just reason. (R., pp.102-04.) The new reasons Christian has articulated on appeal were not properly preserved and, in any event, are contradicted by the record. Christian has thus failed to present a just reason to withdraw his Alford pleas.

CONCLUSION

The state respectfully requests this Court affirm the district court's judgment of conviction entered after Christian entered Alford pleas to battery with the intent to commit murder and attempted strangulation.

DATED this 9th day of October, 2018.

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of October, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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JN/dd