

6-23-2014

State v. Knutsen Appellant's Reply Brief Dckt. 40803

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 40803
)	
v.)	TWIN FALLS COUNTY
)	NO. CR 2009-3193
)	
DAVID AARON KNUTSEN,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

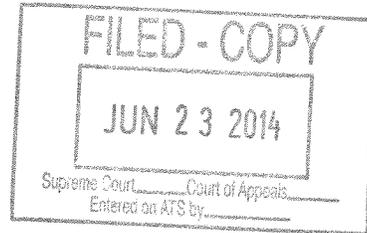
HONORABLE G. RICHARD BEVAN
District Judge

SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247

DIANE M. WALKER
Deputy State Appellate Public Defender
I.S.B. #5920
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

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



ATTORNEYS FOR
DEFENDANT-APPELLANT

ATTORNEY FOR
PLAINTIFF-RESPONDENT

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STATEMENT OF THE CASE

Nature of the Case

David Aaron Knutsen appeals from his convictions for sexual abuse of a vulnerable adult. This reply brief is necessary to address a disputed factual point, explain that certain errors are ripe for review, and to address a recently published opinion involving the vulnerable adult statute.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Knutsen's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto. However, to the extent that the State has inferred that, at the time of the alleged incident, V.M. was already living a specialized care facility, that inference is not accurate.

The State claims, "V.M. was living in an intensive Care Facility for the Mentally Retarded." (Appellant's Brief, p.1.) However, a complete review of the record reveals that V.M. was living with her parents and brother at the time of the grand jury indictment which was approximately ten months after the alleged incident. (Grand Jury Tr., p.83, Ls.23-24; R., pp.12-14.) After V.M.'s release from Canyon View mental health facility, she moved to the Emerald House Assisted Living. (Tr., p.401, L.23-p.402, L.7.) The record does not indicate that V.M. was living at an intensive care facility prior to her admission to Canyon View.

ISSUES

- 1) Did the court lack subject matter jurisdiction because the Grand Jury's term expired rendering the indictment issued void?
- 2) Is Idaho's sexual abuse of a vulnerable adult statute unconstitutional because it is overbroad?
- 3) Does the application of Idaho's sexual contact with a vulnerable adult statute to private, consensual sexual relations between consenting adults violate Mr. Knutsen's right to due process of law and equal protection?
- 4) Is Idaho's sexual abuse of a vulnerable adult statute unconstitutionally void for vagueness in violation of the Fourteenth Amendment of the United States Constitution?
- 5) Did the district court err when it instructed the jury that V.M.'s consent to sexual contact was not a defense to the crime of sexual abuse of a vulnerable adult?
- 6) Should this Court vacate Mr. Knutsen's convictions for sexual abuse of a vulnerable adult because there was insufficient evidence to support the convictions?
- 7) Should this Court vacate three of the convictions of sexual abuse of a vulnerable adult because Mr. Knutsen's protection against double punishment under the double jeopardy clauses of the United States and Idaho Constitutions was violated, because he was charged and convicted of four counts of sexual abuse of a vulnerable adult where his actions amounted to one continuous act, without a break in the chain of events, such that he should only be punished for one offense?

ARGUMENT

I.

The Court Lacked Subject Matter Jurisdiction Because The Grand Jury's Term Expired Rendering The Indictment Issued Void

Mr. Knutsen contends a valid Indictment was never entered against him, and therefore, the district court never had subject matter jurisdiction over his case under Article I, section 8 of the Idaho Constitution. He asserts that the district court erred when it denied his motion to dismiss the invalid indictment. The State argued in its brief that Mr. Knutsen failed to challenge the district court's holding that it orally ordered the grand jury to meet on March 25, 2009. (Respondent's Brief, p.8.) Additionally, the State argued that the grand jury did not convene until December 3, 2008, and because the grand jury indicted Mr. Knutsen within the six-month statutory period, the district court properly acquired jurisdiction. (Respondent's Brief, pp.8-10.)

The State fails to understand Mr. Knutsen's argument. Mr. Knutsen contends that the district court shortened the period of time that the chosen grand jury had jurisdiction to act. The order controls the period that the grand jury has authority to act. While it is true that, by statute, a grand jury may act for six months and the indictment was issued within the six months, the district court had shortened the grand jury's jurisdiction to four months. Therefore, unless there was a court order extending the grand jury's jurisdiction, it had no authority to act.

II.

Idaho's Sexual Abuse Of A Vulnerable Adult Statute Is Unconstitutional Because It Is Overbroad

Mr. Knutsen asserts that the sexual abuse of a vulnerable adult statute is overbroad because it infringes on the constitutionally protected privacy and freedom of association rights of consenting adults to engage in sexual contact. Because the State's argument concerning the overbreadth argument is not remarkable, no further reply is necessary. Accordingly, Mr. Knutsen simply refers the Court to pages 13-26 of his Appellant's Brief.

III.

The Application Of Idaho's Sexual Contact With A Vulnerable Adult Statute To Private, Consensual Sexual Relations Between Consenting Adults Violates Mr. Knutsen's Right To Due Process Of Law And Equal Protection

Mr. Knutsen asserts that Idaho's sexual contact with a vulnerable adult statute (I.C. § 18-1505B) is unconstitutional for violating substantive due process and equal protection. The State recognizes that Mr. Knutsen did raise the issues before the district court; however, it contends that the district court failed to make an adverse ruling and Mr. Knutsen failed to further object to not having an adverse ruling on the matter. (Respondent's Brief, p.17.) As mentioned in Mr. Knutsen's opening brief, the State argued to the district court the statute's legitimate state interest and that the interest did not infringe on any protected interest of another or violate substantive due process. (See Appellant's Brief, p.28.) Moreover, the district court found the statute constitutional, and therefore, Mr. Knutsen asserts there is an adverse ruling. (R., pp.183-199.)

Even if the State was correct, that Mr. Knutsen failed to object to the scope of the district court's ruling on his motion or request clarification or reconsideration (Respondent's Brief, p.17), this Court should still review the issue because he did object to the error, this Court's review is de novo, and the error is reviewable under the fundamental error test announced by this court in *State v. Perry*, 150 Idaho 209 (2010). Alternatively, Mr. Knutsen would not object to a remand for the court's determination of whether the statute violates Mr. Knutsen's due process and equal protection rights.

The Idaho Supreme Court has clarified fundamental error and stated that to obtain relief on appeal for fundamental error:

(1) the defendant must demonstrate that one or more of the defendant's unwaived constitutional rights were violated; (2) the error must be clear or obvious, without the need for any additional information not contained in the appellate record, including information as to whether the failure to object was a tactical decision; and (3) the defendant must demonstrate that the error affected the defendant's substantial rights, meaning (in most instances) that it must have affected the outcome of the trial proceedings.

Perry, 150 Idaho at 226 (footnote omitted). Thus, on a claim of fundamental error, a defendant must first show that the alleged error "violates one or more of the defendant's unwaived constitutional rights" and that the error "plainly exists," in that the error was plain, clear, or obvious. *Id.* at 228. If the alleged error satisfies the first two elements of the *Perry* test, the error is reviewable. *Id.* To obtain appellate relief, however, the defendant must further persuade the reviewing court that the error was not harmless, i.e., that there is a reasonable possibility that the error affected the outcome of the trial. *Id.* at 226-228. Mr. Knutsen's claim is that the statute violates his constitutional rights to due process of law and equal protection, the error plainly exists, and if the statute is

deemed unconstitutional, Mr. Knutsen's conviction must be vacated. Therefore, under *Perry*, this Court should review the constitutionality of the statute.

Recently the Idaho Court of Appeals recognized that the vulnerable adult statute may violate the Due Process Clause. *State v. Hamlin*, 156 Idaho 307, ___, 324 P.3d 1006, 1014 (2014). In *Hamlin*, the defendant did not receive relief from the potentially unconstitutional statute because he did not take his case to trial and was unable to demonstrate, through a pretrial motion to dismiss, that the statute violated due process as applied to him. *Id.* at ___, 324 P.3d at 1015. Here, the case did proceed to trial and the evidence revealed that V.M. verbally consented to sexual contact.¹ The State also argues that the conduct here was not private. (Respondent's Brief, p.19.) Assuming for sake of argument that the conduct was not private, but consensual, Mr. Knutsen would be guilty of a different code section, such as Idaho Code § 18-4104 (a misdemeanor).

Because the State's remaining arguments regarding due process and equal protection are not remarkable, no further reply is necessary. Accordingly, Mr. Knutsen simply refers the Court to pages 27-30 of his Appellant's Brief.

IV.

Idaho's Sexual Abuse Of A Vulnerable Adult Statute Is Unconstitutionally Void For Vagueness In Violation Of The Fourteenth Amendment Of The United States Constitution

Mr. Knutsen contends that the statute under which he was prosecuted is unconstitutionally vague because it fails both to provide fair notice of the prohibited

¹ There is an error in the jury instructions through which this jury was prohibited from determining whether V.M. consented to sexual contact. The jury instruction issue is contained in Issue V in the Appellant's Brief and in this Reply Brief.

conduct and fails to prevent arbitrary and discriminatory enforcement. The State simply quotes the language defining “vulnerable adult” and declares the language “broad” but not vague. (Respondent’s Brief, pp.12-13.) Contrary to the State’s assertion, Mr. Knutsen does contend that the language is vague. In an attempt to explain how it is vague, Mr. Knutsen utilizes the facts of this case and hypothetical scenarios. The State also argues that the statute is not vague as applied. (Respondent’s Brief, pp.15-16.) In its argument, the State focuses on I.C. § 18-1505, the general section prohibiting sexual contact with vulnerable adults, not the problematic I.C. § 18-1505, the statute that defines who is vulnerable. (Respondent’s Brief, pp.16.) With that distinction, the State’s response is not remarkable, and no further reply is necessary. Accordingly, Mr. Knutsen simply refers the Court to pages 30-43 of his Appellant’s Brief.

V.

The District Court Erred When It Instructed The Jury That V.M.’s Consent To Sexual Contact Was Not A Defense To The Crime Of Sexual Abuse Of A Vulnerable Adult

Mr. Knutsen asserts that the district court should not have provided the consent defense instruction, or alternatively should have utilized the consent instruction applicable to rape involving a person of unsound mind. Because the jury was incorrectly instructed, the matter should be remanded for a new jury trial with proper instructions.

Recently, in *Hamlin*, the Court of Appeals recognized part of the problem with the vulnerable adult statute. The *Hamlin* Court stated, “a person deemed to lack capacity in one area of functioning will not necessarily lack capacity in other areas. Thus, not all ‘vulnerable adults’ or, as is relevant here, all mentally retarded adults, are incapable of

validly consenting to sexual behavior.” *Id.* at ___, 324 P.3d at 1014. Therefore, when the court instructed the jury that “it is not a defense to the crime of Sexual Abuse of a Vulnerable Adult that V.M. may have consented to the alleged conduct” it misstated the law because a vulnerable person may actually be able to consent to sexual intercourse. The *Hamlin* Court went on to find that when an “individual who is a ‘vulnerable adult’ for some purposes is nevertheless capable of consenting to sex and does consent to sex in a private place, that conduct is protected by the Due Process Clause and may not be criminalized.” *Id.* Because the State’s argument concerning the inappropriate instruction is not remarkable, no further reply is necessary. Accordingly, Mr. Knutsen simply refers the Court to pages 44-48 of his Appellant’s Brief.

VI.

This Court Should Vacate Mr. Knutsen’s Convictions For Sexual Abuse Of A Vulnerable Adult As There Was Insufficient Evidence To Support The Convictions Because The State Failed To Prove That V.M. Was A Vulnerable Adult

Mr. Knutsen asserts that the evidence presented at trial was insufficient to support the jury’s guilty verdicts. Because the State’s argument concerning the sufficiency of the evidence is not remarkable, no further reply is necessary. Accordingly, Mr. Knutsen simply refers the Court to pages 49-52 of his Appellant’s Brief.

VII.

Mr. Knutsen's Protection Against Double Punishment Under The Double Jeopardy Clauses Of The United States And Idaho Constitutions Was Violated Because He Was Charged And Convicted Of Four Counts Of Sexual Abuse Of A Vulnerable Adult Where His Actions Amounted To One Continuous Act, Without A Break In The Chain Of Events, Such That He Should Only Be Punished For One Offense

Mr. Knutsen was charged with, and convicted of, four counts of sexual abuse of a vulnerable adult despite the fact that the conduct was one continuous act, without a break in the chain of events. Because I.C. § 18-1505B contemplates a continuing act, Mr. Knutsen's protection against double punishment under the double jeopardy clauses of the United States and Idaho Constitution were violated. Because the State's argument concerning double jeopardy is not remarkable, no further reply is necessary. Accordingly, Mr. Knutsen simply refers the Court to pages 52-55 of his Appellant's Brief.

CONCLUSION

For the foregoing reasons, as well as those set forth in his Appellant's Brief, Mr. Knutsen respectfully requests that this Court grant him relief consistent with the claims of error he has asserted in this appeal.

DATED this 23rd day of June, 2014.


DIANE M. WALKER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd day of June, 2014, 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:

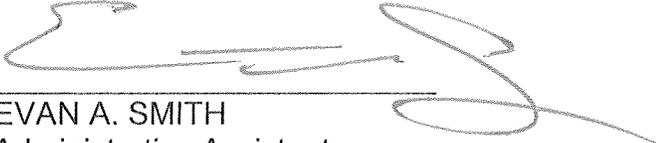
DAVID AARON KNUITSEN
INMATE # 59569
ICC
PO BOX 70010
BOISE ID 83707

G RICHARD BEVAN
DISTRICT COURT JUDGE
E-MAILED BRIEF

DOUGLAS D NELSON
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.


EVAN A. SMITH
Administrative Assistant

DMW/eas