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# State v. Hoagland Appellant's Brief 1 Dckt. 42396

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 42396
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NO. CR 2005-136
v.	)	
	)	
ALDEN LAMAR	)	
HOAGLAND, JR.,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

BRIEF OF APPELLANT

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

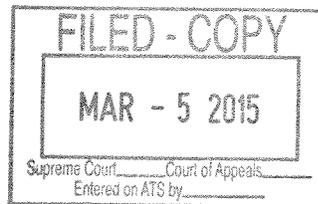
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## STATEMENT OF THE CASE

### Nature of the Case

Pursuant to a plea agreement, Alden Lamar Hoagland, Jr. pleaded guilty to one count of sexual abuse of a minor. On appeal, Mr. Hoagland asserts that the district court erred in denying his motion to correct an illegal sentence. Mr. Hoagland asserts that the prosecuting attorney had no authority to produce an amended superseding indictment, which alleged a new crime that was not charged in the original indictment and was not an included offense of the crime initially charged. Therefore, the amended superceding indictment was insufficient to confer subject matter jurisdiction.

### Statement of the Facts and Course of Proceedings

In 2005, Mr. Hoagland's eight-year-old son, J.H., told a Nampa Police Department Detective (Detective Sutherland) that Mr. Hoagland had showered with him and asked him to wash his "weenie," underneath his "weenie," his "butt," and his "boobs." (R., p.6.) J.H. said he did what his father asked him to. (R., p.6.) He also said that Mr. Hoagland then washed J.H.'s "weenie," "butt," and "boobs." (R., p.6.) Subsequently, Detective Sutherland interviewed Mr. Hoagland and reported that Mr. Hoagland confirmed his son's story. (R., p.6.) Mr. Hoagland was then arrested for lewd conduct with a minor under sixteen. (R., p.6.) Later, J.H. and Detective Sutherland testified before a grand jury and reiterated this information. (See Tr. 1/5/05, generally.) Based on their testimony, Mr. Hoagland was indicted for one count of lewd conduct with a minor under sixteen.<sup>1</sup> (R., pp.16-17.)

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<sup>1</sup> The Superseding Indictment read as follows:

**Count I**

That the Defendant, ALDEN L. HOAGLAND, JR., as a continuing course of conduct, on or between January 1, 2004 through June 30, 2004,

Pursuant to a plea agreement, and without resubmitting the matter to the grand jury, the district court, at the change of plea hearing, amended the superceding indictment and changed the lewd conduct charge to sexual abuse of a child under sixteen.<sup>2</sup> (See Tr. 5/2/05, p.5, L.3 – p.6, L.21; R., pp.34-35.) Mr. Hoagland agreed to plead guilty to the amended charge and waive any issues concerning the amendments. (Tr. 5/2/05, p.4, Ls.13-16, p.6, L.22 – p.7, L.1.) The amended superceding indictment was not signed by the foreman of the grand jury or the prosecutor.<sup>3</sup> The district court accepted Mr. Hoagland's plea and set a date for sentencing. (Tr. 5/2/05, p.12, L.12 – p.13, L.4.) Subsequently, the district court imposed a unified sentence of fifteen years, with three and a half years fixed. (R., pp.54-55.)

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in the County of Canyon, State of Idaho, did willfully and lewdly, commit a lewd and/or lascivious act upon and/or with the body of a minor, J.H., under the age of sixteen years, to-wit: of the age of eight (8) years (DOB 1-19-1986), by having manual to genital and/or manual to buttocks contact with the intent to arouse, appeal to and/or gratify the lust, passion and/or sexual desire of the defendant and/or said minor child.

All of which is contrary to Idaho Code, Section 18-1508 and against the power, peace and dignity of the State of Idaho.

<sup>2</sup> Prior to the change of plea hearing, the indictment was amended to correct J.H.'s date of birth; it was changed to [REDACTED] (R., pp.29-33.)

<sup>3</sup> The amended superceding indictment read as follows:

#### **Count I**

That the Defendant, ALDEN L. HOAGLAND, JR., on a date certain, between January 1, 2004 and June 30, 2004, in the County of Canyon, State of Idaho, did have sexual contact with a minor, J.H., under the age of sixteen years, to wit: of the age of eight (8) years [REDACTED] by having manual to genital and/or manual to buttocks contact with the intent to arouse, appeal to and/or gratify the lust, passion and/or sexual desire of the defendant and/or said minor child.

All of which is contrary to Idaho Code, Section 18-1506(b) [this should have been "18-1506(1)(b)"] and against the power, peace and dignity of the State of Idaho.

Mr. Hoagland filed a motion for correction or reduction of sentence pursuant to I.C.R. 35(b), but the district court denied the motion. (R., pp.56-59, pp.72-80.) Seven years later, Mr. Hoagland filed a pro se motion to correct an illegal sentence pursuant to I.C.R. 35(a). (R., pp.81-87.) In that motion, Mr. Hoagland argued that, because the matter was not resubmitted to the grand jury, the Amended Superceding Indictment was “a nullity,” and thus failed to confer subject matter jurisdiction on the district court. (R., p.85.) Later, Mr. Hoagland filed a motion for appointment of counsel and a motion for a hearing. (R., pp.102-07.) The district court granted both the motions and held a hearing on the matter on September 13, 2013. (R., pp.108-12.) After the hearing, the district court ordered that transcripts of the original 2005 hearings be produced and set a briefing schedule. (R., pp.115-16, pp.119-21.) Both parties subsequently submitted briefs on the issue. (R., pp.124-37.)

Thereafter, on July 29, 2014, the district court entered an order denying the motion to correct an illegal sentence. (R., pp.140-50.) It held that, because Mr. Hoagland “pled guilty to the Sexual Abuse charge on the same operative facts alleged in both the Superceding Indictment and the Amended Superceding Indictment,” the Amended Superceding Indictment was valid, and the district court had jurisdiction over the matter. (R., pp.148.-49.) Mr. Hoagland then filed a Notice of Appeal that was timely from the district court’s order denying the motion. (R., pp.151-54.)

ISSUE

Did the district court err when it denied Mr. Hoagland's I.C.R. 35 motion to correct an illegal sentence?

## ARGUMENT

### The District Court Erred When It Denied Mr. Hoagland's I.C.R. 35 Motion To Correct An Illegal Sentence

#### A. Introduction

Mr. Hoagland asserts that the district court erred when it denied his I.C.R. 35(a) motion to correct an illegal sentence because the district court lacked subject matter jurisdiction. Mr. Hoagland asserts that the district court lacked subject matter jurisdiction because the Amended Superseding Indictment charged a crime that was not an included offense under the original indictment.

#### B. Standard Of Review

The question of whether the district court lacked subject matter jurisdiction is a question of law that this Court reviews *de novo*. *State v. Jones*, 140 Idaho 755, 757 (2004). Whether an information or indictment conforms to legal requirements is also a question of law that this Court reviews *de novo*. *Id.* The issue of whether the district court had subject matter jurisdiction over a case can be raised at any time, including for the first time on appeal or in a I.C.R. 35(a) motion to correct an illegal sentence. *Id.* at 758; *State v. Lute*, 150 Idaho 837, 838-39 (2011) (holding that the court had jurisdiction to consider defendant's I.C.R. 35 motion to correct an illegal sentence).

#### C. The District Court Erred When It Denied Mr. Hoagland's I.C.R. 35 Motion Alleging An Illegal Sentence Because The District Court Lacked Subject Matter Jurisdiction

Mr. Hoagland asserts that the record in this case establishes that the trial court did not have subject matter jurisdiction to accept Mr. Hoagland's guilty plea, or sentence him upon his conviction. Therefore, Mr. Hoagland asks this Court to reverse the district

court's order denying his motion to correct an illegal sentence and remand this case to the district court with instructions to vacate his conviction. See *Lute*, 150 Idaho at 840-841.

1. Subject Matter Jurisdiction

Article I, section 8 of the Idaho Constitution provides “[n]o person shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prosecutor . . . .”

It is the filing of an indictment or information that confers subject matter jurisdiction on the district court with regard to the charges contained therein. *Jones*, 140 Idaho at 757. “The indictment or information filed by the prosecution is the jurisdictional instrument upon which a defendant stands trial.” *Id.* In light of this, the district court’s subject matter jurisdiction over the charges brought against the defendant is dependent upon the legal sufficiency of the indictment or information containing those charges. *Id.* at 758. In this case, the amended indictment was insufficient because it charged a different offense than the indictment issued by the grand jury.

The Idaho Supreme Court considers two standards in determining the legal sufficiency of an indictment: (1) whether an indictment or information is legally sufficient for the purposes of due process; and (2) whether an indictment or information is legally sufficient for the purpose of imparting jurisdiction. *Id.* at 757-58.. The charging document satisfies due process when it contains factual specificity sufficient to inform a person of common understanding of what is intended and to shield against double jeopardy. *State v. Severson*, 147 Idaho 694, 708 (2009). “An indictment confers jurisdiction when it alleges that the defendant committed a criminal offense in the State of Idaho.” *Id.*

Although the district court may permit a complaint, information, or indictment to be amended, the Idaho Criminal Rules only permit such amendment “if no additional or different offense is charged.” I.C.R. 7(e). In *State v. McKeehan*, 91 Idaho 808 (1967), the Idaho Supreme Court held as follows:

An accused is denied, therefore, his constitutional right to a preliminary hearing where an information is filed or subsequently amended charging him with a crime of a greater degree or of a different nature than that for which he was held by the committing magistrate.

It is, additionally, in this state, specifically provided by statute that a different and distinct offense may not be charged by way of amended information. I.C. § 19-1420. See, *State v. Thompson* [392 S.W.2d 617 (Mo.1965).]

*State v. McKeehan*, 91 Idaho at 817–18 (footnote omitted).

In *Lute*, the Idaho Supreme Court held that the district court never had subject matter jurisdiction over the defendant’s case because the grand jury never issued a valid indictment. 150 Idaho at 841. Thus the Court reversed the district court’s denial of the defendant’s motion for correction of an illegal sentence and remanded the case with instructions to grant the motion and vacate the conviction. *Id.* Therefore, when there is no valid indictment from a grand jury, there is no subject matter jurisdiction. The remedy is to vacate the conviction.

2. Because the Amended Superseding Indictment Charged Mr. Hoagland With A Different And Distinct Offense, It Was Invalid, And Mr. Hoagland’s Conviction Was Void

Mr. Hoagland properly challenged the district court’s lack of subject matter jurisdiction. He asserted that the Amended Superceding Indictment failed to confer jurisdiction because the charge of Sexual Abuse was a new charge that was never submitted to the grand jury. (R., pp.84-85, pp.127-28.) Thus, the Amended

Superseding Indictment was invalid. Therefore, this charge must be dismissed and Mr. Hoagland's conviction declared void.

Mr. Hoagland's case is controlled by *State v. Flegel*, 151 Idaho 525 (2011). There, the defendant was indicted by a grand jury for the crime of lewd conduct. During the jury trial, the district court instructed the jury regarding the crime of lewd conduct and, as an included offense, the crime of sexual abuse of a child under sixteen. *Id.* at 526. The lewd conduct charge was based upon the allegation that Flegel touched the minor's vagina, and the sexual abuse charge was based upon evidence that he also touched her buttocks. The jury found Flegel not guilty of lewd conduct, but could not reach a verdict on the sexual abuse charge. Without resubmitting the matter to a grand jury, the State then filed an amended indictment charging Flegel with one count of sexual abuse. Flegel was then tried by a jury on that charge and found guilty. *Id.* After the Idaho Court of Appeals vacated the judgment and remanded the case for a new trial, the Idaho Supreme Court granted the State's petition for review. *Id.*

The Court held that the district court lacked subject matter jurisdiction over the sexual abuse charge. *Id.* Specifically, it stated that "[b]ecause Sexual Abuse is not a lesser included offense of Lewd Conduct, Flegel could only be validly charged by indictment if the matter was resubmitted to a grand jury and it returned the amended indictment." *Id.*

The *Flegel* Court also held that, "[t]he prosecuting attorney had no authority to issue an amended indictment for a crime that was not an included offense of that crime." *Id.* The Court explained the statutory and constitutional basis underlying its decision as follows:

Article I, Section 8 of the Idaho Constitution states that "[n]o person shall be held to answer for any felony . . . unless on presentment or indictment

of a grand jury or on information of the public prosecutor, after a commitment by a magistrate . . . .” Because a felony can only be prosecuted by an indictment found by a grand jury or by an information based upon the commitment of a magistrate (following a preliminary hearing or its waiver), Idaho Code section 19-1420 provides: “An information or indictment cannot be amended so as to charge an offense other than that for which the defendant has been held to answer.” To allow a prosecutor to amend an indictment to charge an offense other than that for which the defendant was held to answer would permit the prosecutor to, in essence, become the grand jury.

*Flegel*, 151 Idaho at 526-27. The Court then went on to analyze whether sexual abuse was a lesser included offense of lewd conduct, ultimately finding that sexual abuse was not a lesser included offense of lewd conduct. *Id.* at 527-30. Thus, the Court held in *Flegel*, as it should in this case, “[b]ecause the amended indictment charged a different crime than the crime charged in the original indictment, the amended indictment is a nullity.” *Id.* at 530.

The Court also discussed *State v. O’Neill*, 118 Idaho 244 (1990). It said that in that case the “Court permitted an information to be amended from Lewd Conduct . . . to Sexual Abuse . . . without requiring that the defendant have an opportunity for a preliminary hearing” because the acts alleged in the amended information, which constituted a violation of the sexual abuse statute, were the same acts alleged in the original indictment. *Id.*

Here, the district court found that “[a]n analysis of the pleadings in this case indicate that *O’Neill*, rather than *Flegel*, controls.” (R, p.148.) It held that, because Mr. Hoagland “pled guilty to the Sexual Abuse charge on the same operative facts alleged in both the Superceding Indictment and Amended Superceding Indictment,” the amended indictment was valid, and thus the district court had jurisdiction. (R., pp.148-49.)

Contrary to the district court's finding, the indictment was invalid because the *Flegel* Court held that sexual abuse is not a lesser included offense of lewd conduct. *Id.* at 526. Therefore, *O'Neill* does not control. In this case, the Amended Superceding Indictment allegation was changed to "sexual contact," an allegation missing from the original indictment, just as it was in *Flegel*. *Id.* at 530. As the Court explained in *Flegel*,

When there is evidence indicating that a defendant committed more than one offense during a course of conduct, the prosecuting attorney can seek an indictment charging each of those crimes as separate counts. The prosecuting attorney in this case is presumed to have known the law, and he could have elected to seek an indictment for both Lewd Conduct and Sexual Abuse, but he chose not to do so.

*Id.* at 530-31 (footnote omitted).

The *Flegel* Court expressly held that when an indictment is amended, without the grand jury, to include an allegation of "sexual contact," it is not an included offense of a charging violation of I.C. §18-1508 under either a statutory or a pleading theory. *Id.* at 527-30. Therefore, the Amended Superceding Indictment was a nullity, and the district court lacked subject matter jurisdiction to accept Mr. Hoagland's guilty plea or impose sentence.

#### CONCLUSION

Mr. Hoagland respectfully requests that this Court remand his case to the district court with instructions to vacate his judgment and commitment for sexual abuse because the district court never had subject matter jurisdiction over this charge.

DATED this 5<sup>th</sup> day of March, 2015.



REED P. ANDERSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

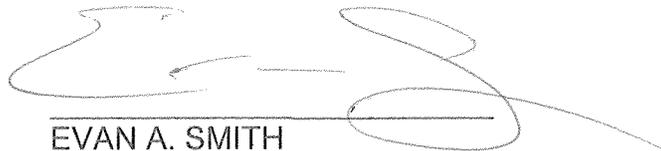
I HEREBY CERTIFY that on this 5<sup>th</sup> day of March, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

ALDEN LAMAR HOAGLAND JR  
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BOISE ID 83707

JUNEAL C KERRICK  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

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