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

STATE OF IDAHO,	)	
	)	**No. 46421-2018**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR01-17-11165**
	)	
MARTIN H. BETTWIESER,	)	
	)	
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 GERALD F. SCHROEDER, District Judge
HONORABLE DAVID D. MANWEILER, Magistrate Judge

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STATEMENT OF THE CASE

Nature Of The Case

Martin Bettwieser appeals from the district court's order, on intermediate appeal, affirming his judgment of conviction for Following Too Closely in violation of Idaho Code section 49-638.

Statement Of The Facts And Course Of The Proceedings

Martin H. Bettwieser was driving a postal truck in stop-and-go traffic when he rear-ended the vehicle in front of him. (Trial Tr., p. 4, L. 18 – p. 5, L. 21.) An officer who arrived at the scene a short time later issued Bettwieser a citation for Following Too Closely in violation of Idaho Code section 49-638. (Trial Tr., p. 10, L. 8 – p. 14, L. 2; R., p. 7.) Bettwieser denied the violation. (R., p. 10.) A trial was set in magistrate court for September 21, 2017. (R., p. 15.)

On June 19, Bettwieser served a Request for Discovery, including interrogatories. (Appellant's brief, p. 1; R., pp. 16-20 (stamped as received by the City of Boise, Legal Department on June 19).) The requests were not filed with the court until July 12. (R., pp. 3 (ROA reflecting that Requests for Discovery were filed on July 12), 16-20 (Requests stamped as filed July 12).) The City of Boise ("the City") filed a Response in Opposition to Request for Discovery on June 28, and then a Response to Request for Discovery, as well as its own requests, on June 30. (R., p. 2.[1])

On July 18, Bettwieser filed a Motion for Sanctions (R., pp. 28-29), Memorandum in Support of Motion to Dismiss (R., pp. 21-24), and affidavit in support (R., pp. 25-26). He argued

[1] These filings are in the record only as attachments to a much later motion made by Bettwieser to correct or augment the record in his intermediate appeal to the district court. (R., pp. 59-69.) If the district court ruled on this motion, it is not reflected in the record.

that the magistrate court should dismiss the charge against him because he had not received the City's responses to his discovery request, though he acknowledged that he received its objection to those requests. (R., pp. 21-22.) He complained that, when he told the prosecutor at a status conference on July 12 that he had not received responses to his discovery requests, the prosecutor did not have copies of the responses with him and told him that they would be re-served, but he had not received them six days later when he filed his motion for sanctions. (R., pp. 22, 25.) With respect to the City's objection to his requests, Bettwieser argued that his interrogatories were proper because traffic infractions are "quasi criminal, they are also sui generis, therefore both civil and criminal rules are utilized." (R., p. 23.)

The magistrate court denied Bettwieser's motion for sanctions on July 19. (R., pp. 28-29.) The City then re-served its responses to Bettwieser's discovery requests on July 21. (Appellant's brief, pp. 1-2; R., pp. 62-65 (responses reflecting service on July 21).)

After a court trial held September 21 (R., pp. 3-4; see generally, Trial Tr.), Bettwieser was convicted and ordered to pay a ninety-dollar fine (R., p. 35; Trial Tr., p. 32, Ls. 13-20).

Bettwieser timely filed an intermediate appeal to district court. (R., pp. 36-37.) He stated two issues on appeal:

> A. Do the errors of the Prosecution and the Court amount to constitutional violations for reversal?
> B. Is there just cause to solely issue traffic citations on the basis to make Insurance Companies Happy?

(R., p. 75 (verbatim).) With respect to the first issue, he identified six alleged errors and his argument consisted, in its entirety, of the following:

> **Error 1**, In the pre-trial proceedings the record shows that Boise City did not timely serve Bettwieser a response to his discovery request and there by forfeiting objections with sanctions allowed. *ICR. 16(f)*

Error 2, The court did not properly dispose of the Motion for Sanctions and did not issue a proper order to the motion. It sent a copy of the Motion for Sanctions to the parties, allegedly wanting it to be interpreted as a legitimate ruling of the court. The paper is not a separate document and and prepared to meet the requirements of *I.R.C.P. 2*, has no filing stamp of the clerk, *I.R.C.P. 2.3* The Idaho Supreme Court held in *State v. Ciccone. 150 Idaho 305, 246 P. 3d 958 (2010)*: " The placing of filing stamp on the judgment constitutes the entry of the judgment; and the judgement is not effective before such entry. *I.R.C.P 58(a).* Thus, in order to be effective , judgment is not effective, a judgement must be stamped by the clerk of the court." *Ciccone, 150 Idaho at 306-07, 246 P.3d at 959-60*

Error 3, That documents signature is not a valid signature as compared to the Judge Manweilers signature on the Judgment. The signature on the Motion appears to be presented as his initials but on closer observation the initials differ in form as to his real signature on the Judgment. The D's or M do not resemble the Judgment signature letters at all and can be presumed were subscribe by someone other than Judge Manweiler.

Error 4, The alleged order appears to want to instill that it was validly served when no information is given that it was, there is nothing in the record of actions that states it was. *I.R.C.P. 2.3(b)*, it is not listed with a certificate of service nor how it was served.

Error 5, And the most disturbing is that Judge Manweiler signed the Judgment against Bettwieser before the trial even began, that there was a preconceived outcome before trial even began, and could also conclude that the courts outcome for Bettwieser's Motion for Sanctions was preconceived, absent an opposition from the motion before the ruling. This error alone would constitute an unfair trial the constitutional violations against Bettwieser.

Error 6, The court did not retain an exhibit offered at trial for review by the appellate court contrary to *I.C.R. 54(l)* and is now tainted.

(R., pp. 75-76 (verbatim).)

With respect to the second issue, Bettwieser argued that the citation was wrongfully issued only to "make the Insurance Companies happy." (R., pp. 77-78.)

The district court affirmed. (R., pp. 90-96.) Forty-three days later, Bettwieser filed a notice of appeal. (R., pp. 97-99.)

ISSUES

Bettwieser states the issues on appeal as:

ISSUES ON APPEAL - From District Court to Supreme Court

A. Do the errors of the Prosecution and the Court amount to constitutional violations for reversal? (R. 71-81) (R.83-88) (Aug. p.1-10)
B. Is there just cause to solely issue traffic citations on the basis to make Insurance Companies Happy ? (R. 71-81) (R.83-88) (Aug. p.1-10)

ISSUES ON APPEAL – To SUPREME COURT

C. Does the record and briefing in the District Court acting as an intermediate appeal constitute sufficient error by the court to sustain reversal under bias and prejudice and the cumulative error doctrine and constitutional violations, contrary to District Court Opinion.
D. Can the Civil Rules of Procedure be applied to Infraction cases?

(Appellant's brief, p.3 (verbatim).)

The state rephrases the issues as:

1. Should Bettwieser's appeal be dismissed as untimely?

2. Has Bettwieser failed to establish that the district court committed reversible error?

ARGUMENT

I.
Bettwieser's Appeal Is Untimely And This Court Should Dismiss For Lack Of Jurisdiction

Idaho Appellate Rule 14 provides that an appeal "as a matter of right from the district court may be made only by physically filing a notice of appeal with the clerk of the district court within 42 days from the date evidenced by the filing stamp of the clerk of the court on any judgment or order of the district court appealable as a matter of right in any civil or criminal action." "The requirement of perfecting an appeal within the forty-two day time period is jurisdictional. Appeals taken after expiration of the filing period must be dismissed." State v. James, 112 Idaho 239, 241, 731 P.2d 234, 236 (Ct. App. 1986).

The district court's opinion affirming the magistrate court was filed August 27, 2018, and was mailed to Bettwieser the same day. (R., pp. 90, 96.) Bettwieser's Notice of Appeal was filed October 9, forty-three days later. (R., pp. 6 (ROA reflecting that Notice of Appeal was filed on October 9, 2018), 97 (Notice of Appeal with filing stamp).) While the Notice of Appeal is *dated* October 8, and would have been timely if filed on that date, the rule explicitly provides that an appeal is perfected "only by physically filing" the notice of appeal within forty-two days. I.A.R. 14(a). Bettwieser's appeal is untimely, the failure to timely file a notice of appeal is jurisdictional, and this Court should therefore dismiss the appeal.

II.
Bettwieser Cannot Established That The District Court Committed Reversible Error

A. Introduction

Bettwieser repeats a number of the claims that the district court properly rejected below: that the magistrate court erred procedurally in the manner in which it denied his motion for

sanctions (Appellant's brief, pp. 5-6); that it erred by failing to ensure an exhibit was part of the record on appeal (Appellant's brief, pp. 4-5); that it erred by signing the judgment before trial (Appellant's brief, p. 5); and that it erred in entering a conviction when the officer who issued the traffic citation allegedly did so only to "make Insurance Companies happy" (Appellant's brief, pp. 6-7). In addition to these arguments, Bettwieser argues that the district court misallocated the burden with respect to the harmless error analysis. (Appellant's brief, pp. 4, 6, 7.) He is mistaken. The district court not only correctly concluded that Bettwieser failed to establish any error on the part of the magistrate court, but that reversal would have been inappropriate even if he had because he did not establish (or, even argue) that he any errors were likely prejudicial.

Bettwieser also argues that the district court erred in the manner in which it resolved his intermediate appeal: that it improperly limited his ability to provide oral argument and that it did not "properly settle the clerk's record on appeal." (Appellant's brief, p. 6.) Again, Bettwieser is mistaken. The record shows that the district court provided him the opportunity to argue his appeal below, he waived any objection to the appellate record by failing to object to it within the period provided by the Idaho Appellate Rules, and he cites no authority to suggest that these alleged errors entitle him to some relief related to his conviction.

Finally, Bettwieser makes several arguments alleging error before the magistrate court that were not raised on intermediate appeal and so are not before this Court. First, he argues that the Idaho Rules of Civil Procedure apply to the prosecution of infractions, and so his interrogatories directed to the state were proper. (Appellant's brief, p. 8.) Second, he argues that the judgment entered by the magistrate court does not state the fine or penalty to be imposed, does not state that he was advised of his constitutional rights, and was not served. (Appellant's brief, p. 5.) Both because these issues were not raised to the district court, and because they are

frivolous on the merits, they also fail to establish reversible error.

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 (2005)). 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." State v. Tregeagle, 161 Idaho 763, 765, 391 P.3d 21, 23 (Ct. App. 2017). Whether the district court erred is based on whether the magistrate's findings are supported and the magistrate's legal conclusions follow therefrom. State v. Pettit, 162 Idaho 849, 851, 406 P.3d 370, 372 (Ct. App. 2017).

C. This Court Should Decline To Address Arguments Unsupported By Relevant Authority And Citations To The Record

As they were on intermediate appeal, Bettwieser's arguments here are largely unsupported by relevant authority or citations to the record. For example, while Bettwieser argues that his conviction should be reversed because the officer who issued the citation allegedly did so only to satisfy an insurance company, and because the district court did not properly prepare the appellate record, he cites no case law related to such allegations or suggesting that reversal is appropriate in such circumstances. (Appellant's brief, pp. 6-7.) For that reason alone, this Court should decline to address Bettwieser's claims. See Clark v. Cry Baby Foods, LLC, 155 Idaho 182, 185, 307 P.3d 1208, 1211 (2013) ("this Court has refused to

consider an appellant's claims because he has failed to support them with either relevant argument and authority or coherent thought" (internal quotation marks omitted)).

D. The District Court Properly Determined That Bettwieser Failed To Identify Any Reversible Error By The Magistrate Court

On appeal, Bettwieser repeats a number of allegations regarding error by the magistrate court, claiming that the district court failed to recognize the errors. In particular, he focuses on the denial of his motion for sanctions, the alleged failure to include a particular exhibit in the record on appeal, and the allegation that the magistrate court signed the judgment prior to trial. (Appellant's brief, pp. 4-6.) As the district court found below, Bettwieser cannot show that the district court erred in any of these ways. (R., pp. 103-05.)

Bettwieser also argues that the district court misapplied the harmless error analysis by determining that any such errors would be harmless if they occurred. (Appellant's brief, pp. 4, 6, 7.) The district court correctly recognized that the errors alleged by Bettwieser would warrant reversal only if he demonstrated that they were not harmless, which he did not even attempt to do. (R., p. 105.) It correctly concluded that the alleged errors were, at best, minor procedurally irregularities that would not entitle Bettwieser to the reversal of his conviction.

1. The District Court Correctly Determined That The Denial Of Bettwieser's Motion For Sanctions Did Not Constitute Reversible Error

"The grant or denial of sanctions for discovery violations is committed to the discretion of the trial court and will be disturbed on appeal only for a manifest abuse of that discretion." Milburn v. State, 135 Idaho 701, 705, 23 P.3d 775, 779 (Ct. App. 2000); see also State v. Anderson, 145 Idaho 99, 104, 175 P.3d 788, 793 (2008) ("The decision whether to impose discovery sanctions is within the discretion of the trial court.").

The district court did not abuse its discretion by denying Bettwieser's request that it dismiss the charge against him merely because the state's discovery responses were allegedly just over two weeks late. (R., pp. 21-24.) In the first place, Bettwieser failed to establish any discovery violations. Idaho Criminal Rule 16(f)(1) requires that responses to a discovery request be filed and served within fourteen days of the request. Bettwieser's requests were served on June 19. (R., pp. 16-20.) The City filed objections on June 28, and responses to the request on June 30, respectively. (R., p. 2.) Though Bettwieser claims he did not receive the discovery responses, the record does not contain the responses that the City filed on June 30, and therefore does not reflect whether they were served along with the objections that he acknowledges receiving. (R., pp. 21-22.) "[A]ny missing portions of the record are presumed to support the trial court's ruling." State v. Murphy, 133 Idaho 489, 494, 988 P.2d 715, 720 (Ct. App. 1999).

But Bettwieser also did not file his discovery requests until July 12. (R., pp. 3, 16-20.) Idaho Criminal Rule 16(e) provides that, "Failure to file and serve the [discovery] request constitutes a waiver of the right to discovery." Until Bettwieser filed his requests on July 12, he had no right to discovery and the City had not obligation to respond. Bettwieser acknowledges that the City served—in fact, re-served—its responses to his discovery requests on July 21, less than fourteen days later. (Appellant's brief, pp. 1-2.) The City provided timely responses from the first date on which the City had an obligation to respond to Bettwieser's requests.

Even if the City was obligated to respond to Bettwieser's requests within fourteen days of June 19, and even if it did not do so until July 21, making the responses roughly two and a half weeks late, the magistrate court acted within its discretion in declining to dismiss the charges against Bettwieser. In determining whether to impose sanctions for an alleged discovery violations and, if so, what sanctions to impose, "judge[s] should balance the culpability of the

disobedient party against the resulting prejudice to the innocent party." Anderson, 145 Idaho at 105, 175 P.3d at 794. Bettwieser did not identify any prejudice he suffered from the short delay in receiving responses when he made his motion (R., pp. 21-24), and has not identified any prejudice on appeal. Nor is there any indication of culpability. According to Bettwieser, when the City was informed that Bettwieser had not initially received its responses, the City's attorney informed Bettwieser that they had been served but that they would be re-served. (Appellant's brief, p. 1.) The City then did so. (Id.) An error with respect to service is no indication of culpability warranting some severe discovery sanction. Bettwieser cites no authority for the proposition that the magistrate court abused its discretion by declining to dismiss the charge against him—the only relief he sought—because the City's discovery responses were just over two weeks late and though Bettwieser identified no prejudice.

Finally, Bettwieser argues that the magistrate court denied his motion in a procedurally improper fashion. He complains that the magistrate court denied his motion by indicating on the motion itself that it had been denied for insufficient grounds, as opposed to denying it by creating a separate document to memorialize the denial, speculates that it was not signed by the magistrate judge, and claims that it was not served. (Appellant's brief, pp. 5-6.) The motion itself is stamped as denied for insufficient grounds, with the magistrate judge's initials. (R., p. 28.[2]) It reflects that copies were sent to Bettwieser and the City of Boise (R., p. 29), and the denial was filed (R., p. 3).

The only authority that Bettwieser cites for the proposition that the magistrate court erred is Idaho Rule of Civil Procedure 2.3, presumably for the proposition that orders must be served

[2] Bettwieser's speculation that the magistrate judge did not actually deny the motion is based only on his own amateur handwriting analysis.

on the parties. But, as noted above, the order reflects that it was served and Bettwieser acknowledges that the magistrate court sent it to the parties. (R., p. 74 ("on July 19, 2017 the court sent a copy of the Motion for Sanctions back with additional information on it to make it appear to purport to be some ruling by the court").) At any rate, the Idaho Rules of Civil Procedure do not apply to infractions. The Idaho Infraction Rules govern the prosecution of infractions. Idaho Infraction Rule 1 states that "[t]he Misdemeanor Criminal Rules shall apply to the processing of infraction citations and complaints to the extent they are not in conflict with these specific rules." In turn, Idaho Misdemeanor Criminal Rule 1 incorporates the Idaho Criminal Rules to the extent they are not in conflict with the former. Thus, the Idaho Infraction Rules certainly apply, and the Idaho Misdemeanor Criminal Rules and Idaho Criminal Rules may apply, but the Rules of Civil Procedure do not.

Bettwieser has not identified any applicable rules, statutes, or case law supporting his view that the magistrate court erred by denying his motion for sanctions, or by denying it in the manner it did.

2. The District Court Did Not Err By Failing to Ensure That An Exhibit Was Included In The Record For Bettwieser's Intermediate Appeal

During trial, Bettwieser attempted to admit a portion of a police report but the magistrate court ruled that it was inadmissible. (Trial Tr., p. 25, L. 20 – p. 27, L. 6.) At the close of trial, the magistrate court returned the proposed exhibit to Bettwieser. (Trial Tr., p. 31, Ls. 20-21.) On appeal, Bettwieser apparently argues that the district court erred in failing to ensure that this exhibit was part of the record on intermediate appeal. (Appellant's brief, pp. 4-5.) In fact, however, the district court attempted to ensure that the proposed exhibit was in the record. After he initiated his intermediate appeal, Bettwieser brought the issue to the district court's attention

and the district court stated that Bettwieser could augment the record with the proposed exhibit. (R., p. 47.) Though the exhibit had been returned to him, and though he was specifically permitted to augment the record with that exhibit, he apparently never did so. Nor does Bettwieser explain how the exhibit was in any way important to his intermediate appeal. Bettwieser does not now and did not argue to the district court below that the exhibit should have been admitted at trial. Rather, he is arguing only that it should have been included in the record in his appeal to the district court, but for no particular reason. Where Bettwieser was offered the opportunity to augment the exhibit but declined to do so, the district court did not err by failing to ensure that the exhibit was part of the record.

3. The District Court Correctly Determined That Bettwieser Failed To Establish Error In the Manner In Which The Judgment Against Him Was Signed

Bettwieser argues that the magistrate judge signed the judgment against him before his trial. (Appellant's brief, p. 5). The trial began at 8:27 a.m. on September 21, 2017. (Trial Tr., p.3, Ls. 1-2.) The judgment form was signed at the same time. (R., p. 35.) He argued below that this established that "there was a preconceived outcome before trial even began." (R., p. 76.) As the district court noted, though, there is nothing to suggest that the form was *completed* at that time, already indicating a guilty verdict. (R., pp. 93-94.) The form was not filed until after the trial, when the magistrate judge determined that Bettwieser was guilty. (R., p. 35 (filed at 9:02 a.m.).) The mere fact that the magistrate court had prepared the judgment form by signing it prior to trial does not suggest that it had already entered the verdict or otherwise predetermined the outcome of the trial. Idaho Infraction Rule 9(a) provides that upon "a finding by the court upon trial that the defendant committed the infraction offense, . . . the court shall enter judgment against the defendant." The magistrate court here did so, entering judgment against Bettwieser at

9:02 a.m., after the trial ended and Bettwieser was found guilty. (R., pp. 34-35.) Bettwieser failed to establish any error.

4. The District Court Did Not Err In Holding That The Officer's Purported Reason For Issuing Bettwieser A Citation Did Not Warrant Reversal Of His Conviction

Bettwieser argues that his conviction should be reversed because he should never have been cited. (Appellant's brief, pp. 6-7.) He argues that the officer who responded to the accident "issued the citation only to suffice the insurance companies so they could assess fault." (Appellant's brief, p. 7.) Though it is unclear, and Bettwieser cites no authority, the most generous reading of his argument is that there is insufficient evidence to sustain his conviction. Even interpreting his argument in that way, Bettwieser has not established that his conviction should be reversed.

Appellate review of the sufficiency of the evidence is limited in scope. "When a criminal action has been tried to a court sitting without a jury, appellate review of sufficiency of the evidence is limited to ascertaining whether there is substantial evidence upon which the court could have found that the prosecution met its burden of proving the essential elements of the crime beyond a reasonable doubt." State v. Wright, 154 Idaho 157, 158, 295 P.3d 1016, 1017 (Ct. App. 2013). Evidence is substantial if a "'reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact has been prove[n].'" State v. Severson, 147 Idaho 694, 712, 215 P.3d 414, 432 (2009) (quoting State v. Mitchell, 130 Idaho 134, 135, 937 P.2d 960, 961 (Ct. App. 1997)). The Court "must view the evidence in the light most favorable" to upholding the verdict and will not substitute its own judgment on issues of weight, credibility or reasonable inferences. Id.

Bettwieser was convicted of violating Idaho Code section 49-638(1), which provides: "The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicle, traffic upon and the condition of the highway." There is substantial evidence on which the magistrate judge could have found that Bettwieser violated this statute.

The individual Bettwieser rear-ended testified that at around 1:20 p.m. on March 17, 2017, he was driving in stop-and-go traffic when he braked for the traffic in front of him and was immediately hit from behind by Bettwieser. (Trial Tr., p. 4, L. 18 – p. 7, L. 13.) He stated that before Bettwieser hit him, he saw the "post truck" driven by Bettwieser "moving at a pretty good rate of speed." (Trial Tr., p. 8, Ls. 4-9.) Bettwieser himself testified that he looked away from the traffic and, when he noticed that traffic had stopped, he tried to brake but rear-ended the car in front of him. (Trial Tr., p. 25, Ls. 10-19.) This testimony is sufficient to support Bettwieser's conviction. See State v. Bettwieser, 143 Idaho 582, 588-89, 149 P.3d 857, 863-64 (Ct. App. 2006) (sustaining conviction for Following Too Closely where the individual Bettwieser rear-ended "testified that on a clear, dry day, Bettwieser's car rear-ended his when he had to brake suddenly because the car in front of him stopped").

Bettwieser's argument to the contrary focuses on a statement at trial by the officer who cited him. The officer stated that after he issued Bettwieser the ticket, he told Bettwieser that:

> insurance companies like to see citations written because if you don't write a citation usually on a traffic accident the insurance company doesn't believe that the person at fault did anything wrong because there wasn't a citation issued. So as a standard practice I write a citation to whoever is at fault in a traffic accident.

(Trial Tr., p. 15, L. 17 – p. 16, L. 3.) According to Bettwieser, this shows that the citation "was not issued because Bettwieser was following to close but the circumstances of following to close

was created in order to make the Insurance Companies happy." (R., p. 77 (verbatim).) The fact that the officer has a policy of issuing citations to the individual "at fault" in an accident, and issued a citation to Bettwieser for following too closely, in no way undermines the proposition that Bettwieser was at fault for the accident because he was following too closely. The officer's view that insurance companies like to see citations issued to persons at fault for accidents is irrelevant to the fact that Bettwieser was at fault for this accident, and irrelevant to the fact that there was sufficient evidence to sustain his conviction for violating Idaho Code section 49-638. (R., p. 106 ("Insurance has no relevance to a determination of guilty or non-guilt and it would be best left out of the conversation, but relevant evidence supports the decision.").)

5. The District Court Did Not Err In Holding That, Even If Bettwieser Had Established Error, Reversal Would Not Be Warranted Because Bettwieser Failed To Articulate Any Prejudice

Bettwieser argues that "it was the State that has the burden to show the cumulative of errors was harmless, which it did not do on appeal (R 87) *State v. Perry 150 Idaho 2009* and that the district court errored and took that burden upon itself in its opinion and did not apply a waiver upon the State for that issue." (Appellant's brief, p. 4 (verbatim).) Relying exclusively on State v. Perry, 150 Idaho 209, 245 P.3d 961 (2010), he appears to be arguing that the district court improperly shifted the burden to him to establish that the errors he alleged somehow affected his trial.

Bettwieser is mistaken. The district court correctly recognized that an error does not necessarily require reversal of a conviction "'since under due process a defendant is entitled to a fair trial, not an error-free trial.'" (R., p. 92 (quoting State v. Johnson, 163 Idaho 412, 428, 414 P.3d 234, 250 (2018)).) Instead, it is only where errors, individually or cumulatively, are "'of

such magnitude that the defendant was denied a fair trial'" that reversal of the conviction is warranted. (Id. (quoting Johnson, 163 Idaho at 428, 414 P.3d at 250).) The district court then correctly concluded that Bettwieser had "not demonstrated the existence of errors of such magnitude that he was denied a fair trial," either individually or cumulatively. (R., p. 94.[3])

Perry does not support the proposition that the district court improperly placed any burden on Bettwieser. Perry held that where an error occurs "at trial" and was the subject of a "contemporaneous objection," the state has the burden to establish that the error was harmless. Perry, 150 Idaho at 221, 245 P.3d at 973. On the other hand, where a defendant alleges an error that was not the subject of a contemporaneous objection, the defendant must show that the error violated an un-waived constitutional right, plainly exists, and that the error was not harmless. Perry, 150 Idaho at 228, 245 P.3d at 980. None of the errors identified by Bettwieser occurred at trial and none were met with a contemporaneous objection.

Four of the six alleged errors concerned Bettwieser's motion for sanctions and supposed technical deficiencies in the magistrate court's denial of that motion. (R., pp. 75-76.) Bettwieser does not contend that he ever brought these alleged technical deficiencies to the magistrate court's attention. Though he brought the discovery dispute itself to the magistrate court's attention, on appeal from determinations regarding the propriety of discovery sanctions, "the complaining party [must] demonstrate that the late disclosure hampered his ability to meet the evidence at trial, had a deleterious effect on his trial strategy, or deprived him of the opportunity to raise a valid challenge to the admissibility of evidence." State v. Wilson, 158 Idaho 585, 589,

[3] This conclusion focused on the six alleged errors that comprised Bettwieser's first issue below—"Do the errors of the Prosecution and the Court amount to constitutional Violations for reversal ?" (R., pp. 75-76)—not Bettwieser's argument concerning whether the officer issued the citation for some improper purpose (R., p. 94).

349 P.3d 439, 443 (Ct. App. 2015). That is, Bettwieser was required to establish some prejudice. The fifth alleged error concerned the manner in which the magistrate judge signed the judgment, and the sixth concerned whether an exhibit was in the record for his intermediate appeal. In neither case were the alleged errors the subject of a contemporaneous objection at trial.

The district court did not err in holding that, even if one or more of these alleged errors occurred, reversal would not be appropriate because Bettwieser did not establish (or even argue) that he was prejudiced in any way. Even if they occurred, the alleged errors were, at best, minor procedural irregularities that in no way compromised Bettwieser's right to a fair trial.

E. The District Court Did Not Improperly Limit Bettwieser's Opportunity To Provide Oral Argument

Bettwieser argues that the "district court errored when it withheld Bettwieser's final response to oral argument even when Bettwieser had the court clarify on the order of argument and was expecting a final response after the States argument." (Appellant's brief, p. 6 (verbatim).) In addition to being unsupported by any authority suggesting such an error would entitle him to any relief, this claim is contrary to the record.

As the appellant below, Bettwieser was offered the opportunity to present oral argument first, which he "reserved" until after the City offered any argument. (8/9/18 Tr., p.5, Ls. 4-14.) When the City elected to submit the appeal on the briefs, without offering argument, the district court stated, "There being no argument, I will take it on the briefs." (8/9/18 Tr., p. 5, Ls. 15-21.) Bettwieser then complained that he thought he would have an opportunity to present argument after the City even if the City declined to present any argument, at which point the district court offered to "start this over" so that Bettwieser would have an opportunity to provide argument, which he did. (8/9/18 Tr., p. 5, L. 22 – p. 7, L. 14.) Thus, Bettwieser was not denied the

opportunity to present oral argument. After Bettwieser's argument, the City again declined to offer any argument and the district court indicated that it would issue an opinion. (Tr., p. 7, Ls. 18-25.) To the extent that Bettwieser is arguing that he was entitled to *additional* argument time, to present a reply to an oral argument the City did not offer, he is simply mistaken.

F. Any Objections To The Record On Appeal Were Waived And Would Not Provide Grounds For Reversal Even If They Had Not Been

Bettwieser alleges that the district court "did not properly settle the clerks record on appeal." (Appellant's brief, p. 6.) The only alleged deficiency he identifies is the absence of a table of contents or index, which he suggests makes briefing take longer. (Id.) Bettwieser apparently did not object to the record within the twenty-eight days permitted by Idaho Appellate Rule 28(a) for such objections. Having failed to "fully and timely utilize the Idaho Appellate Rules" to "make any objections, corrections, additions, or deletions prior to settling of the record," Bettwieser cannot now claim that the record is deficient. State v. Morgan, 153 Idaho 618, 622, 288 P.3d 835, 839 (Ct. App. 2012). Bettwieser also cites no authority for the proposition that the failure to provide a table of contents or index in the appellate record would provide grounds for relief from the underlying conviction.

G. Bettwieser Waived Issues Not Raised Below

"[W]here a party appeals the decision of an intermediate appellate court, the appellant may not raise issues that are different from those presented to the intermediate court." State v. Sheahan, 139 Idaho 267, 275, 77 P.3d 956, 964 (2003). On appeal to this Court, Bettwieser attempts to raise a number of alleged errors by the magistrate court that were not raised on intermediate appeal. First, he argues that his interrogatories were proper because the Idaho Rules

of Civil Procedure apply to the prosecution of infractions. (Appellant's brief, p. 8.) Second, he argues that the judgment entered by the magistrate court does not state the fine or penalty to be imposed, does not state that he was advised of his constitutional rights, and was not served. (Appellant's brief, p. 5.) Because these issues were not raised before the district court, Bettwieser cannot raise them now.

But these arguments also fail on the merits. With respect to the propriety of his interrogatories, Bettwieser's argument that they were proper is premised on the proposition that "both civil and criminal rules are utilized" in the prosecution of infractions. (Appellant's brief, p. 8.) That is, he claims that the interrogatories were proper because the Idaho Rules of Civil Procedure authorize interrogatories and apply to the prosecutions of infractions. As discussed above, though, Bettwieser ignores the fact that there are rules specifically devoted to the prosecution of infractions, rules which make no mention of the Idaho Rules of Civil Procedure but do specifically incorporate portions of the Idaho Misdemeanor Criminal Rules and Idaho Criminal Rules. The Idaho Infraction Rules specifically provide that the Misdemeanor Criminal Rules govern matters not addressed by the former. I.I.R. 1. The scope of discovery is not addressed by the Infraction Rules, so we look to the Misdemeanor Criminal Rules. The Misdemeanor Criminal Rules in turn provide that the the Idaho Criminal Rules govern issues not addressed by the former. I.M.C.R. 1. Because the Misdemeanor Criminal Rules do not address the scope of discovery, we look to the Idaho Criminal Rules. The Idaho Criminal Rules address the scope of discovery in Rule 16, which do not provide for interrogatories. There is no contrary case law suggesting that the Idaho Rules of Civil Procedure apply to the prosecution of infractions.

Nor is there any reason to believe that Bettwieser was at all prejudiced by the failure to secure answers to his interrogatories. Bettwieser provides no indication what information the interrogatories sought or how that information was important to his trial.

Finally, as to the alleged deficiencies in the judgment, Bettwieser claims that he lacked adequate notice of the judgment because there is no proof of service and the judgment does not list the fine of ninety dollars. (Appellant's brief, pp. 5-6.) Again, that claim is directly belied by the record. The magistrate court announced at the close of trial that Bettwieser was guilty and the fine was ninety dollars. (Trial Tr., p. 32, Ls. 13-20.) The citation itself also listed the fine as ninety dollars. (R., p. 10.) Bettwieser cannot reasonably argue that he did not have notice of the judgment against him and that he would be required to pay ninety dollars. Further, he does not say how any alleged failure of notice prejudiced him. He timely filed his notice of appeal from the date the judgment was entered, for instance. (R., pp. 36-37.)

These issues have been waived for failure to press them on intermediate appeal before the district court. But, like Bettwieser's other arguments, they are also meritless.

CONCLUSION

The state respectfully requests that this Court affirm Bettwieser's judgment of conviction.

DATED this 27th day of June, 2019.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 27th day of June, 2019, 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:

MARTIN BETTWIESER
3862 Yorktown Way
Boise, Idaho 83706

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General