

1-12-2016

State v. Villafuerte Appellant's Reply Brief Dckt. 42766

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

Recommended Citation

"State v. Villafuerte Appellant's Reply Brief Dckt. 42766" (2016). *Idaho Supreme Court Records & Briefs*. 5669.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/5669

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 42766
)	
v.)	CANYON COUNTY NO.
)	CR 2013-26871
DAKOTA LEE VILLAFUERTE)	
AKA KODY VILLAFUERTE,)	REPLY BRIEF
)	
Defendant-Appellant.)	

RECEIVED
 IDAHO SUPREME COURT
 COURT OF APPEALS
 2016 JAN 12 PM 3:35

REPLY 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

HONORABLE THOMAS J. RYAN
District Judge

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

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

BRIAN R. DICKSON
Deputy State Appellate Public Defender
I.S.B. #8701
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

ATTORNEYS FOR
DEFENDANT-APPELLANT

ATTORNEY FOR
PLAINTIFF-RESPONDENT

FILED - COPY

JAN 12 2016

Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE.....	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings.....	1
ISSUE PRESENTED ON APPEAL	2
ARGUMENT.....	3
The District Court Erred When It Denied Mr. Villafuerte's Motion To Dismiss This Case Because The State Of Idaho Did Not Have Jurisdiction Over The Alleged Criminal Act	3
CONCLUSION	10
CERTIFICATE OF MAILING.....	11

TABLE OF AUTHORITIES

Cases

<i>Bourgeois v. Murphy</i> , 119 Idaho 611 (1991)	8
<i>Doe v. State</i> , 158 Idaho 778 (2015)	7
<i>Staff of Idaho Real Estate Comm'n v. Nordling</i> , 135 Idaho 630 (2001).....	8
<i>State v. Armstrong</i> , 146 Idaho 372 (Ct. App. 2008)	6
<i>State v. Doyle</i> , 121 Idaho 911 (1992).....	5
<i>State v. Lee</i> , 153 Idaho 559 (2012).....	3, 4, 7, 9
<i>State v. Ozuna</i> , 155 Idaho 697 (Ct. App. 2013)	7
<i>State v. Wilson</i> , 2013 WL 5488655, *2 (Ct. App. 2013)	8
<i>Trinity Universal Ins. Co. v. Kirsling</i> , 139 Idaho 89 (2003)	7
<i>Verska v. Saint Alphonsus Reg'l Med. Ctr</i> , 151 Idaho 889 (2011)	6

Statutes

I.C. § 18-202	5
I.C. § 18-8306(5)(c).....	9
I.C. § 18-8307(4)(a).....	7, 8, 9
I.C. § 18-8309	3, 8, 9
I.C. § 18-8311(1).....	9
I.C. § 19-301	5, 6
I.C. § 19-302	5

STATEMENT OF THE CASE

Nature of the Case

Dakota Villafuerte appeals, contending the district court erred in denying his motion to dismiss the indictment in this case, as it improperly attempted to charge him for an act (failing to register as a sex offender) which occurred wholly in another state. The State responds by arguing that he had to register either in the other state or in Idaho, and therefore, the State could still prosecute him. However, the Idaho Supreme Court has already essentially rejected that argument. The reasons the Supreme Court rejected that argument are consistent with the plain language of Idaho's statutes and the fundamental principles of jurisdiction and venue. Therefore, this Court should also reject the State's argument. Since the Indictment was jurisdictionally-defective for failing to allege a criminal act occurring in Idaho, this Court should reverse the district court's order denying Mr. Villafuerte's motion to dismiss the indictment and remand this case for entry of an order of dismissal.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Villafuerte's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Whether the district court erred when it denied Mr. Villafuerte's motion to dismiss this case because the State of Idaho did not have jurisdiction over the alleged criminal act.

ARGUMENT

The District Court Erred When It Denied Mr. Villafuerte's Motion To Dismiss This Case Because The State Of Idaho Did Not Have Jurisdiction Over The Alleged Criminal Act

The State's argument on appeal boils down to a single point – that "changes in information that an offender is obligated to update under I.C. § 18-8309(1) must be reported to the county sheriff or to an official in another state, if that state requires registration." (Resp. Br., p.6.) Therefore, the State contends, Idaho can prosecute the failure to register even if the registrant has moved out of the State of Idaho. (Resp. Br., pp.6-7.) That argument runs contrary to basic principles of law embodied in Idaho's statutes and the decisions of the Idaho Supreme Court on this topic. Therefore, this Court should reject the State's argument.

In fact, the Idaho Supreme Court has already essentially rejected the State's argument. See *State v. Lee*, 153 Idaho 559, 561-62 (2012). In that case, the Supreme Court vacated a conviction for failure to register, explaining:

The State contends that the evidence in the record established beyond a reasonable doubt that Lee violated I.C. § 18-8309 because it proves that he moved from his last known address without providing notice of a new address or actual residence. This argument fails because (1) I.C. § 18-8309 does not apply to changes of address or actual residence to other countries and (2) *the State never proved that Lee moved to a new address or actual residence in Idaho.*

Lee, 153 Idaho at 561 (emphasis added). In a footnote, the State attempts to distinguish *Lee*, but it only discusses the first reason the Supreme Court vacated that conviction. (See Resp. Br., p.11 n.4.) It argues that, since the Supreme Court's decision was based on the lack of the word "country" in the relevant version of the statute, "the Court implicitly found that the evidence would have been sufficient if the state had shown that Lee established residence in another State before leaving the

country.” (Resp. Br., p.11 n.4.) That assertion is contradicted the Supreme Court’s second reason for vacating the conviction in *Lee*: the State failed to prove that the defendant “moved to a new address or actual residence *in Idaho*.” *Lee*, 153 Idaho at 561-62 (emphasis added). Thus, as Mr. Villafuerte explained in his initial brief, that rationale reveals that there were two implicit conclusions within the *Lee* decision: that the duty to report under the SORA statute when a registrant moves out of Idaho only exits in the state to which the defendant moved, and that there was no residual duty to notify Idaho that he had moved out of the State of Idaho. (App. Br., pp.18-20.) Were either of those two conclusions not part of the decision, there would be no need for the State to prove the defendant moved to a new residence “in Idaho.” *See id.* Therefore, even if the prosecution had shown the defendant in *Lee* had moved to another state, the conviction would still have been vacated under the second rationale. *See id.*

In this case, the State has effectively conceded in its Respondent’s Brief that there is no evidence that Mr. Villafuerte moved to a new address or residence in the State of Idaho: “[Mr.] Villafuerte did not report to the jail, or return to his registered address, but instead absconded to Nevada and was later arrested in Utah.” (Resp. Br., p.1; *see also* R., p.55 (the district court pointing out that both parties submitted that Mr. Villafuerte had left the State of Idaho, not moved within it).) Since the State has not offered any proof that Mr. Villafuerte “moved to a new address or actual residence *in Idaho*,” his conviction, like the conviction in *Lee*, should be vacated.

Basically, what *Lee* recognizes is that there are jurisdictional limitations in Idaho’s judicial system – for the courts to have subject matter jurisdiction over a criminal case, an essential element of the criminal act must have occurred in Idaho. *See Lee*, 153

Idaho at 561-62 (holding the State has to prove the defendant moved “in Idaho” for the conviction to stand); see also *State v. Doyle*, 121 Idaho 911, 913-14 (1992) (examining the scope of the district court’s jurisdiction under Idaho’s statutes). “Any other interpretation would create a direct conflict between I.C. §§ 18-202, 19-301, and 19-302.” *Doyle*, 121 Idaho at 913-14. By noting the defendant must have moved “in Idaho,” the Supreme Court essentially recognized that no essential element of failure to register occurs in Idaho if the registrant moves out of the state. That means the State is arguing for an expansion of prosecutorial jurisdiction to allow prosecution of acts wholly occurring outside the State of Idaho, and so, its interpretation would create a direct conflict between those statutes. As a result, that argument should be rejected.

To help explain his analysis on this point, Mr. Villafuerte directed this Court to several decisions by the United States Supreme Court which discussed statutes that, like SORA, designate a specific location for the established duty to be performed. (See App. Br., pp.10-17.) The Supreme Court provided a detailed analysis of how such statutes operate within the context of jurisdiction and venue, concluding that the authority to prosecute for failure to perform the established duty only exists in the jurisdiction where the duty was supposed to have been performed. (See App. Br., pp.10-17.)

In response, the State contends those cases are not relevant because Mr. Villafuerte’s claim is a lack of subject matter jurisdiction and “the plain language of [I.C. § 19-301(2)] indicates ‘venue is nonjurisdictional.’” (Resp. Br., pp.8-9.) That argument ignores the language of subsection 1 of that same statute, which begins: “Jurisdiction - venue.” I.C. § 19-301(1). Therefore, the language of the statute, read as

a whole, is not as clear as the State contends. See *Verska v. Saint Alphonsus Reg'l Med. Ctr*, 151 Idaho 889, 893 (2011) (reaffirming that statutes must be construed as a whole). However, those two provisions are not inconsistent with each other either. What the State's argument fails to appreciate is the dual meaning the term "jurisdiction" in such contexts – the term "jurisdiction" can refer specifically to personal and subject matter jurisdiction, or it can generally refer to "a court's authority to take certain action or grant a certain type of relief." *State v. Armstrong*, 146 Idaho 372, 375 (Ct. App. 2008).

Mr. Villafuerte's challenge in this case is that the district court lacked subject matter jurisdiction because the Indictment did not allege a crime that actually occurred in the State of Idaho. (R., pp.37-42.) Idaho Code § 19-301 recognizes that the analysis of whether the act occurred in Idaho incorporates aspects of venue. I.C. § 19-301(1). To that end, it provides that only acts occurring in Idaho may be criminally charged in Idaho's courts, and that the modicum of proof necessary to establish whether the act occurred in Idaho is a preponderance of the evidence. I.C. § 19-301. Ultimately, when the act does not occur in Idaho, the act is not prosecutable in Idaho under I.C. § 19-301(1), and so, Idaho's courts do not have subject matter jurisdiction over the case. Thus, while venue is not equivalent to jurisdiction (*i.e.*, it is "nonjurisdictional"), aspects of venue are relevant within certain jurisdictional analyses. Therefore the State's first argument to distinguish the Supreme Court's venue discussions is meritless.

The same is true of the State's second contention – that those opinions are not controlling, in that they do not discuss the jurisdictional limitations of Idaho's SORA statute specifically. (Resp. Br., pp.7-8.) Mr. Villafuerte has not contended that those cases are controlling in that regard, but rather, has argued that their analysis helps

explain why Idaho's courts do not have subject matter jurisdiction in this case. As in the statutes analyzed by the United States Supreme Court cases, Idaho's SORA statute establishes the duty, then sets a particular location where that duty is to be performed: the state to which the registrant is moving. I.C. § 18-8307(4)(a); *compare Doe v. State*, 158 Idaho 778 (2015) (noting that Idaho's registration requirements would control if and when the petitioner was sufficiently employed in Idaho despite the different registration requirements applicable to him in his home state of Washington). Thus, like in the Supreme Court's cases, any authority to prosecute for not fulfilling that duty lies only in the jurisdiction in which the duty is to be performed.

Besides, rare indeed would be the cases that are factually identical. As such, Idaho's courts have often examined how other courts have handled similar issues, particularly when they are examining an issue that has not been fully explored by Idaho's courts or when a court in another jurisdiction has engaged in a particularly useful analysis of the issue. *See, e.g., Trinity Universal Ins. Co. v. Kirsling*, 139 Idaho 89, 92 (2003) ("Our decision is in accord with the vast weight of persuasive authority from other jurisdictions."); *State v. Ozuna*, 155 Idaho 697, 703 (Ct. App. 2013) ("We find the reasoning of the Massachusetts Court of Appeals persuasive."). The State does not criticize the United States Supreme Court's analysis of this issue. (*See generally* Resp. Br.) Thus, this Court may properly consider that analysis in understanding how a similar issue under Idaho's statutes should be resolved. Since the person who moves out of Idaho is only obligated to act in the jurisdiction to which he is moving, prosecution for failing to perform that duty is improper in Idaho. *Compare Lee*, 153 Idaho at 561-62.

Illustrative of the proper analysis proscribed by *Lee*, the Court of Appeals, in an unpublished decision, vacated a conviction for failure to register as a sex offender when the defendant moved to Oregon because “[t]he language of I.C. § 18-8307(4)(a) and I.C. § 18-8309(2) unambiguously relieved an offender of the duty to register annually in Idaho once the offender moved to another State.” *State v. Wilson*, 2013 WL 5488655, *2 (Ct. App. 2013). The State contends that this Court should not look to the discussion in *Wilson* because the opinion is unpublished, and so, cannot be relied on as precedent. (Resp. Br., p.10 n.2.) Mr. Villafuerte has already explained that *Wilson* is not cited as precedent. (App. Br., p.17 n.8.) Rather, as the Idaho Supreme Court has approved: “When this Court had cause to consider unpublished opinions from other jurisdictions because an appellant had discussed the cases in his petition, we found the presentation of the unpublished opinions as ‘quite appropriat[e].’ Likewise, we find the hearing officer’s consideration of the unpublished opinion, not as binding precedent but as an example, was appropriate.” *Staff of Idaho Real Estate Comm’n v. Nordling*, 135 Idaho 630, 634 (2001) (quoting *Bourgeois v. Murphy*, 119 Idaho 611, 617 (1991)). Thus, referencing an unpublished opinion as a historical example of how a learned court has analyzed the particular question at issue in this case is appropriate, and that is all Mr. Villafuerte has asked this Court do with the discussion of this question in *Wilson*. (App. Br., p.17.)

The State also attempts to distinguish this line of analysis by pointing out that the defendant in *Wilson* was charged under a different section of the SORA statute than Mr. Villafuerte. (Resp. Br., p.10 n.2.) The State’s argument is unavailing because the plain language of the statutes still reveals its argument to be erroneous. The conduct

criminalized by SORA is more than just failing to register: “An offender subject to registration who knowingly fails to register, verify his address, or provide information or notice as required by this chapter shall be guilty of a felony” I.C. § 18-8311(1). However, SORA also unambiguously relieves the registrant of his duty under this statute in Idaho if he moves out of state: “If the offender intends to reside in another jurisdiction, the offender *shall register in the other jurisdiction* within two (2) days of moving to that jurisdiction and will not be removed from the sexual offender registry in Idaho until registration in another jurisdiction is complete.” Idaho Code § 18-8307(4)(a) (emphasis added); see also I.C. § 18-8306(5)(c) (requiring the state to notify the registrant “of the requirement to register *in a new jurisdiction* within two (2) days”).)

Thus, while Idaho’s records will still reflect the defendant’s status as a sex offender until he meets his duty to register in that other state, his duty is still to register “in the other jurisdiction.” I.C. § 18-8307(4)(a). Since statutes are to be construed as a whole, once Mr. Villafuerte moved to out of the State of Idaho, regardless of what type of information the State believes he needs to report,¹ he was relieved of that duty to provide that information to Idaho; his duty was to provide that information to the new jurisdiction. *Compare Lee*, 153 Idaho at 561-62 (holding that, absent evidence that the

¹ The State contends that, in addition to not updating his information as required by I.C. § 18-8309(1), Mr. Villafuerte also violated I.C. § 18-8309(2) (requiring the registrant to notify the jurisdiction of a lodging lasting more than seven days regardless of whether that lodging would be considered a residence). (Resp. Br., p.6 n.1.) However, the decision in *Lee* demonstrates that to be an erroneous position as well, as the Idaho Supreme Court assumed that the defendant had “travelled through one or more states before leaving the United States, he would not necessarily have had an address in any of those states,” and yet, it still vacated his conviction. *Lee*, 153 Idaho at 562. Thus, the jurisdiction the registrant would be required to notify under I.C. § 18-8309(2) would be the one he was obligated to report to in general. In cases such as this, that is the new jurisdiction to which the registrant moved. I.C. § 18-8307(4)(a).

defendant moved to a new address "in Idaho," a conviction for failure to register was not proper).

Since the resolution of this case is clear under the plain language of Idaho's statutes and the Idaho Supreme Court's decision in *Lee*, this Court should reject the State's attempts to justify the invasion of another state's sovereignty by allowing it prosecute an act which occurred wholly in that other state.

CONCLUSION

Mr. Villafuerte respectfully requests this Court reverse the district court's order denying his motion to dismiss and remand this case for entry of an order of dismissal.

DATED this 12th day of January, 2016.



BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of January, 2016, 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:

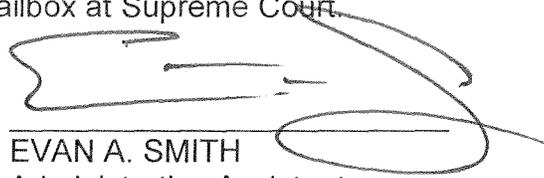
DAKOTA LEE VILLAFUERTE
INMATE #105668
ISCI
PO BOX 14
BOISE ID 83707

THOMAS J RYAN
DISTRICT COURT JUDGE
E-MAILED BRIEF

LARY G SISSON
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

BRD/eas