

11-10-2015

# State v. Villafuerte Respondent's Brief Dckt. 42766

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

## Recommended Citation

"State v. Villafuerte Respondent's Brief Dckt. 42766" (2015). *Idaho Supreme Court Records & Briefs*. 5671.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/5671](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/5671)

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](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

STATE OF IDAHO,	)	
	)	No. 42766
Plaintiff-Respondent,	)	
	)	Canyon Co. Case No.
vs.	)	CR-2013-26871
	)	
DAKOTA LEE VILLAFUERTE,	)	
	)	
Defendant-Appellant.	)	

RECEIVED  
IDAHO SUPREME COURT  
COURT OF APPEALS  
2015 NOV 10 PM 4:20

**BRIEF OF RESPONDENT**

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

**HONORABLE THOMAS J. RYAN  
District Judge**

**LAWRENCE G. WASDEN  
Attorney General  
State of Idaho**

**BRIAN R. DICKSON  
Deputy State Appellate  
Public Defender  
P. O. Box 2816  
Boise, Idaho 83701  
(208) 334-2712**

**PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division**

**JESSICA M. LORELLO  
Deputy Attorney General  
Criminal Law Division  
P. O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534**

**ATTORNEYS FOR  
PLAINTIFF-RESPONDENT**

**ATTORNEY FOR  
DEFENDANT-APPELLANT**

**FILED - COPY**  
NOV 10 2015  
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 Facts And Course Of Proceedings .....	1
ISSUE .....	3
ARGUMENT.....	4
Because Villafuerte Has Failed To Establish The State Lacks Jurisdiction To Prosecute Him For Failing To Comply With Idaho’s Sex Offender Registration Requirements, He Has Failed To Show Error In The Denial Of His Motion To Dismiss .....	4
A.    Introduction .....	4
B.    Standard Of Review.....	4
C.    The State Of Idaho Has Jurisdiction To Prosecute Villafuerte For Failing To Comply With Idaho’s Sex Offender Registration Requirements .....	4
CONCLUSION .....	12
CERTIFICATE OF SERVICE .....	12

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Bach v. Miller</u> , 144 Idaho 142, 158 P.3d 305 (2007) .....	5
<u>Johnston v. United States</u> , 351 U.S. 215 (1956) .....	7
<u>State v. Barros</u> , 131 Idaho 379, 957 P.2d 1095 (1998) .....	4
<u>State v. Doyle</u> , 121 Idaho 911, 828 P.2d 1316 (1992) .....	9
<u>State v. Frauenberger</u> , 154 Idaho 294, 297 P.3d 257 (Ct. App. 2013) .....	5
<u>State v. Lee</u> , 153 Idaho 559, 286 P.3d 537 (2012).....	4, 10, 11
<u>State v. Lute</u> , 150 Idaho 837, 252 P.3d 1255 (2011).....	4, 10
<u>State v. Olin</u> , 153 Idaho 891, 292 P.3d 282 (Ct. App. 2012) .....	5
<u>State v. Severson</u> , 147 Idaho 694, 215 P.3d 414 (2009).....	5
<u>State v. Wilson</u> , 2013 WL 5488655 (July 12, 2013 Idaho App.) .....	10
<u>Travis v. United States</u> , 364 U.S. 631 (1961) .....	7
<u>United States v. Anderson</u> , 328 U.S. 699 (1946) .....	7
<u>United States v. Cores</u> , 356 U.S. 405 (1958) .....	7
<u>United States v. Lombardo</u> , 241 U.S. 73 (1916).....	7, 8
 <u>STATUTES</u>	
I.C. § 18-202 .....	8, 9
I.C. § 18-8303(9) .....	6
I.C. § 18-8307(4)(a).....	10
I.C. § 18-8309 .....	passim
I.C. § 18-8311 .....	passim
I.C. § 19-301(2) .....	8

I.C. § 19-302 ..... 8, 9

## STATEMENT OF THE CASE

### Nature Of The Case

Dakota Lee Villafuerte appeals from the judgment entered upon his conditional guilty plea to failing to register as a sex offender. Villafuerte contends the district court erred in denying his motion to dismiss, in which Villafuerte claimed the state lacked jurisdiction to prosecute him for failing to register as a sex offender because, according to Villafuerte, his failure to update his address after he absconded was not a crime in Idaho.

### Statement Of Facts And Course Of Proceedings

In 2012, Villafuerte pled guilty to battery with intent to commit a serious felony (lewd conduct) and the court imposed a unified 15 year sentence, with three years fixed, and retained jurisdiction. (See R., pp.37-38.) At the end of the retained jurisdiction period, the court placed Villafuerte on probation and Villafuerte registered as a sex offender as required by I.C. § 18-8304. (See R., p.38.) Villafuerte “listed his parent’s home in Nampa, Idaho as his residence.” (R., p.38.)

In November 2013, after Villafuerte was ordered by his probation officer to serve discretionary jail time, Villafuerte did not report to the jail, or return to his registered address, but instead absconded to Nevada, and was later arrested in Utah. (R., pp.38-39, 47.) The state subsequently charged Villafuerte with failing to register as a sex offender for “fail[ing] to update his registration information within two working days as required by statute.” (R., pp.8-9, 18-19, 35-36.) Villafuerte filed a motion to dismiss, claiming the “State of Idaho lacks jurisdiction

over the crime” because it was not a crime in Idaho for him to fail to provide a current address after he absconded to Nevada. (R., pp.37-42.) The district court denied Villafuerte’s motion, after which Villafuerte entered a conditional guilty plea, reserving his right to appeal the denial of his motion. (R., pp.54-70, 74-77.) The court imposed a unified six year sentence, with six months fixed, to run consecutive to a sentence imposed in a separate case. (R., pp.79-80.) Villafuerte filed a timely notice of appeal. (R., pp.81-83.)

## ISSUE

Villafuerte states the issue on appeal as:

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.

(Appellant's Brief, p.4.)

The state rephrases the issue on appeal as:

Has Villafuerte failed to establish the State of Idaho lacks jurisdiction to prosecute him for a violation of I.C. § 18-8311 (failing to register as a sex offender) based on Villafuerte's non-compliance with Idaho's sex offender registration requirements?

## ARGUMENT

### Because Villafuerte Has Failed To Establish The State Lacks Jurisdiction To Prosecute Him For Failing To Comply With Idaho's Sex Offender Registration Requirements, He Has Failed To Show Error In The Denial Of His Motion To Dismiss

#### A. Introduction

Villafuerte claims the district court erred in denying his motion to dismiss, arguing, as he did below, that the court lacked jurisdiction over the alleged crime of failing to register as a sex offender. (Appellant's Brief, pp.5-20.) Villafuerte's claim fails. Application of the correct legal standards to the facts of his case supports the district court's conclusion that the State of Idaho has jurisdiction to prosecute Villafuerte for failing to comply with Idaho's sex offender registration requirements.

#### B. Standard Of Review

"An interpretation of a statute is a question of law over which this Court exercises free review." State v. Lee, 153 Idaho 559, 561, 286 P.3d 537, 539 (2012) (brackets, quotations, and citation omitted). "Jurisdiction is likewise a question of law and is reviewed de novo." State v. Lute, 150 Idaho 837, 839, 252 P.3d 1255, 1257 (2011) (citing State v. Barros, 131 Idaho 379, 381, 957 P.2d 1095, 1097 (1998)).

#### C. The State Of Idaho Has Jurisdiction To Prosecute Villafuerte For Failing To Comply With Idaho's Sex Offender Registration Requirements

"Subject matter jurisdiction is the power to determine cases over a general type or class of dispute." Lute, 150 Idaho at 840, 252 P.3d at 1258 (quoting

Bach v. Miller, 144 Idaho 142, 145, 158 P.3d 305, 308 (2007)). “Because the charging document is the instrument that confers subject matter jurisdiction on a court, whether a court has subject matter jurisdiction depends upon whether the charging document is legally sufficient.” State v. Frauenberger, 154 Idaho 294, 298, 297 P.3d 257, 261 (Ct. App. 2013) (citing State v. Severson, 147 Idaho 694, 708, 215 P.3d 414, 428 (2009)). “An indictment or an information confers jurisdiction if it alleges that the defendant committed a criminal offense within the state of Idaho.” Id.

The Amended Information alleges that Villafuerte violated I.C. § 18-8311 along with other provisions of the Sex Offender Registration Notification and Community Right-to-Know Act (“SORA”). (R., pp.35-36.) Section 18-8311, I.C., provides, in relevant part: “An offender subject to registration who knowingly fails to register, verify his address, or provide any information or notice as required by this chapter shall be guilty of a felony.” I.C. § 18-8311(1). Because the Amended Information alleges Villafuerte “committed a criminal offense within the state of Idaho,” it is sufficient to confer jurisdiction. Therefore, dismissal based on a jurisdictional defect would only be appropriate if “the facts alleged do not constitute a prosecutable act under the laws of the State.” State v. Olin, 153 Idaho 891, 894, 292 P.3d 282, 285 (Ct. App. 2012). Villafuerte contends such a defect exists because, he argues, the underlying facts do not support a criminal charge in Idaho because SORA does not impose upon him an obligation to update his address when he absconds and leaves the state. (Appellant’s Brief, pp.13-14.) Rather, Villafuerte asserts, “the criminal act – failing to register – may

have occurred in Nevada or Utah, but it certainly did not occur in Canyon County,” Idaho. (Appellant’s Brief, pp.13-14 (footnote omitted).) Villafuerte’s interpretation of the statute and the applicable legal standards is incorrect.

As noted, under I.C. § 18-8311(1), it is a felony for an offender subject to SORA to knowingly “fail[ ] to register, verify his address, or provide any information or notice” required by SORA. In turn, I.C. § 18-8309(1) requires an offender subject to registration who changes his name, street address or actual address, or employment or student status, to “appear in person within (2) working days after the change at the office of the sheriff of the county where the offender is required to register and notify the sheriff of all changes in the information required.” This notification requirement is satisfied if the offender appears “in another jurisdiction in which registration is required and notifies that jurisdiction of the changed information.” I.C. § 18-8309(1). “Jurisdiction” for purposes of SORA includes any state. I.C. § 18-8303(9). Thus, 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, and the failure to do so is a felony, I.C. § 18-8311.<sup>1</sup> That Villafuerte can satisfy the requirement to update his registration information in Idaho by registering in another state does not mean he is not guilty of violating I.C. § 18-

---

<sup>1</sup> It is also a felony for an offender subject to the registration requirements of SORA to fail to “immediately notify the department[, *i.e.*, the Idaho State Police], of any lodging lasting seven (7) days or more, regardless of whether the lodging would be considered a residence as defined in section 18-8303, Idaho Code.” I.C. § 18-8309(2); I.C. § 18-8303(5) (defining “department” for purposes of SORA). It appears from the facts in the record, that Villafuerte violated this provision of SORA as well.

8311. To the contrary, if Villafuerte changes his address, he must notify either the county sheriff or, if his address is changed to another state, he must register there if registration is required. I.C. § 18-8309(1). Villafuerte's claim that such a conclusion would be inconsistent with "United States Supreme Court precedent" is without merit. (Appellant's Brief, p.17.)

The United States Supreme Court cases on which Villafuerte relies are Travis v. United States, 364 U.S. 631 (1961), Johnston v. United States, 351 U.S. 215 (1956), United States v. Cores, 356 U.S. 405 (1958), United States v. Anderson, 328 U.S. 699 (1946), and United States v. Lombardo, 241 U.S. 73 (1916). (Appellant's Brief, pp.6-14.) Villafuerte's reliance on these cases is misplaced because none of the cases discuss SORA much less interpret its jurisdictional boundaries. Rather, in all of these cases, the Court was interpreting a federal statute for purposes of determining venue, not jurisdiction. Travis, 364 U.S. at 632-33 (only addressing whether venue was proper in Colorado for alleged violations of the National Labor Relations Act); Johnston, 351 U.S. at 216 ("We must determine the proper venue for the trial" of violations of the Universal Military Training and Services Act.); Cores, 356 U.S. at 409 ("venue for s 252(c) [of the Immigration and Nationality Act] lies in any district where the crewman willfully remains after the permit expires"); Anderson, 328 U.S. at 699 ("On the merits the issue is narrow, namely, whether in a criminal prosecution under s 11 of the Selective Training and Service Act, for refusal to submit to induction, the venue is properly laid in the judicial district where the act of refusal occurred rather than in the district where the draft board which issued the order is

located.”) (code sections omitted); Lombardo, 241 U.S. at 76-78 (based on interpretation of the word “filed” as used in the “White Slave Traffic Act,” Court found violations of act justiciable in District of Columbia where Commissioner General of Immigration was located). None of the Supreme Court’s decisions determining the proper venue for prosecuting a violation of United States law, over which the United States Government has jurisdiction, has any bearing on whether the State of Idaho has jurisdiction to prosecute a violation of an Idaho statute. Villafuerte’s claim that “United States Supreme Court precedent” precludes his prosecution fails.

Villafuerte also contends that Idaho law dictates a finding that there is no jurisdiction in Idaho over the charged offense. (Appellant’s Brief, pp.7-8.) Specifically, Villafuerte contends I.C. § 18-202 and I.C. § 19-301 provide that “Idaho courts only have authority to hear and impose punishment in (*i.e.*, have jurisdiction over) cases involving acts occurring within the state,” and “[t]he only way around this territorial limitation on jurisdiction is the so-called ‘long-arm’ statute,” I.C. § 19-302. (Appellant’s Brief, p.7.) None of these statutes support Villafuerte’s jurisdictional claim.

First, I.C. § 19-301 governs venue. As the plain language of the statute indicates, “[v]enue is nonjurisdictional.” I.C. § 19-301(2). Second, as previously noted, SORA requires Villafuerte to update the Idaho Sex Offender Registry when he changes his address, and he can accomplish this by appearing at the sheriff’s office where he is required to register or by appearing in another state in which registration is required and notifying that state of the change. I.C. § 18-

8309(1). The failure to update the Idaho Sex Offender Registry is a crime “within this state,” which is all that is required by I.C. § 18-202. Accordingly, there is no need to determine whether the “so-called ‘long-arm’ statute,” I.C. § 19-302, applies. (Appellant’s Brief, p.7.) Even if this Court determines an analysis under I.C. § 19-302 is necessary, any such analysis supports a finding that Idaho has jurisdiction over Villafuerte’s violation of I.C. § 18-311.

Idaho Code Section 19-302 “allows a defendant to be liable for punishment within Idaho ‘when the commission of a public offense, commenced without the state is consummated within its boundaries . . . .’” State v. Doyle, 121 Idaho 911, 913, 828 P.2d 1316, 1318 (1992) (quoting I.C. § 19-302). Under this statute, “an Idaho court will have subject matter jurisdiction over a crime if any essential element of the crime, including the result, occurs within Idaho.” Doyle, 121 Idaho at 914, 828 P.2d at 1319. In order to establish a violation of I.C. § 18-8311, the state must prove (1) the defendant was subject to registration, and (2) he “knowingly fail[ed] to register, verify his address, or provide any information or provide any information or notice” as required by SORA. I.C. § 18-8311(1). SORA requires, among other things, a registered offender to update his address with either the county sheriff or another state if the other state requires registration. I.C. § 18-8309(1). At a minimum, the result of Villafuerte’s failure to provide current information to any Idaho official, or to register in either Nevada or Utah, which Villafuerte admitted he did not do (R., p.48), occurs within Idaho because Idaho’s Sex Offender Registry continues to list him as living at an incorrect address in Idaho, and Villafuerte cannot be removed from Idaho’s Sex

Offender Registry “until [his] registration in another jurisdiction is complete.” I.C. § 18-8307(4)(a). It is Villafuerte’s interpretation of the law that “ignores the plain language” of the applicable statutes, not the “district court’s reading” that Villafuerte had “to notify either the jurisdiction to which [he] is moving or the jurisdiction from which [he] moved.”<sup>2</sup> (Appellant’s Brief, p.17.)

Finally, Villafuerte argues that “the district court’s decision is at odds with the Idaho Supreme Court’s decision in *State v. Lee*, 153 Idaho 559[, 286 P.3d 537] (2012).”<sup>3</sup> (Appellant’s Brief, p.18.) This is so, Villafuerte claims, because he believes the Court in Lee implicitly concluded that (1) a defendant’s “only obligation” under SORA is to “report in the place of his new residence,” assuming

---

<sup>2</sup> As part of his “plain language” argument, Villafuerte relies on the Court of Appeals’ unpublished opinion in State v. Wilson, 2013 WL 5488655 (July 12, 2013 Idaho App.), and asserts that although “[u]npublished opinions may not have precedential value, [] they are still persuasive as examples of a learned court’s conclusion after evaluating the same or similar issues.” (Appellant’s Brief, p.17 and n.8.) The state fails to see a distinction between citing an unpublished opinion for “precedential value” and citing it as an “example of a learned court’s conclusion” on “the same or similar issue[.]” (Appellant’s Brief, p.17 n.8.) Nevertheless, the issue in Wilson was whether there was sufficient evidence that Wilson violated SORA by failing to register annually in Idaho after he moved to Oregon. Wilson at \*1-2. The Court of Appeals concluded the evidence was not sufficient because the applicable versions of the relevant statutes “relieved an offender of the duty to register annually in Idaho once the offender moved to another state.” Id. at \*2. Because the state did not charge Villafuerte with failing to register annually after absconding from Idaho, Villafuerte’s reliance on Wilson, even if proper despite the fact it is unpublished, is misplaced.

<sup>3</sup> Villafuerte also complains that the district court employed an incorrect rule of statutory interpretation by stating that Villafuerte’s argument would lead to absurd results. (Appellant’s Brief, p.19.) While Villafuerte correctly notes that the Idaho Supreme Court has rejected the “absurd results” principle of statutory construction (Appellant’s Brief, p.19), the district court’s reference to such is ultimately irrelevant because both jurisdiction and statutory interpretation are questions of law reviewed de novo. Lee, 153 Idaho at 561, 286 P.3d at 539; Lute, 150 Idaho at 839, 252 P.3d at 1257.

that place has a registration requirement, and (2) a defendant has no “obligation to inform the jurisdiction he left.” (Appellant’s Brief, p.18.) Assuming these conclusions are implicit in Lee, which the state does not concede, they support a finding of jurisdiction.<sup>4</sup> The first implicit conclusion, in particular, undermines Villafuerte’s jurisdictional claim because that finding, according to Villafuerte, is that a registered sex offender has an obligation under SORA to “report in the place of his new residence” – because Villafuerte failed to do so, the state had jurisdiction to prosecute him pursuant to I.C. § 18-8311. Villafuerte has not demonstrated otherwise.

Villafuerte has failed to establish the district court erred in denying his motion to dismiss.

---

<sup>4</sup> The issue in Lee was whether the state presented sufficient evidence that Lee failed to register as required by I.C. § 18-8309. Lee, 153 Idaho at 561, 286 P.3d at 539. The Court concluded it did not because Lee moved to another country and “[n]owhere in [the applicable version of] I.C. § 18-8309(1) or (2) is the word ‘country’ mentioned.” Id. at 562, 286 P.3d at 540. If anything, 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. Id. (“There was no evidence at trial as to how Lee left Idaho, whether it was by air or by land. Assuming that Lee traveled through one or more states before leaving the United States, he would not necessarily have had an address in any of those states. Therefore, there was no evidence that he changed his address to another state.”). Further, under the version of the statute at issue in Lee, an offender who changed his address to another state was required to provide written notice to the department. Id. at 561-562, 286 P.3d at 539-540. Villafuerte’s claims regarding alleged “implicit” findings in Lee do not withstand scrutiny.

CONCLUSION

The state respectfully requests that this Court affirm the judgment entered upon Villafuerte's conditional guilty plea to failing to register.

DATED this 10<sup>th</sup> day of November, 2015.

  
\_\_\_\_\_  
JESSICA M. LORELLO  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10<sup>th</sup> day of November, 2015, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BRIAN R. DICKSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

  
\_\_\_\_\_  
JESSICA M. LORELLO  
Deputy Attorney General

JML/dd