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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47560-2019
Plaintiff-Respondent,)	
)	BONNER COUNTY NO. CR09-19-1579
v.)	
)	
KEITH WILLIAM RABIDUE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNER**

HONORABLE BARBARA A. BUCHANAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Keith Rabidue appeals from the district court's order denying his motion in limine for a jury instruction on a police officer's illegal conduct during his arrest. Among other charges, the State charged Mr. Rabidue with resisting and obstructing an officer after Mr. Rabidue physically resisted officers' attempts to detain him in his home. Before trial, Mr. Rabidue argued that the district court should instruct the jury that the officer's entry into his home for the detention was unlawful. The district court declined to give that instruction because, regardless of the illegality, Mr. Rabidue could not use force or violence against the officers. Mr. Rabidue entered a conditional guilty plea, and he argues on appeal that the district court erred by denying his motion.

Statement of Facts and Course of Proceedings

Late one evening, a police officer responded to a 911 call on an alleged physical altercation between Mr. Rabidue and his girlfriend at their house. (R., p.27 (probable cause affidavit).) Mr. Rabidue was home, but his girlfriend was not. (R., p.27.) After another officer arrived on scene, the officers entered Mr. Rabidue's house and tried to detain him in handcuffs. (R., p.28.) Mr. Rabidue resisted, became violent with the officers, and eventually fled. (R., pp.28–30.) During his flight, Mr. Rabidue entered another house, caused some damaged inside, and took some items. (R., pp.30–31.) Later that evening, officers located Mr. Rabidue and arrested him. (R., p.31.)

The State filed a criminal complaint alleging Mr. Rabidue committed two counts of battery on a law enforcement officer, one count of misdemeanor domestic battery, one count of resisting and obstructing an officer, one count of destruction of a telephone line, and one count of

burglary. (R., pp.24–26, 37–39.) Mr. Rabidue waived a preliminary hearing, and the magistrate bound him over to district court. (R., pp.60, 63, 64.) The State filed an information charging Mr. Rabidue with the six offenses from the criminal complaint. (R., pp.65–67.) Mr. Rabidue pled not guilty. (R., p.75.)

Before trial, Mr. Rabidue filed a motion for the district court to find “that the warrantless seizure and entry into the residence was not lawful.” (R., p.83.) In a memorandum in support, Mr. Rabidue argued that the officers did not have probable cause to arrest him for the alleged domestic violence incident and did not have a warrant to enter his home to detain him. (R., pp.93–101.)

The district court held a hearing on the motion. (R., pp.114–16.) Mr. Rabidue explained that an element of resisting and obstructing an officer is that the defendant resisted the officer in the discharge of a lawful and authorized duty. (Tr. Vol. I,¹ p.4, Ls.1–14.) Due to the unlawful entry for the seizure, Mr. Rabidue argued that the district court should instruct the jury that the officer’s “attempt to detain” Mr. Rabidue “at his home and/or his entry into the home in order to detain Mr. Rabidue were not lawful.” (Tr. Vol. I, p.27, Ls.7–10.) The State opposed the motion and disagreed with Mr. Rabidue’s offered instruction. (Tr. Vol. I, p.5, L.1–p.6, L.4, p.27, L.12–p.28, L.7.)

¹ There are six transcripts on appeal contained in one electronic document. Citations will refer to each transcript as a separate volume and reference its internal pagination. The first transcript, cited as Volume I, contains a hearing on Mr. Rabidue’s motion in limine, held on May 31, 2019 (pages 2 to 32 of overall document). The second transcript, cited as Volume II, contains a copy of the May 31, 2019, motion in limine hearing (pages 33 to 65 of overall document). The third transcript, cited as Volume III, contains a pretrial conference, held on July 19, 2019 (pages 66 to 74 of overall document). The fourth transcript, cited as Volume IV, contains a motion hearing, held on August 6, 2019 (pages 75 to 91 of overall document). The fifth transcript, cited as Volume V, contains the entry of plea hearing, held on August 13, 2019 (pages 92 to 106 of overall document). The sixth transcript, cited as Volume VI, contains the sentencing hearing, held on September 27, 2019 (pages 107 to 136 of overall document).

Also at the hearing, Mr. Rabidue's girlfriend testified that she called 911 after Mr. Rabidue took her phone. (Tr., p.8, Ls.12–24.) She denied that Mr. Rabidue touched or pushed her, but she agreed she told dispatch that he was “being hostile.” (Tr., p.9, Ls.16–18, p.11, Ls.5–7, p.1, p.12, L.19–p.13, L.6.) The responding officer testified that he intended to detain Mr. Rabidue in handcuffs while he tried to contact his girlfriend to “continue the investigation.” (Tr., p.17, L.24–p.18, L.5.) In addition, the district admitted the responding officer's bodycam video. (Tr., p.19, Ls.6–12.) The bodycam video showed that Mr. Rabidue was standing at the threshold of his door while the officer was on the porch outside. (Def.'s Ex. B, 4:00–8:25.) After the officer told Mr. Rabidue that he was going place him in handcuffs and detain him, Mr. Rabidue walked back into his house and started to shut the door. (Def.'s Ex. B, 8:25–8:35.) The officer pushed the door open and entered the house. (Def.'s Ex. B, 8:30–8:35.) Mr. Rabidue had a phone in his hand, and the officer slapped the phone out of his hand and told him to turn around. (Def's Ex. B, 8:35–8:40.) Mr. Rabidue did not comply, asked the officer repeatedly what he had done, and kept trying to back away from the officer. (Def.'s Ex. B, 8:40–44.) The officer continued to approach while ordering Mr. Rabidue to turn around, and Mr. Rabidue started throwing items around and grabbing for his phone. (Def's Ex. B, 8:40–9:12.) After that, Mr. Rabidue started to physically resist and began fighting with the officer. (Def.'s Ex. B, 9:09–9:39.)

The district court issued a memorandum decision and order denying Mr. Rabidue's motion. (R, pp.117–21.) The district court determined that, even if the officer's actions were unlawful, Mr. Rabidue was not entitled to a jury instruction on the officer's unlawful acts because the law prohibited the use of force or violence to resist the illegality. (R., pp.118–20.) The district court found that the officer's bodycam video “of the contact clearly shows

Mr. Rabidue using force or violence to resist arrest.” (R., p.20.) Therefore, the district court determined that a reasonable view of the evidence did not support Mr. Rabidue’s theory and the district court would not instruct the jury on “the illegality of the officer’s conduct.” (R., pp.120–21.) The district court noted, however, that it would provide the standard jury instructions for the elements of resisting and obstructing an officer, the requirement of willfulness, and the duty to submit to arrest. (R., p.121.) The district court identified that one of the standard jury instructions included: “The word ‘duty’ includes only the lawful and authorized acts of a public officer.” (R., p.120 (quoting Idaho Criminal Jury Instruction 1261).)

After the district court’s decision, Mr. Rabidue filed a supplemental brief in support of his motion. (R., pp.171–73.) He asserted, in light of recent case law prohibiting a warrantless arrest for a completed misdemeanor, the officer’s entry into Mr. Rabidue’s home and attempt to detain him was unlawful. (R., pp.171–73.) He also argued that Idaho’s “stand your ground” law allowed him to defend himself against the officer’s unlawful entry into his home. (R., pp.172–73.)

The district court held another hearing. (R., p.203.) After further argument by the parties, the district court determined:

First of all, so the argument about whether or not the arrest was illegal, I think that’s precisely what we talked about in the other decision, that the Idaho case law is very clear that it doesn’t matter if the arrest is ultimately determined to be illegal, you’re still not allowed to resist the officer, to commit battery on an officer.

(Tr. IV, p.13, L.21–p.14, L.2, p.15, Ls.4–20.) The district court also rejected the application of Idaho’s “stand your ground” law. (Tr. IV, p.14, L.5–p.15, L.3.)

Pursuant to a plea agreement with the State, Mr. Rabidue pled guilty to two counts of battery on a law enforcement officer and one count of resisting and obstructing an officer.

(Tr. Vol. V, p.9, Ls.3–16, p.11, L.18–p.12, L.21.) The State agreed to dismiss the other charges. (R., pp.260–61.) Mr. Rabidue reserved the right to appeal the district court’s denial of his motion in limine. (Tr. Vol. V, p.8, L.14–p.9, L.2.)

The district court sentenced Mr. Rabidue to four years, with one and one-half years fixed, for each count of battery on a law enforcement officer, to be served consecutively. (Tr. Vol. VI, p.25, Ls.19–23.) The district court imposed a consecutive sentence of 154 days, with 154 days of credit for time served, for resisting and obstructing an officer. (Tr. Vol. VI, p.27, Ls.13–16.) The district court also retained jurisdiction. (Tr. Vol. VI, p.25, L.24.)

Mr. Rabidue filed a timely notice of appeal from the district court’s judgment of conviction. (R., pp.263–65, 267–68, 278–80.)

ISSUE

Mindful of *State v. Bishop*, 146 Idaho 804 (2009), did the district court err when it denied Mr. Rabidue's motion in limine for a jury instruction on the officer's illegal actions as a defense to resisting and obstructing an officer?

ARGUMENT

Mindful Of *Bishop*, The District Court Erred When It Denied Mr. Rabidue’s Motion In Limine For A Jury Instruction On The Officer’s Illegal Actions As A Defense To Resisting And Obstructing An Officer

A. Introduction

Although *Bishop* and similar cases hold that a defendant may not use force or violence to resist an unlawful arrest, Mr. Rabidue maintains that the district court erred by refusing to instruct the jury that the officer’s action of entering his home to detain him was unlawful.

B. Standard Of Review

The Court exercises free review over jury instructions. *State v. Lemmons*, 158 Idaho 971, 976 (2015). “[T]he trial court does not err in refusing a proposed instruction where it is either erroneous in its statement of the law, is not supported by the evidence, constitutes an impermissible comment on the evidence, or is adequately covered by other instructions given by the court.” *Id.* (quoting *State v. Tiffany*, 139 Idaho 909, 916 (2004)).

C. Mindful Of *Bishop*, The District Court Should Have Instructed The Jury That The Officer’s Entry Into Mr. Rabidue’s Home For The Detention Was Unlawful

Idaho Code § 18-705 creates a misdemeanor offense for any “person who wilfully resists, delays or obstructs any public officer, in the discharge, or attempt to discharge, of any duty of his office or who knowingly gives a false report to any peace officer” I.C. § 18-705.

Three elements must be satisfied in order to find a violation of the statute: “(1) the person who was resisted, delayed or obstructed was a law enforcement officer; (2) the defendant knew that the person was an officer; and (3) the defendant also knew at the time of the resistance that the officer was attempting to perform some official act or duty.”

Bishop, 146 Idaho at 816 (quoting *State v. Adams*, 138 Idaho 624, 629 (Ct. App. 2003)). The appellate courts have interpreted an officer’s “duty” “to encompass only those lawful and

authorized acts of a public officer.” *State v. Wilkerson*, 114 Idaho 174, 180 (Ct. App.), *aff’d without opinion*, 115 Idaho 357 (1988); *see also State v. Fields*, No. 46422 (Ct. App. July 16, 2020) (discussing scope of an officer’s “official duty”). If the duty is unlawful, “an individual may peacefully obstruct or refuse to obey an officer’s unlawful act without violating the statute.” *Bishop*, 146 Idaho at 817. But, even if the officer’s actions are unlawful, the appellate courts draw the line at force or violence:

It is well established that an individual may not use force to resist a peaceable arrest by one she knows or has good reason to believe is a police officer, even if the arrest is illegal under the circumstances. *State v. Richardson*, 95 Idaho 446, 451 (1973); *State v. Wren*, 115 Idaho 618, 627 (Ct. App. 1989); *Wilkerson*, 114 Idaho at 177–78. Although a person may resist the use of unreasonable force, she has “no underlying right to resist the officers’ attempt to make a peaceable arrest.” *Wren*, 115 Idaho at 627. “[I]f a person has reasonable ground to believe he is being arrested by a peace officer, it is his duty to refrain from using force or any weapon in resisting arrest regardless of whether or not there is a legal basis for the arrest.” *Richardson*, 95 Idaho at 451. Instead, an individual subjected to illegal arrest should later pursue rights and remedies afforded by the civil or criminal law. *Id.*

State v. Lusby, 146 Idaho 506, 509 (Ct. App. 2008). In short, as stated in *Bishop*, “an individual may not . . . use force or violence to resist.” 146 Idaho at 817.

Here, the district court found that Mr. Rabidue used force or violence to resist the officer’s attempts to detain him. (R., p.120.) Even if the officer’s entry into Mr. Rabidue’s home solely to detain him was unlawful, *see, e.g., State v. Finnicum*, 147 Idaho 137, 139–41 (Ct. App. 2009) (an officer may complete an *arrest* based on probable cause in a private residence if the suspects flees inside), *Bishop* and similar case law prohibit the use of force or violence.

Mindful of this case law, Mr. Rabidue nonetheless argues that the district court should have instructed the jury on the unlawfulness of the officer’s actions. He submits “it was only through the actions of the officers”—by “swip[ing] the cell phone out of Mr. Rabidue’s hand” and laying “hands on him”—“that the situation escalated.” (R., pp.98–99.) He also submits that

this “case is factually different” because “the officer is entering his home.” (Tr. Vol. IV, p.9, Ls.18–20.) For that reason, Mr. Rabidue contends that he was able to “stand his ground” and defend against the officer’s unlawful entry into his home. *See* I.C. § 19-202A (self-defense and defense of home statute). Therefore, while mindful of *Bishop* and similar case law, Mr. Rabidue asserts that the district court erred by denying his motion in limine for a jury instruction on the illegality of the officer’s actions.

CONCLUSION

Mr. Rabidue respectfully requests that this Court reverse or vacate the district court’s memorandum decision denying his motion in limine and remand this case with instructions to the district court for Mr. Rabidue to withdraw his guilty plea and proceed to trial.

DATED this 22nd day of July, 2020.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 2020, I caused a true and correct copy of the foregoing APPELLANT’S BRIEF, to be served as follows:

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/s/ Evan A. Smith
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JCS/eas