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State v. Price Respondent's Brief Dckt. 47608

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

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	**NO. 47608-2019**
	)	
v.	)	**BONNEVILLE CO. NO. CR10-19-6281**
	)	
CHARLES BRADLEY PRICE,	)	**RESPONDENT'S BRIEF**
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

HONORABLE BRUCE L. PICKETT
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JUSTIN M. CURTIS
Deputy State Appellate Public Defender
I.S.B. #6406
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

ATTORNEYS FOR DEFENDANT-RESPONDENT

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

ATTORNEY FOR PLAINTIFF-APPELLANT

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STATEMENT OF THE CASE

Nature of the Case

The State appeals from the district court's order granting Charles Bradley Price's motion to dismiss. Because this case is not meaningfully different than *State v. Farfan-Galvan*, 161 Idaho 610 (2016), this Court should affirm the district court's decisions.

Statement of the Facts and Course of Proceedings

Mr. Price was charged with felony operating a motor vehicle while under the influence ("DUI") and a misdemeanor open container violation. (R., p.50.) The DUI charge was made a felony due to two prior convictions in Bonneville County, one in 2011 and one in 2017. (R., p.52.)

Mr. Price filed a motion to dismiss the felony DUI charge, asserting that the 2017 conviction was obtained in violation of his right to counsel pursuant to *State v. Farfan-Galvan*, 161 Idaho 610 (2016), and therefore could not be used to enhance the present case to a felony. (R., p.59.) The district court found the following facts for purposes of the motion: In September of 2011, Mr. Price was found guilty of driving under the influence. (R., p.75.) In March of 2017, Mr. Price pleaded guilty to a second charge of driving under the influence. (R., p.75.) Mr. Price did not have counsel during the arraignment on December 5, 2016, but informed the magistrate that he was going to look into getting an attorney. (R., p.75.) Mr. Price admitted that he heard his rights on a video that was played during or right before the arraignment. (R., pp.75-76.) At the change of plea and sentencing hearing on March 31, 2017, the magistrate asked Mr. Price, "are you representing yourself today?" to which Mr. Price replied, "Yes." (R., p.76.) The magistrate inquired no further about Mr. Price's representation. (R., p.76.) On the

Misdemeanor Minute Entry Log for March 31, 2017, the magistrate did not mark that Mr. Price waived counsel. (R., p.76.)

The district court granted the motion to dismiss, holding that "in light of the *Farfan-Galvan* case, at minimum the defendant must waive his right to counsel, and in the absence of any indication that the defendant waived his right, a court cannot infer such waiver." (R., p.77.)

The State appealed. (R., p.82.) Because the district court properly concluded that *Farfan-Galvan* controlled the instant case, the Court should affirm the district court's decision.

ISSUE

Did the district court properly grant Mr. Price's motion to dismiss?

ARGUMENT

The District Court Properly Granted Mr. Price's Motion To Dismiss

A. Introduction

Because this case is not meaningfully different than *State v. Farfan-Galvan*, 161 Idaho 610 (2016), this Court should affirm the district court's decision.

B. Standard Of Review

"When a violation of a constitutional right is asserted, this Court will accept the trial court's factual findings unless such findings are clearly erroneous; however, this Court will freely review whether constitutional requirements have been satisfied in light of the facts found." *Id.* at 613.

C. The District Court Properly Granted Mr. Price's Motion To Dismiss

When the State uses a prior conviction for enhancement purposes, the defendant may collaterally attack the conviction based on a denial of his Sixth Amendment right to counsel. *See, e.g., Farfan-Galvan*, 161 Idaho at 613. A valid waiver of counsel must be intelligent, knowing, and voluntary. *Faretta v. California*, 422 U.S. 806, 835 (1975). Determining if there is such a valid waiver will depend on case-specific factors, which can include the nature of the charge and the stage of the proceeding. *Iowa v. Tovar*, 541 U.S. 77, 88 (2004). Though a guilty plea in a misdemeanor case is a critical stage of a criminal proceeding, it is not sufficiently difficult to require the trial court to administer a *Faretta* warning advising of the dangers associated with waiving the right to counsel. *Faretta*, 422 U.S. at 835. However, this Court will not infer a waiver of the right to counsel from a silent record. *Farfan-Galvan*, 161 Idaho at 615 (citing *Burgett v. Texas*, 389 U.S. 109, 114-15 (1967)).

The State asserts two claims of error on appeal: First, that the district court reversed the burden of proof and required the State to prove that Mr. Price was not denied the right to counsel; and second, that the record shows that Mr. Price made a knowing and intelligent choice to represent himself because he told the court that he was representing himself. (App. Br., p.4.) With regard to the first claim of error, the State correctly cites to *Tovar* for the proposition that in a collateral attack "it is the defendant's burden to prove that he did not competently and intelligently waive his right to the assistance of counsel." (App. Br., p.8 (citing *Tovar*, 541 U.S. at 92.)) However, this is ultimately immaterial to this case because Mr. Price demonstrated that the record was silent as to his alleged waiver.

Because this case is so similar to *Farfan-Galvan*, an examination of the facts of that case is helpful. In 2010, following his arrest for misdemeanor DUI, Mr. Farfan-Galvan bonded out before arraignment and appeared at the courthouse counter, where he received forms entitled "Notification of Rights Misdemeanor" and "Plea of Guilty." *Farfan-Galvan*, 161 Idaho at 611. That first document, which Mr. Farfan-Galvan signed, advised him of right to counsel including court-appointed counsel if he could not afford counsel. *Id.* This document did not contain any language regarding waiver of rights. *Id.* The guilty plea form was completed by Mr. Farfan-Galvan and another individual, and made no mention of the right to counsel. *Id.* at 611-12.

On September 14, 2010, Mr. Farfan-Galvan filed an application for the appointment of counsel, which was denied by a deputy court clerk without explanation. *Id.* at 612. The record was silent as to whether Mr. Farfan-Galvan received that letter. *Id.*

Mr. Farfan-Galvan appeared before the magistrate on October 5, 2010, where the following exchange occurred before the court imposed the sentence:

> THE COURT: Edgar Farfan-Galvan, CR-10-10207. Mr. Galvan, are you represented by counsel?

THE DEFENDANT: What's that?

THE COURT: Do you have a lawyer?

THE DEFENDANT: I don't.

THE COURT: Okay. What would you like to say before I decide what I should do?

Id.

The Idaho Supreme Court concluded, based on this information, "there is no indication in the record that Farfan-Galvan waived his right to counsel." *Id.* The same is true in this case. Like Mr. Farfan-Galvan, Mr. Price was informed of his right to counsel. Like Mr. Farfan-Galvan, Mr. Price appeared before the court pro se. When Mr. Farfan-Galvan told the court that he did not have a lawyer, this informed the court that Mr. Farvan-Galvan was representing himself. There is no indication that Mr. Farfan-Galvan protested in any way. Likewise, Mr. Price merely informed the court that he was representing himself. He did not say that he wished to represent him or was making an election to represent himself, he simply said that he *was* representing himself, which was obviously the case because he, like Mr. Farfan-Galvan, appeared without counsel. The State's entire claim that *Farfan-Galvan* is distinguishable is "stating that one is not represented by counsel is a far different statement than a statement that one is representing himself." (Respondent's Brief, p.10.) Mr. Price disagrees. Both statements inform the court that one is representing himself. Simply stating that one is representing himself is not a waiver of the right to counsel.

The definition of "waiver" is well-settled:

> Waiver is defined as the voluntary relinquishment of a known right. Thus, the accused not only must voluntarily manifest his intention to waive his right or rights but it must clearly appear that he is completely aware of the nature of the charge against him and is competent to know the consequences arising from his waiver of these rights. In this connection this court will indulge every reasonable presumption against a waiver of fundamental constitutional rights, and will not presume acquiescence in their loss.

State v. Thurlow, 85 Idaho 96, 103 (1962). Further, in *Johnson v. Zerbst*, 304 U.S. 458 (1938), the United States Supreme Court concluded, trial courts have a "protecting duty . . . of determining whether there is an intelligent and competent waiver by the accused." *Id.* at 465. Further, "while an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting an appropriate for that determination to appear on the record." *Id.* No waiver appears on this record. The court did not secure a waiver or engage in any kind of colloquy with Mr. Price about waiving his right to counsel or even ask if his decision to represent himself was made freely or voluntarily. The record discloses nothing about why Mr. Price was representing himself when he entered his guilty plea. The court simply asked him if he was representing himself. Thus, the record in this case is silent as to waiver, and the State is improperly asking this Court to infer a waiver from a silent record.

The State asserts that the exchange between the magistrate and Mr. Price in this case is "indistinguishable" from *Tovar*, representing that the exchange between Mr. Tovar and the court was "'Did you want to represent yourself at today's hearing?' … 'Yes, sir.'" (App. Br., p.7.) This is not the entire exchange that occurred in *Tovar*. According to *Tovar*, during the arraignment, "the court's inquiries of Tovar began: 'Mr. Tovar appears without counsel *and I see, Mr. Tovar, that you waived application for a court appointed attorney.* Did you want to represent yourself at today's hearing?' Tovar replied: 'Yes, sir.'" *Tovar*, 541 U.S. at 82 (citation omitted) (emphasis added).

When entering the plea, the court then asked Mr. Tovar how he wished to plead, and he responded, "guilty." *Id.* The court then conducted a plea colloquy where the court explained what rights Mr. Tovar would be waiving by pleading guilty, including the right to be represented

by an attorney at trial. *Id.* at 83. After conducting the plea colloquy, the court again asked Mr. Tovar if he wished to plead guilty, and Mr. Tovar confirmed that he did. *Id.*

Further, when Mr. Tovar arrived for sentencing and an arraignment on a subsequent charge, "[noting] that Tovar was again without counsel, the court inquired, 'Mr. Tovar, did you want to represent yourself at today's hearing or did you want to take some time to hire an attorney to represent you?'" *Id.* at 84. Mr. Tovar again stated that he wished to represent himself. *Id.*

When Tovar attempted to collaterally attack his prior conviction, he did not claim that the record did not show a waiver; rather, "he maintained that this 1996 waiver of counsel was invalid" because "he was never made aware by the court . . . of the dangers and disadvantages of self-representation." *Id.* at 85.

Tovar is thus readily distinguishable from this case. In *Tovar*, the court confirmed that Mr. Tovar had affirmatively waived application for a court-appointed attorney, twice asked him if he "wanted" to represent himself, and advised him during his guilty plea of his right to counsel. By contrast, the entire exchange regarding the right to counsel at the entry of plea hearing in this case was "are you representing yourself today? Yes." (Defendant's Exhibit B (Tr., p.4, Ls.8-9).)

In granting the motion to dismiss, the court concluded,

> The Magistrate conducted no further inquiry into the nature of the Defendant's self-representation or if he had decided to waive his right to counsel. This exchange is at best ambiguous as to whether or not the Defendant was waiving his right to counsel. In fact, it is similar to the conversation in the *Farfan-Galvan* case where the court asked the defendant if he had a lawyer, to which the defendant answered that he did not. The Idaho Supreme Court ultimately ruled that there was no waiver despite being informed of his right to counsel. Similarly, in the present case, the Defendant was informed of his right to counsel, but there was no indication that Defendant intended to waive that right.

> Furthermore, at the arraignment hearing, Defendant had previously informed the Magistrate that he was looking into getting an attorney. This indicates that the Defendant, at the very least, had not waived his right to counsel. His answer to the question at the change of plea hearing indicates only that he was there without counsel at that time, not that he was waiving his right to counsel. Additionally, the Magistrate neglected to check the box on the Misdemeanor Minute Entry Log that would indicate that the Defendant had waived his right to counsel.
>
> While the State accurately identifies that a defendant cannot simultaneously invoke his right to counsel while also representing himself, the issue before the Court is whether there is any indication in the record of waiver. The Magistrate Court made no specific finding that Defendant had waived his right, and the Court cannot infer from a silent record that the Defendant waived his right to counsel. The State is asking the Court to make such an inference by determining that the Defendant's answer to the Magistrate's question is ipso facto a waiver of his right to counsel. "A waiver of the Sixth Amendment right to counsel is valid only when it constitutes an intentional relinquishment or abandonment of a known right", and such a waiver "must be voluntary, knowing, and intelligent?" However, there is no evidence in the record that the Defendant *intended* to relinquish or abandon his right to counsel.

(R., pp.78-79.) The district court is completely correct. The magistrate made no inquiry into Mr. Price's self-representation or if he had decided to waive his right to counsel. The conversation Mr. Price had similar to the one in *Farfan-Galvan*. At arraignment, Mr. Price told the court that he was looking to getting an attorney, which indicated that he was not waiving his right to counsel. The magistrate made no finding that Mr. Price had waived his right to counsel and did not even check the box on the minute entry indicating that Mr. Price had waived his right to counsel. As the district court concluded, the State was simply asking the district court to infer a waiver from a silent record. Because *Farfan-Galvan* prohibits the court from making that inference, this Court should affirm the decision of the district court.

CONCLUSION

Mr. Price requests that the decision of the district court be affirmed.

DATED this 5th day of August, 2020.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August, 2020, I caused a true and correct copy of the foregoing RESPONDENT'S BRIEF to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JMC/eas