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State v. Castrejon Appellant's Brief Dckt. 44783

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 44783
 Plaintiff-Appellant,)
) Gooding County Case No.
 v.) CR-2016-1473
)
 CESAR GABRIEL CASTREJON,)
)
 Defendant-Respondent.)
)
 _____)

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF GOODING**

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order reducing felony battery on a law enforcement officer charges to misdemeanors and remanding them to the magistrate division.

Statement Of The Facts And Course Of The Proceedings

In an encounter with police, Cesar Gabriel Castrejon head-butted Gooding police officer Christopher Knott and repeatedly kicked the knee of Gooding County deputy sheriff Sabrina Becker. (P.H. Tr., p. 4, L. 13 – p. 12, L. 18; p. 15, L. 5 – p. 20, L. 8.) The state charged Castrejon with two felony counts of battery on a law enforcement officer. (R., pp. 24-25.) Count One charged that Castrejon “did actually, intentionally, and unlawfully, touch and/or strike the person of Officer Chris Knott, against his will by striking him in the face.” (R., p. 25.) Count Two charged that Castrejon “did actually, intentionally, and unlawfully, touch and/or strike the person of Deputy Sabrina Becker against her will by kicking her multiple times in her knee.” (R., p. 25.)

Castrejon and the state entered a plea agreement whereby Castrejon would plead guilty to Count One of the information. (R., pp. 37-40.) At the change of plea hearing the district court, on its own initiative, questioned whether the language in the information was sufficient to charge a felony, as opposed to a misdemeanor. (01/17/17 Tr., p. 3, Ls. 7-21.) The prosecutor represented that the inclusion of the misdemeanor language was in the nature of a “clerical error” that he had intended to address before trial, and that he had called defense

counsel's attention to it in the plea negotiations. (01/17/17 Tr., p. 3, L. 22 – p. 4, L. 9.) Castrejon's counsel represented that he was aware that "unlawful touching is a misdemeanor," but that the defense concluded that the "and/or made it quite fine" and elected to proceed with the plea agreement because the "Appellate Court would probably say it was sufficient" even though there is "misdemeanor language in it." (01/17/17 Tr., p. 4, Ls. 11-23.) The district court, however, concluded that both touching and striking were misdemeanors, and therefore the court lacked "jurisdiction over a felony offense." (01/17/17 Tr., p. 7, L. 19 – p. 8, L. 2.) Therefore, the district court ordered the case remanded to the magistrate division. (01/17/17 Tr., p. 8, Ls. 2-3; R., p. 42.)

The state filed a notice of appeal timely from the order of remand. (R., pp. 44-46.)

ISSUE

Did the district court erroneously conclude the information charged only misdemeanors?

ARGUMENT

The District Court Erred Because The Information Charged Felonies For Striking A Police Officer

A. Introduction

The district court held:

Given the way that Counts I and II are charged as unlawful touching and/or striking, I find that that is the language that is excepted out in subsection (3) of 18-915, so I do not believe that the Court has jurisdiction over a felony offense, so I'm going to remand this matter back to magistrate court for further proceedings.

(01/17/17 Tr., p. 7, L. 22 – p. 8, L. 3.) The flaw in the district court's reasoning is that, although battery on a law enforcement officer by "touching" is a misdemeanor, battery on a law enforcement officer by "striking" is a felony. The information therefore charged both a felony and a misdemeanor,¹ and the district court erred by ordering the case remanded to the magistrate division.

B. Standard Of Review

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

¹ The prosecutor argued the misdemeanor "touching" was an included offense of the felony "striking." (01/17/17 Tr., p. 5, Ls. 11-23.)

C. The Plain Language Of The Statute Provides That Striking A Police Officer Is A Felony

“When interpreting statutes we begin with the literal words of the statute, which are the best guide to determining legislative intent.” Leavitt v. Craven, 154 Idaho 661, 667, 302 P.3d 1, 7 (2012) (internal quotes, brackets and citation omitted). If the plain language of the statute is unambiguous, “legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature.” Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011). Review of the plain language of I.C. §§ 18-915(3) and 18-903 shows that striking an officer is a felony.

Under the plain language of the applicable statute, there are five actions that can constitute battery (force, violence, touching, striking, or causing bodily harm), all separated by the disjunctive “or”:

Battery defined. A battery is any:

(a) Willful and unlawful use of *force* or *violence* upon the person of another; or

(b) Actual, intentional and unlawful *touching* or *striking* of another person against the will of the other; or

(c) Unlawfully and intentionally *causing bodily harm* to an individual.

I.C. § 18-903 (italics and underlining added).² Any battery under this definition, “except unlawful touching as described in section 18-903(b), Idaho Code,”

² A violation of I.C. § 18-903 alone is a misdemeanor punishable by up to six months in jail and a fine of up to \$1000. I.C. § 18-904. Because the victims in this case were police officers, punishment would be doubled. I.C. § 18-915(1)(b).

committed on a peace officer under certain conditions is a felony. I.C. § 18-915(3). Because all five acts that constitute battery are set forth with the disjunctive “or,” and because only “touching” is excluded from the felony battery on a peace officer statute, using force, using violence, striking, or causing bodily harm are all batteries that qualify as felonies under I.C. § 18-915(3).

The information charged Castrejon with battery by both touching “and/or” striking the officer victims. (R., p. 25.) As set forth above, committing a battery on a law enforcement officer by “touching” him or her is not a felony under I.C. § 18-915(3), but committing a battery by “striking” an officer is such a felony. Because Castrejon was charged with striking the victim officers, he was charged with a felony.

The district court concluded that both touching and striking were excluded from the felony provisions of I.C. § 18-915(3). (01/17/17 Tr., p. 7, L. 22 – p. 8, L. 2.) The statute, however, exempts only “unlawful touching as described in section 18-903(b)” and does not exempt any other manner of committing a battery, including striking. I.C. § 18-915(3). Because the plain language of the statute exempts only touching, but does not exempt force, violence, striking or causing bodily harm, the district court misread and misapplied the statute.

The state charged felonies when it charged Castrejon with striking two police officers. The district court’s conclusion that striking a police officer is not a felony, but only a misdemeanor, is contrary to the plain language of the applicable statute and therefore error. The district court committed reversible error in its order remanding the charges to the magistrate division.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order remanding the case to the magistrate division and remand for entry of the plea or other proceedings.

DATED this 14th day of June, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of June, 2017, served a true and correct copy of the foregoing BRIEF OF APPELLANT by emailing an electronic copy to:

ERIC D. FREDERICKSEN
STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd