7-12-2017

State v. Castrejon Respondent's Brief Dckt. 44783

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	**NO. 44783**
	)	
v.	)	**GOODING COUNTY**
	)	**NO. CR 2016-1473**
CESAR GABRIEL CASTREJON,	)	
	)	**RESPONDENT'S BRIEF**
Defendant-Respondent.	)	
	)	

BRIEF OF RESPONDENT

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

HONORABLE JOHN K. BUTLER
District Judge

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STATEMENT OF THE CASE

Nature of the Case

The State charged Cesar Gabriel Castrejon with two counts of battery on a police/peace officer, or sheriff. At Mr. Castrejon's change of plea hearing, the district court remanded the case to the magistrate court for lack of jurisdiction, because the Information only charged misdemeanors. The State appeals from the district court's Order for Remand, and argues the district court erred in remanding the case because the Information, under the plain language of the relevant statutes, charged Mr. Castrejon with felonies.

The State has failed to show the district court erred. The State did not preserve for appeal its argument that the Information charged Mr. Castrejon with felonies because striking an officer is a felony under the plain language of the relevant statutes, as that argument was not presented to the district court. Even if the State's argument on appeal were preserved, the invited error doctrine precludes the State from raising that argument, because the State agreed with the district court's interpretation of the statutes. Further, even if the State's argument on appeal were not precluded by the invited error doctrine, the district court's interpretation of the statutes was correct.

Statement of the Facts and Course of Proceedings

The State charged Mr. Castrejon by Information with two counts of battery on a police/peace officer, or sheriff, "Felony, Idaho Code §§ 18-915(3) and 18-903."[1] (R., pp.23-25.)

[1] Section 18-915(3) provides:

> For committing a violation of the provisions of section 18-903, Idaho Code, except unlawful touching as described in section 18-903(b), Idaho Code, against the person of a former or present peace officer, sheriff or police officer:

Specifically, Count I of the Information alleged Mr. Castrejon "did actually, intentionally, and unlawfully, touch and/or strike the person of Officer Chris Knott, against his will be striking him in the face . . . ." (R., p.24.) Count II of the Information alleged Mr. Castrejon "did actually, intentionally, and unlawfully, touch and/or strike the person of Deputy Sabrina Becker against her will be kicking her multiple times in her knee . . . ." (R., p.24.) Mr. Castrejon entered a not guilty plea to the charges. (R., p.26.)

The parties later entered into a plea agreement, where Mr. Castrejon agreed to enter an *Alford* plea[2] to Count I of the Information. (R., pp.37-40.) However, at the change of plea hearing, the district court asked, "I have a question for both counsel, because in reviewing the Information in this matter, the defendant in both counts is charged with actually, intentionally, and unlawfully touching and/or striking the officer, and the question I have is why is that not a misdemeanor offense?" (Tr., p.3, Ls.15-21.)

The State answered, "that was a—basically, I suppose, what could be called a clerical error in the Information." (Tr., p.3, Ls.22-24.) The State told the district court it had discussed the issue with defense counsel. (Tr., p.4, Ls.2-9.)

> (a) Because of the exercise of official duty or because of the victim's former or present official status; or
>
> (b) While the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that such victim is a peace officer, sheriff or police officer;
>
> the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

Section 18-903 defines "battery" as 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."

[2] *See North Carolina v. Alford*, 400 U.S. 25 (1970).

Mr. Castrejon's counsel stated, "I brought it to Mr. Pember's attention. He told me he was happy with the language and wanted to proceed. I pointed out that unlawful touching is a misdemeanor aspect, and he believed that the and/or made it quite fine . . . ." (Tr., p.4, Ls.11-15.) Mr. Pember was another State prosecutor. (*See* R., pp.33, 36.) Mr. Castrejon's counsel also stated he had previously said, "'Well, we would enter a guilty plea to the unlawful touching, but with the amendment,' and I've talked to my client about it, I said that—'the facts and the headings, I think you and the Appellate Court would probably say it was sufficient,' but it definitely has the misdemeanor language in it." (Tr., p.4, Ls.16-23.)

The district court then discussed the language of I.C. §§ 18-915(3) and 18-903(b), and asked the State, "[s]o whether you touch or strike, why isn't that a misdemeanor offense?" (Tr., p.4, L.24 – p.5, L.10.) The State contended it "would have a very strong argument that more than touching was done . . . ." (Tr., p.5, Ls.11-14.) The district court replied, "[w]ell, I understand that, but the Information as charged is charged—I think, under reading—the plain reading of the statute is charged as a misdemeanor and not as a felony." (Tr., p.5, Ls.15-18.) The State responded that "the misdemeanor could be possibly argued as a lesser included with the way the language is with that and/or language in there." (Tr., p.5, Ls.19-23.) The State clarified the "and/or" language came from the Information. (Tr., p.5, L.24 – p.6, L.1.)

The district court inquired, "why isn't striking the same as touching?" (Tr., p.6, Ls.2-5.) The State argued "striking would be force with perhaps an intent to cause injury," but acknowledged "maybe that's not necessarily in the statute . . . ." (Tr., p.6, Ls.6-12.) The district court turned back to the language of I.C. § 18-903: "subsection (a) charges a battery as force or violence. Subsection (2) is touching—unlawful touching or striking. Subsection (3) is causing bodily injury." (Tr., p.6, Ls.13-17.)

The district court asked the State: "So isn't subsection (2) the language that the legislature has excepted out as far as the felony's concerned?" (Tr., p.6, Ls.17-19.) The State answered, "[w]ell, I think I would have to agree with the Court there that, yes, that is the case, but, as I mentioned, the language in our Information was a clerical—obviously, not one without impact, but it was a clerical error." (Tr., p.6, Ls.20-24.)

Mr. Castrejon's counsel indicated his prior argument to Mr. Pember was in line with the district court's thoughts. (*See* Tr., p.7, Ls.3-13.) When the district court offered the last word, the State replied, "No, Your Honor. I'd just leave it to the Court." (Tr., p.7, Ls.16-18.) The district court then ruled, sua sponte, "[g]iven 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) in 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." (Tr., p.7, L.22 – p.8, L.3.) The district court entered an Order for Remand, which remanded the case "back to the magistrate court for lack of jurisdiction. The offenses, as charged, are misdemeanor offenses." (R., pp.42-43.)

The State filed a Notice of Appeal timely from the district court's Order for Remand. (R., pp.44-47.)

ISSUE

Has the State failed to show the district court erred in remanding Mr. Castrejon's case to the magistrate court for lack of jurisdiction?

ARGUMENT

The State Has Failed To Show The District Court Erred In Remanding Mr. Castrejon's Case To The Magistrate Court For Lack Of Jurisdiction

A. Introduction

Mr. Castrejon asserts the State has failed to show the district court erred in remanding his case to the magistrate court for lack of jurisdiction. As a threshold matter, the State did not preserve for appeal its argument that the Information charged Mr. Castrejon with felonies because striking an officer is a felony under the plain language of I.C. §§ 18-915(3) and 18-903, as that argument was not presented to the district court. Even if the State's argument on appeal were preserved, the invited error doctrine precludes the State from raising that argument, because the State agreed with the district court's interpretation of the statutes. Further, even if the State's argument on appeal were not precluded by the invited error doctrine, the district court's interpretation of the statutes was correct. Thus, the district court correctly concluded the Information charged only misdemeanors. The State has failed to show the district court erred.

B. Standard Of Review

"Whether a court lacks jurisdiction is a question of law that may be raised at any time, and over which appellate courts exercise free review." *State v. Jones*, 140 Idaho 755, 757 (2004) (citation omitted).

C. The State Did Not Preserve Its Argument On Appeal

As a threshold matter, the State did not preserve for appeal the argument that the Information charged Mr. Castrejon with felonies because striking an officer is a felony under the

plain language of I.C. §§ 18-915(3) and 18-903, as that argument was not presented to the district court.

Under certain circumstances, "a violation of the provisions of section 18-903, Idaho Code, except unlawful touching as described in section 18-903(b), Idaho Code, against the person of a former or present police officer, sheriff, or police officer" is a felony. I.C. § 18-915(3). Section 18-903 defines battery to include any "[a]ctual, intentional and unlawful touching or striking of another person against the will of the other." I.C. § 18-903(b).

The State asserts, "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, and the district court erred by ordering the case remanded to the magistrate division." (App. Br., p.4.) According to the State, "[r]eview of the plain language of I.C. § 18-915(3) and 18-903 shows that striking an officer is a felony." (App. Br., p.5.)

However, the State did not preserve the above plain language argument for appeal, because it did not present that argument to the district court. The Idaho Supreme Court has held, "[t]his Court will not consider issues raised for the first time on appeal." *Mickelsen Constr., Inc., v. Horrocks*, 154 Idaho 396, 405 (2013) (quoting *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 812 (2011)) (internal quotation marks omitted). The Court has also held that "[a]ppellate court review is limited to the evidence, theories and arguments that were presented below." *State v. Johnson*, 148 Idaho 664, 670 (2010) (quoting *Nelson v. Nelson*, 144 Idaho 710, 714 (2007)) (internal quotation marks omitted). According to the Court, "[i]ssues not raised below will not be considered by this court on appeal, and the parties will be held to the theory

upon which the case was presented to the lower court." *Heckman Ranches, Inc. v. State, By & Through Dep't of Pub. Lands*, 99 Idaho 793, 799-800 (1979).

Here, the State did not argue before the district court that the plain language of I.C. §§ 18-915(3) and 18-903 provided that striking a police officer is a felony. (*See generally* Tr., pp.3-9.) Rather, the State contended that "the misdemeanor could be possibly argued as a lesser included with the way the language is with that and/or language in there." (Tr., p.5, Ls.19-23; *see* App. Br., p.4 n.1.) That contention before the district court on the wording of the Information (*see* Tr., p.5, L.24 – p.6, L.1), did not preserve the State's argument on appeal regarding the plain language of the statutes, because "[a]n objection on one ground will not preserve for appeal a separate and different basis for objection not raised before the trial court." *See State v. Armstrong*, 158 Idaho 364, 367-68 (Ct. App. 2015) (citing *State v. Frederick*, 149 Idaho 509, 513 (2010); *State v. Higgins*, 122 Idaho 590, 597 (1992); *State v. Wheaton*, 121 Idaho 404, 406-07 (1992); *State v. Vondenkamp*, 141 Idaho 878, 885 (Ct. App. 2005)). The State's current plain language argument is nowhere to be found in the State's arguments before the district court.

The State's argument on appeal "was not raised before the district court, thereby depriving the district court of an opportunity to address the argument in the first instance and rule accordingly." *See id.* at 368. The State did not make the specific argument regarding the plain language of the statutes to the district court, and the State may not argue on appeal the district court's decision was in error based on an argument that was never presented to the district court for consideration. *See id.* The State should "be held to the theory upon which the case was presented to the lower court." *See Heckman Ranches*, 99 Idaho at 799-800. In sum, because the

State did not present the plain language argument to the district court, its argument was not preserved for appeal. *See Mickelsen Constr.*, 154 Idaho at 405; *Johnson*, 148 Idaho at 670.

D. The Invited Error Doctrine Precludes The State From Raising Its Argument On Appeal

Even if the State's plain language argument were preserved, the invited error doctrine precludes the State from raising that argument on appeal, because the State agreed with the district court's interpretation of the statutes.

Under the invited error doctrine, "[i]t has long been the law in Idaho that one may not successfully complain of errors one has acquiesced in or invited. Errors consented to, acquiesced in, or invited are not reversible." *State v. Dunlap*, 155 Idaho 345, 379 (2013) (quoting *State v. Owsley*, 105 Idaho 836, 838 (1983)) (citation omitted).

Here, the State agreed with the district court's interpretation of the statutes. During the hearing, the district court went over the subsections of I.C. § 18-903, stating "[s]ubsection (2) is touching—unlawful touching or striking."[3] (Tr., p.6, Ls.13-17.) The district court asked the State, "[s]o isn't subsection (2) the language that the legislature has excepted out as far as the felony's concerned?" (Tr., p.6, Ls.17-19.) The State then replied, "[w]ell, I think I would have to agree with the Court there that, yes, that is the case, but, as I mentioned, the language in our Information was a clerical—obviously, not one without impact, but it was a clerical error." (Tr., p.6, Ls.20-24.) Further, when the district court offered the last word, the State only responded, "No, Your Honor. I'd just leave it to the Court." (Tr., p.7, Ls.16-18.) Thus, the State agreed with the district court's interpretation of the statutes.

[3] The district court's references to "subsection (2)" clearly concerned subsection (b) of I.C. § 18-903. (*See* Tr., p.5, Ls.7-8, p.6, Ls.13-19.)

By agreeing with the district court's interpretation of the statutes, the State, at the least, acquiesced in the district court's decision to remand the case for lack of jurisdiction because the Information only charged misdemeanors. *See Dunlap*, 155 Idaho at 379. Because the State acquiesced in the district court's decision, it cannot now successfully complain that decision was in error. *See id.* The invited error doctrine precludes the State from raising its argument on appeal, because the State agreed with the district court's interpretation of the statutes.

E. The District Court's Interpretation Of The Statutes Was Correct

Even if the State's argument on appeal were not precluded by the invited error doctrine, the district court's interpretation of the statutes, I.C. §§ 18-915(3) and 18-903, was correct. Based on the plain language of the statutes, the district court did not have jurisdiction because the Information only charged misdemeanors.

An appellate court exercises free review over questions of statutory interpretation and application. *State v. Thiel*, 158 Idaho 103, 106 (2015). The Idaho Supreme Court has held, "[t]he interpretation of a statute must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893 (2011) (quoting *State v. Schwartz*, 139 Idaho 360, 362 (2003)) (internal quotation marks omitted).

As discussed above, under certain circumstances, "a violation of the provisions of section 18-903, Idaho Code, except unlawful touching as described in section 18-903(b), Idaho Code, against the person of a former or present police officer, sheriff, or police officer," is a felony. I.C. § 18-915(3). Section 18-903(b) defines battery to include any "[a]ctual, intentional and unlawful touching or striking of another person against the will of the other." I.C. § 18-903(b).

Based on the plain language of the statutes, the district court did not have jurisdiction because the Information only charged misdemeanors. Section 18-915(3) excepts "unlawful touching as described in section 18-903(b), Idaho Code," from those acts that constitute felony battery on an officer. I.C. § 18-915(3). Thus, acts as described in section 18-903(b), namely, "[a]ctual, intentional and unlawful touching or striking of another person against the will of the other," are misdemeanors even if otherwise committed against an officer under the circumstances outlined in Section 18-915(3). *See* I.C. §§ 18-903(b); 18-915(3). As the district court and State agreed (*see* Tr., p.6, Ls.13-24), the plain language of the statutes excepted unlawful touching or striking from felony status. *See Verska*, 151 Idaho at 893. The district court's interpretation of the statutes was correct, and the district court did not have jurisdiction because the Information only charged misdemeanors. The State has failed to show the district court erred.

CONCLUSION

The State has failed to show the district court erred in remanding Mr. Castrejon's case to the magistrate court for lack of jurisdiction. Mr. Castrejon respectfully requests that this Court affirm the district court's Order for Remand.

DATED this 12th day of July, 2017.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of July, 2017, I served a true and correct copy of the foregoing RESPONDENT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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_____/s/_____
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BPM/eas