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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45032**
Plaintiff-Respondent,	)	
	)	**BOUNDARY COUNTY**
v.	)	**NO. CR 2016-1199**
	)	
GEOFFREY CLAUDE COLEMAN,	)	**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 BOUNDARY

HONORABLE BARBARA A. BUCHANAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Following a jury trial on two felony counts and two misdemeanor counts, the jury found Geoffrey Claude Coleman guilty of misdemeanor exhibition of a deadly weapon. On appeal, Mr. Coleman asserts the district court erred when it denied his Idaho Criminal Rule 29 (Rule 29) motion for a judgment of acquittal regarding the exhibition of a deadly weapon count. The State did not present competent evidence that Mr. Coleman exhibited a deadly weapon in the presence of two or more persons, as required by the applicable statute, I.C. § 18-3303.

Statement of the Facts and Course of Proceedings

The State charged Mr. Coleman by Information with one count of aggravated battery, felony, I.C. §§ 18-903(a) and 18-907(b), one count of exhibition of a deadly weapon, misdemeanor, I.C. § 18-3303, one count of grand theft, felony, I.C. §§ 18-2403(1) and 18-2407(1)(d), and one count of malicious injury to property, misdemeanor, I.C. § 18-7001. (R., pp.47-50.) Mr. Coleman entered a not guilty plea to the charges. (R., pp.56-57.)

The case proceeded to a jury trial. (R., pp.111-32.) Mr. Coleman's father, Richard Coleman, testified he had invited his son and his son's girlfriend to Christmas dinner at his home. (*See* Tr. Vol. I, p.96, L.18 – p.100, L.21.) The GMC Jimmy SUV Mr. Coleman had been driving became stuck in the snow at the base of Richard Coleman's driveway. (Tr. Vol. I, p.110, L.17 – p.111, L.6.) Richard Coleman testified that after he and Mr. Coleman towed the Jimmy out of the snow with another vehicle, his son argued with him and pushed him onto the ground several times. (*See* Tr. Vol. I, p.120, L.17 – p.126, L.4.) Richard Coleman testified he then got onto the ATV he had been using to plow the driveway, but Mr. Coleman knocked him off the ATV, backed it up, and ran it over him. (*See* Tr. Vol. I, p.126, L.5 – p.133, L.15.)

Richard Coleman sustained injuries to his hands and legs. (*See* Tr. Vol. I, p.136, L.8 – p.144, L.10.)

According to Richard Coleman, after his son backed the ATV off him, his son's girlfriend asked if he was hurt, but his son did not say anything. (*See* Tr. Vol. I, p.144, L.19 – p.145, L.2.) He testified that he thought Mr. Coleman then drove off in the Jimmy. (Tr. Vol. I, p.146, Ls.8-21.) Richard Coleman testified he called law enforcement, and officers arrived at the scene. (*See* Tr. Vol. I, p.148, L.11 – p.149, L.7.) After the officers took his statement at his house, they left. (Tr. Vol. I, p.149, L.21 – p.150, L.1.)

Richard Coleman then testified that about fifteen minutes after the officers left, when he was alone at his house, Mr. Coleman entered the house. (Tr. Vol. I, p.150, Ls.2-9, p.151, L.22 – p.152, L.3.) Richard Coleman testified that one of his pistols was in Mr. Coleman's hand. (Tr. Vol. I, p.152, Ls.8-12.) He testified he had not given his son permission to have the pistol in his possession. (Tr. Vol. I, p.155, Ls.2-7.) Richard Coleman testified his son was in a rage and waving the pistol around, but did not point the pistol at him. (Tr. Vol. I, p.155, Ls.8-15.) He testified Mr. Coleman pointed the pistol towards his own head one time. (Tr. Vol. I, p.155, Ls.16-17.)

According to Richard Coleman, Mr. Coleman asked him to help pull the Jimmy out of the snow again. (*See* Tr. Vol. I, p.157, L.18 – p.158, L.5.) Richard Coleman also testified Mr. Coleman punched the pantry door in the house, leaving a hole. (Tr. Vol. I, p.158, Ls.16-25, p.159, L.16 – p.160, L.2.) He testified he helped Mr. Coleman pull the Jimmy out of the snow, and Mr. Coleman then left. (*See* Tr. Vol. I, p.163, L.11 – p.164, L.20.)

On cross-examination, Richard Coleman testified he had not mentioned any damage to the pantry door in his written statements to the police. (Tr. Vol. I, p.172, L.14 – p.174, L.21.)

Officer Robert Elam with the Boundary County Sheriff's Office testified that when he arrested Mr. Coleman later that day, Mr. Coleman had Richard Coleman's pistol in his vehicle. (*See* Tr. Vol. I, p.185, L.2 – p.187, L.8.)

After the State rested, Mr. Coleman made a motion for a judgment of acquittal under Idaho Criminal Rule 29 on the exhibition of a deadly weapon count. (Tr. Vol. I, p.189, L.25 – p.190, L.23.) Mr. Coleman asserted, "[o]ne of the elements of the crime is that it occur in the presence of two or more persons. The evidence that's been presented today is that Richard Coleman and Geoffrey Coleman were the only two people who were present at the time." (Tr. Vol. I, p.190, L.24 – p.191, L.3.) Mr. Coleman interpreted the statute to require the presence of "two persons other than the defendant in order for someone to be guilty of exhibition of a deadly weapon." (Tr. Vol. I, p.191, Ls.4-6.)

The State argued, "the defendant is included in that two or more persons." (Tr. Vol. I, p.192, Ls.24-25.) Mr. Coleman responded, "I don't think the statute would be written that way if the defendant counted as one of the two people. If that were the case, all he would have to do is to exhibit the deadly weapon in the presence of one other person. It wouldn't say in the presence of two or more people." (Tr. Vol. I, p.194, Ls.7-12.) Mr. Coleman asserted, "[t]he plain language of the statute is that the defendant himself does not count as one of the two people." (Tr. Vol. I, p.194, Ls.15-17.)

The district court determined that for "exhibition or use of a deadly weapon, the case law makes it clear it is a lesser included of aggravated assault. And clearly aggravated assault just requires two people, two or more. You have to have the person with a weapon and the person [who] is assaulted." (Tr. Vol. I, p.194, L.22 – p.195, L.2.) The district court read the statute as "trying to make clear that if you are exhibiting a weapon in a rude, angry and threatening manner

and you're the only one there, that maybe somebody took a video of it somehow or a picture, or caught it on a camera, that doesn't constitute the crime." (Tr. Vol. I, p.195, L.9.) The district court denied the Rule 29 motion, determining the statute "means that two people, two or more persons can include the person with the weapon, and there has to be at least one other person." (Tr. Vol. I, p.195, Ls.10-13.)

Mr. Coleman's girlfriend, Kim Christensen, testified for the defense that she was in the Jimmy when she saw Mr. Coleman and Richard Coleman arguing, but she could not necessarily hear what they were saying. (*See* Tr. Vol. I, p.216, L.24 – p.217, L.7, p.220, L.22 – p.221, L.3.) She saw Richard Coleman get off the ATV, and Mr. Coleman got on it. (Tr. Vol. I, p.221, L.18 – p.222, L.23.) She testified she then saw the ATV jerk forward and run over Richard Coleman. (*See* Tr. Vol. I, p.224, Ls.12-18.) Ms. Christensen testified Mr. Coleman immediately backed up the ATV, tried to apologize and appeared to be upset. (*See* Tr. Vol. I, p.225, L.17 – p.226, L.25.) After she saw Mr. Coleman did not need assistance to stand up, she left the area on foot because she was upset. (Tr. Vol. I, p.227, Ls.1-23.) Ms. Christensen testified Mr. Coleman had called her after the incident and stated: "Sometimes you have to lie for the greater good." (Tr. Vol. II, p.251, L.17 – p.252, L.4.)

Mr. Coleman testified that the argument he had with his father was about the Jimmy still being stuck after his father plowed the driveway, and his father not wanting to help. (Tr. Vol. II, p.291, L.17 – p.292, L.3.) After being unable to get the Jimmy up any further, Mr. Coleman left the vehicle and Richard Coleman got off the ATV, and they began to argue. (Tr. Vol. II, p.293, Ls.4-11.) Mr. Coleman testified he did not tackle his father off the ATV. (Tr. Vol. II, p.293, L.24 – p.294, L.5.) According to Mr. Coleman, he got on the ATV to pile the snow so he could get the Jimmy out. (*See* Tr. Vol. II, p.294, Ls.6-16.) He testified that when he tried to put the

ATV into reverse, it went forward. (Tr. Vol. II, p.299, Ls.10-12.) Mr. Coleman testified that he was in shock when he realized he had run over his father, and felt horrible about it. (Tr. Vol. II, p.300, Ls.16-21.) He testified he did not intentionally run over his father with the ATV. (Tr. Vol. II, p.301, Ls.5-7.)

Mr. Coleman also testified he had asked two days prior to borrow the pistol from Richard Coleman. (Tr. Vol. II, p.301, Ls.15-22.) He testified his father allowed him to shoot the pistol for target practice. (*See* Tr. Vol. II, p.301, L.23 – p.302, L.18) He admitted to having possession of the pistol the day of the incident, but denied any intent to keep it. (Tr. Vol. II, p.302, L.19 – p.303, L.10.) Mr. Coleman testified that when he went back inside his father's house, he had the pistol in his possession. (Tr. Vol. II, p.304, Ls.8-18.) He testified he held the gun to his own head and asked his father to help get his vehicle out. (Tr. Vol. II, p.305, Ls.5-10.) Mr. Coleman further testified he did not damage the pantry door. (Tr. Vol. II, p.306, Ls.3-5.)

The jury found Mr. Coleman guilty of exhibition of a deadly weapon, and found him not guilty of the other three counts. (R., pp.173-74.) For exhibition of a deadly weapon, the district court sentenced Mr. Coleman to eighty days in jail, with credit for eighty days served. (R., p.176.) Mr. Coleman filed a Notice of Appeal timely from the district court's Judgment. (R., pp.179-81.)

ISSUE

Did the district court err when it denied Mr. Coleman's Idaho Criminal Rule 29 motion for a judgment of acquittal regarding the exhibition of a deadly weapon count?

ARGUMENT

The District Court Erred When It Denied Mr. Coleman's Idaho Criminal Rule 29 Motion For A Judgment Of Acquittal Regarding The Exhibition Of A Deadly Weapon Count

A. Introduction

Mr. Coleman asserts the district court erred when it denied his Idaho Criminal Rule 29 motion for a judgment of acquittal regarding the exhibition of a deadly weapon count. The State did not present competent evidence that Mr. Coleman exhibited the pistol in the presence of two or more persons, as required by the plain language of I.C. § 18-3303. Thus, the district court erred when it denied Mr. Coleman's motion for a judgment of acquittal.

B. Standard Of Review

At the time of Mr. Coleman's trial, Idaho Criminal Rule 29 provided that "[t]he court on motion of the defendant or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment, information or complaint after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses." I.C.R. 29(a) (2016).[1] The Idaho Supreme Court has held, "[i]n reviewing the denial of a motion for judgment of acquittal, the appellate court must independently consider the evidence in the record and determine whether a reasonable mind could conclude that the defendant's guilt as to such material evidence of the offense was proven beyond a reasonable doubt." *State v. Clark*, 161 Idaho 372, 374 (2016) (internal quotation marks omitted). The relevant inquiry is not whether the appellate court "would find the defendant to be guilty beyond

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[1] Rule 29(a) has since been amended to read, in relevant part, "[a]fter the prosecution closes its evidence or after the close of all the evidence, the court on defendant's motion or on its own motion, must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." I.C.R. 29(a) (effective July 1, 2017).

a reasonable doubt, but whether after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (internal quotation marks omitted).

C. The State Did Not Present Competent Evidence That Mr. Coleman Exhibited The Pistol In The Presence Of Two Or More Persons

The State did not present competent evidence that Mr. Coleman exhibited the pistol in the presence of two more more persons, as required by I.C. § 18-3303. Section 18-3303 provides that "[e]very person who, not in necessary self-defense, in the presence of two (2) or more persons, draws or exhibits any deadly weapon in a rude, angry and threatening manner, or who, in any manner, unlawfully uses the same, in any fight or quarrel, is guilty of a misdemeanor." I.C. § 18-3303. The Idaho Court of Appeals has held "the presence of two or more people is an essential element of the crime." *State v. Mason*, 111 Idaho 660, 669 (Ct. App. 1986).

Here, any rational trier of fact could not have found the presence of two or more persons essential element beyond a reasonable doubt. Richard Coleman testified he was alone in his house when Mr. Coleman came in with the pistol. (*See* Tr. Vol. I, p.149, L.21 – p.151, L.25.) Further, Richard Coleman did not testify any other person showed up while Mr. Coleman was displaying the pistol. (*See* Tr. Vol. I, p.151, L.7 – p.164, L.20.) Thus, even after viewing the evidence in the light most favorable to the prosecution, the State never presented competent evidence that Mr. Coleman exhibited the pistol in the presence of two or more persons. Because any rational trier of fact could not have found that essential element beyond a reasonable doubt, *see Mason*, 111 Idaho at 669, the evidence presented by the State was insufficient to sustain Mr. Coleman's conviction for exhibition of a deadly weapon. *See Clark*, 161 Idaho at 374; I.C.R. 29(a).

D. <u>The Plain Language Of I.C. § 18-3303 Does Not Support The District Court's Interpretation Of The Statute</u>

Although the evidence presented by the State was insufficient, the district court denied Mr. Coleman's Rule 29 motion, determining that under I.C. § 18-3303, "two or more persons can include the person with the weapon, and there has to be at least one other person." (*See* Tr. Vol. I, p.195, Ls.10-13.) However, the plain language of Section 18-3303 does not support the district court's interpretation.

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) (internal quotation marks omitted). Appellate courts exercise free review over statutory interpretation, because it is a question of law. *State v. Leary*, 160 Idaho 349, 352 (2016).

As discussed above, Section 18-3303 provides, "[e]very person who, not in necessary self-defense, in the presence of two (2) or more persons, draws or exhibits any deadly weapon in a rude, angry and threatening manner . . . is guilty of a misdemeanor." I.C. § 18-3303. The statute prohibits a "person" from exhibiting a deadly weapon in a rude, angry and threatening manner "in the presence of two (2) or more persons." Thus, the plain language of Section 18-3303 contemplates the prohibited act would occur when a defendant so displays a deadly weapon in the presence of two or more persons, other than the defendant.

State v. Mason, an Idaho Court of Appeals case interpreting Section 18-3303, supports this construction of the statute's plain language. In *Mason*, the defendant asserted the district court committed reversible error, because the district court refused to give a defense instruction

on exhibition of a deadly weapon as a lesser included offense of aggravated assault. *Mason*, 111 Idaho at 668.

The Idaho Court of Appeals held "not all of the essential elements of the crime of exhibiting a deadly weapon were included among the allegations in the information filed against Mason." *Id.* at 668-69. The information charged that the defendant

> knowingly, willfully, unlawfully and feloniously, with the apparent ability to do so, commit[ted] an intentional, unlawful threat to do violence to the person of another, by word and act against one Patricia Stapleton, with a deadly weapon, without the intent to kill and created a well-founded fear that such violence was imminent, to wit: The said James Mason pointed a handgun at the said Patricia Stapleton and threatened to blow her guts out.

Id. at 669 (alteration in original). The Court of Appeals held the presence of two or more people, an essential element of exhibition of a deadly weapon, "was not contained in the allegations of the information; therefore the crime of exhibiting a deadly weapon was not an included offense under the theory that its elements were charged 'as the manner or means' of the assault." *Id.*

However, the *Mason* Court also held the crime of exhibition of a deadly weapon was an included offense under a different theory, namely that the evidence showed the crime was committed in the commission of another offense.[2] *Id.* This was because, "from the evidence

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[2] The Idaho Supreme Court later clarified that "[t]here are two theories under which a particular offense may be determined to be a lesser offense of a charged offense." *State v. Curtis*, 130 Idaho 522, 524 (1997). Under the first theory, the "statutory theory, an offense is not considered a lesser included offense of the charged offense unless it is necessarily so under the statutory definition of the charge offense." *Id.* (citing *Sivak v. State*, 112 Idaho 197, 211 (1986)). Under the second theory, the "pleading theory," an offense "is an included offense if it is alleged in the information as a means or element of the commission of the higher offense." *Id.* (internal quotation marks omitted).

More recently, the Idaho Supreme Court held in a lewd conduct case, "it is of no consequence that there was evidence admitted during the trial that would support" a lesser included charge of sexual abuse. *See State v. Flegel*, 151 Idaho 525, 530 (2011). The *Flegel* Court held, "[t]he prosecutor had no authority to file an amended indictment charging a crime that was not an included offense under the original indictment, under either the statutory theory or the pleading theory." *Id.*

presented, the jury could have concluded that Mason—not acting in self-defense—and in the presence of Stapleton and at least three other persons (her companion and the two witnesses, Johnson and Thorpe) exhibited a deadly weapon (his revolver) in a rude, angry and threatening manner." *Id.* Thus, the Court of Appeals held the district court erred when it refused to give the requested exhibiting a deadly weapon instruction. *Id.*

In sum, the allegations in the information in *Mason* did not include the presence of two or more persons essential element for exhibition of a deadly weapon, because the information alleged the defendant used a handgun in the presence of only one person (Patricia Stapleton) other than the defendant. *See id.* But the evidence presented contained that same element, because a jury could have concluded from the evidence that the defendant used the weapon in the presence of at least four other persons. *See id.* Thus, *Mason* indicates the plain language of Section 18-3303 does not support the district court's interpretation of the statute.

A comparison of Section 18-3303 with a related statute, former I.C. § 18-3302, also demonstrates the statute's plain language does not support the district court's interpretation. The Idaho Legislature enacted former Section 18-3302 alongside Section 18-3303 in 1972. 1972 Idaho Sess. Laws, ch. 336, § 1, p.911. Before its repeal in 1990, *see* 1990 Idaho Sess. Laws, ch. 256, § 1, p.732, former Section 18-3302 provided that "[i]f any person . . . shall, in the presence of one (1) or more persons, exhibit any deadly or dangerous weapon in a rude, angry, or threatening manner . . . he shall, upon conviction," be guilty of a misdemeanor. 1972 Idaho Sess. Laws, ch. 336, § 1, p.911; *see State v. McNary*, 100 Idaho 244, 246 n.1 (1979).

If the Idaho Legislature had intended for Section 18-3303 to work as the district court interpreted it, to require that only one person other than the defendant need be present, it would have written the statute to mirror the wording of former Section 18-3302, with its "presence of

one (1) or more persons" element. That the legislature instead opted to require the "presence of two (2) or more persons" in Section 18-3303 further shows the plain language of the statute does not support the district court's interpretation.[3]

The plain language of Section 18-3303 does not support the district court's interpretation that the defendant may count as one of the two persons for the presence of two or more persons element of exhibition of a deadly weapon. *See Verska*, 151 Idaho at 893. Under the plain language of the statute, two persons other than the defendant must be present. I.C. § 18-3303. But the State, as shown above, did not present competent evidence that Mr. Coleman exhibited the pistol in the presence of two or more persons. The evidence presented by the State was therefore insufficient to sustain Mr. Coleman's conviction for exhibition of a deadly weapon.

Thus, the district court erred when it denied Mr. Coleman's Rule 29 motion for a judgment of acquittal regarding the exhibition of a deadly weapon count. *See* I.C.R. 29(a). Because there was insufficient evidence to sustain Mr. Coleman's conviction on that count, this Court must vacate his conviction.

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[3] Additionally, if the "two (2) or more persons" in Section 18-3303 are considered to be victims of the offense, it would follow that, under the district court's interpretation of the statute, Mr. Coleman would be his own victim.

CONCLUSION

For the above reasons, Mr. Coleman respectfully requests that this Court vacate the district court's Judgment, because the State did not present sufficient evidence to sustain his conviction for exhibition of a deadly weapon.

DATED this 23rd day of August, 2017.

__________/s/________________
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd day of August, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

GEOFFREY CLAUDE COLEMAN
PO BOX 251
EASTPORT ID 83826

BARBARA A BUCHANAN
DISTRICT COURT JUDGE
E-MAILED BRIEF

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__________/s/________________
EVAN A. SMITH
Administrative Assistant

BPM/eas