11-15-2017

State v. Coleman Respondent's Brief Dckt. 45032

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45032**
Plaintiff-Respondent,	)	
	)	**Boundary County Case No.**
v.	)	**CR-2016-1199**
	)	
GEOFFREY CLAUDE COLEMAN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

HONORABLE BARBARA BUCHANAN
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Geoffrey Claude Coleman appeals from the district court's denial of his Idaho Criminal Rule 29 motion for a judgment of acquittal.

Statement Of The Facts And Course Of The Proceedings

Coleman was involved in a Christmas-day dispute at his father's house. (See generally, Tr. vol. I, pp. 99-182.) It was alleged that while they were arguing outside Coleman pushed his father to the ground and ran him over with an ATV. (Tr. vol. I, p. 123, L. 10 – p. 133, L. 15.) It was also alleged that Coleman went inside and pointed a gun to his own head, and damaged the walls within the house. (Tr. vol. I, p. 155, Ls. 8-17; p. 159, L. 16 – p. 160, L. 2.) As a result Coleman was charged with aggravated battery, exhibition of a deadly weapon, grand theft, and misdemeanor malicious injury to property. (R., pp. 47-49.)

The case went to trial. During the trial, Coleman's father testified that after the ATV incident Coleman left the scene. (Tr. vol. I, p. 146, Ls. 15-21.) Coleman's father then called law enforcement. (Tr. vol. I, p. 148, Ls. 5-12.) After speaking to the officer who arrived on scene, Coleman's father went inside to put firewood in the kitchen. (Tr. vol. I, p. 151, Ls. 3-10.)

Coleman returned to the house. (Tr. vol. I, p. 151, Ls. 11-25.) He entered the kitchen with a gun and "was in a rage"; his father testified that Coleman's "eyes were wild, and he was waving the pistol around." (Tr. vol. I, p. 152, Ls. 8-12; p. 155, Ls. 8-13.) Coleman did not point the gun at his father, but he did turn the gun on himself, pointing it at his own head and saying "Dad, I am going crazy, I am losing my mind."

(Tr. vol. I, p. 155, Ls. 13-17.) Coleman demanded to know the whereabouts of his dog and demanded his father's aid in getting his truck out of the snow. (Tr. vol. I, p. 156, L. 1 – p. 157, L. 22.) After they successfully freed the truck, Coleman departed again. (Tr. vol. I, p. 164, Ls. 11-16.)

There was no evidence presented that any persons other than Coleman and Coleman's father were in the kitchen while Coleman was displaying the gun. (See generally, Tr. vol. I, pp. 83-196; Tr. vol. II, pp. 289-318.)

After the presentation of the state's case Coleman made a Rule 29 motion for a judgment of acquittal. (Tr. vol. I, p. 190, L. 21 – p. 195, L. 13.) He argued that the state failed to prove its Exhibition of a Deadly Weapon charge:

> I would like to make a Motion for a Judgment of Acquittal under Idaho Criminal Rule 29 as to Count II, Exhibition of a Deadly Weapon.
>
> One 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.
>
> I interpret the statute to require to be two persons *other than the defendant* in order for someone to be guilty of exhibition of a deadly weapon. So I move to dismiss that charge.

(Tr. vol. I, p. 190, L. 21 – p. 191, L. 7 (emphasis added).)

The state countered that "[t]he statute doesn't say the defendant and somebody else, it doesn't say two other people other than the defendant," and that therefore "the defendant is included in that two or more persons." (Tr. vol. I, p. 192, Ls. 6-8, 24-25.) The district court agreed with the state:

> The wording is—I can see how you could certainly make the argument that Ms. Brooks is making but—and if it said in the presence of two or more witnesses, I would agree.

> But 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 is assaulted.
>
> And the way I read the statute is that they're just trying to make it 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 camera, that doesn't constitute the crime.

(Tr. vol. I, p. 194, L. 18 – p. 195, L. 9.) The district court concluded the statute's reference to "two or more persons can include the person with the weapon," and denied the motion. (Tr. vol. I, p. 195, Ls. 10-13.)

The jury acquitted Coleman of aggravated battery, grand theft, and malicious injury to property, but found him guilty of exhibition of a deadly weapon. (Tr. vol. II, p. 382, L. 19 – p. 383, L. 5.) Coleman timely appealed from the judgment of conviction. (R., pp. 176, 179-81, 187-91.)

ISSUE

Coleman states the issue on appeal as:

> 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?

(Appellant's brief, p. 6.)

The state rephrases the issue as:

Has Coleman failed to show the district court erroneously concluded there was sufficient evidence to sustain a conviction for exhibition of a deadly weapon?

ARGUMENT

Because There Was Ample Evidence That Coleman Exhibited A Deadly Weapon In The Presence Of Two Persons—Himself And His Father—The District Court Did Not Err In Denying His Rule 29 Motion For A Judgment Of Acquittal

A. Introduction

Coleman's appeal focuses on one element of Idaho Code § 18-3303, which criminalizes the exhibition of a deadly weapon "in the presence of two (2) or more persons." He contends that the "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*." (Appellant's brief, p. 9.) Coleman argues that because the state's evidence only showed that Coleman displayed the gun to his father, there was insufficient evidence to sustain a conviction. (Appellant's brief, pp. 8-12.)

But this argument fails because the plain meaning of "two (2) or more persons" is "two or more persons"—not "two or more *other* persons" or "two or more persons, *other than the defendant.*" Because Coleman and his father are two persons, evidence that Coleman exhibited the gun in his and his father's presence was therefore ample evidence to sustain his conviction for exhibition of a deadly weapon.

B. Standard Of Review

In reviewing the denial of a Rule 29 motion for judgment of acquittal this Court looks to "whether there was substantial evidence upon which a trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Hoyle, 140 Idaho 679, 684, 99 P.3d 1069, 1074 (2004); see State v. Oliver, 144 Idaho 722, 724,

170 P.3d 387, 389 (2007); see State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992). This Court views the evidence "in the light most favorable to the prosecution, and we do not substitute our judgment for that of the jury regarding the credibility of the witnesses, the weight of the evidence, and the reasonable inferences to be drawn from the evidence." Oliver, 144 Idaho at 724, 170 P.3d at 387; State v. Knutson, 121 Idaho 101, 822 P.2d 998 (Ct. App. 1991); State v. Hart, 112 Idaho 759, 761, 735 P.2d 1070, 1072 (Ct. App. 1987). The facts, and inferences to be drawn from those facts, are therefore construed in favor of upholding the jury's verdict. See Oliver, 144 Idaho at 724, 170 P.3d at 387; see also Hart, 112 Idaho at 761, 735 P.2d at 1072.

"The interpretation of a statute is an issue of law over which this Court exercises free review." Porter v. Bd. of Trustees, Preston Sch. Dist. No. 201, 141 Idaho 11, 13–14, 105 P.3d 671, 673–74 (2004) (citing Dyet v. McKinley, 139 Idaho 526, 528, 81 P.3d 1236, 1238 (2003)).

C. The Plain Meaning Of "Two Or More Persons" Is "Two Or More Persons," And The State Presented Sufficient Evidence That Coleman Exhibited A Deadly Weapon In The Presence Of Two Persons—Himself And His Father

Statutory interpretation "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. Saint Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) (quoting State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003) (citations omitted)). This Court has "consistently held that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the

legislature." Id. (quoting City of Sun Valley v. Sun Valley Co., 123 Idaho 665, 667, 851 P.2d 961, 963 (1993)).

Idaho Code § 18-3303 criminalizes exhibition of a deadly weapon:

> Every 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.

Here, the meaning of "two (2) or more persons" is plain. A "person" is "a human being." BLACK'S LAW DICTIONARY (10th ed. 2014). "Presence" is defined as "[t]he quality, state, or condition of being in a particular time and place, particularly with reference to some act that was done then and there," or as "close physical proximity coupled with awareness." Id. Applying those plain definitions Coleman was necessarily in the presence of two persons—himself and his father—when he brandished the gun. Ample evidence therefore sustained a charge of exhibiting a deadly weapon, as the district court correctly found.

Coleman argues that "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*." (Appellant's brief, p. 9 (emphasis added).) But this explanation encapsulates the error: Coleman's proposed definition tacks on a modifying clause that is nowhere in the text. The statute does not say "two or more persons other than the defendant." See I.C. § 18-3303. Nor does the text make any other indication that the defendant would be exempt from the headcount of persons. See id. To the extent Coleman's search for meaning takes him to non-statutory language, by definition he has already departed beyond its plain language. Staying within the bounds

of the text leads to a different outcome—the statute says "two (2) or more persons," which, by plain definition, includes the defendant.[1]

Coleman claims the decision in State v. Mason, 111 Idaho 660, 726 P.2d 772 (Ct. App. 1986), supports a plain reading of "two (2) or more persons" that excludes the defendant. (Appellant's brief, pp. 9-11.) There, the Idaho Court of Appeals considered, among other things, whether a district court erred by "refusing to give a defense instruction on exhibiting a deadly weapon." Mason, 111 Idaho at 668, 726 P.2d at 780. Mason was charged with aggravated assault and contended "that exhibiting a dangerous weapon is a lesser included offense." Id. The district court ultimately concluded that exhibiting a deadly weapon would be a lesser included offense because there it was "necessarily committed in the commission of" the aggravated assault. Id. at 669, 726 P.2d at 781.

But, relevant to the issue in this case, the Mason Court also considered whether the "essential elements" of exhibition of a deadly weapon were "charged in the information as the manner or means by which the [aggravated assault] offense was committed":

> Taking the latter point first, here 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. The information alleged that Mason
>
> > 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

[1] And, per Verska, this plain meaning controls even if this Court concludes it is patently absurd or would produce absurd results if construed as written. 151 Idaho at 896, 265 at 509.

> 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.
>
> Under I.C. § 18–3303, the crime of exhibiting a deadly weapon is not committed unless the exhibition occurs "in the presence of two (2) or more persons." Thus the presence of two or more people is an essential element of the crime. Here that element 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. at 668–69, 726 P.2d at 780–81.

The Mason Court's conclusion would not affect the plain meaning of "two or more persons." There, the question before the Court was whether the elements of exhibition "were charged 'as the manner or means' of the assault." Id. The Mason Court did not engage in any statutory construction to define "two (2) or more persons," much less did it consider the plain language of the statute. See id. Consequently, the Mason decision's examination of a charging document did not define "two (2) or more persons" to exclude the defendant, and even if it could be so construed it was wrongly decided, as this definition ignores the statute's plain language.

By its plain language Section 18-3303 prohibits exhibiting a deadly weapon in the presence of two or more persons. The evidence at trial established that Coleman angrily brandished a gun in the presence of two persons: himself and his father. The district court therefore correctly found there was sufficient evidence to sustain Coleman's conviction for exhibition of a deadly weapon.

D. Alternatively, Even If "Two Or More Persons" Is Ambiguous, It Should Be Construed To Include The Defendant

Where a statute's words "are subject to more than one meaning, it is ambiguous and this Court must construe the statute 'to mean what the legislature intended it to mean. To determine that intent, [this Court] examine[s] not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history.'" Ada Cty. Highway Dist. v. Brooke View, Inc., 162 Idaho 138, 395 P.3d 357, 361 (2017) (quoting Doe v. Boy Scouts of America, 148 Idaho 427, 430, 224 P.3d 494, 497 (2009)). A "fundamental principle of statutory construction" is that "the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." Deal v. United States, 508 U.S. 129, 132 (1993). Courts "follow the cardinal rule that a statute is to be read as a whole" because "the meaning of statutory language, plain or not, depends on context." King v. St. Vincent's Hosp., 502 U.S. 215, 221 (1991).

Here, even if this Court finds it ambiguous whether "two (2) or more persons" includes the defendant, principles of construction support a conclusion that it does.

Starting with the statute itself, reading its text holistically supports counting the defendant as one of the "persons." In the very same sentence as the language at issue, Section 18-3303 also criminalizes the unlawful use of a deadly weapon "in any fight or quarrel." A fight or quarrel, by definition, can be between a defendant and only one other person. In light of the full context of the statute it makes much more sense that the legislature would criminalize both the unlawful use of a deadly weapon in a fight with

one other person, and the unlawful exhibition of the weapon in the presence of *one* other person.

Coleman's proposed construction, on the other hand, would prohibit the unlawful use of a weapon in a fight with *one* other person, but only prohibit the unlawful exhibition of a weapon to a group of *two* other persons. Under Coleman's calculus defendants could not exhibit a deadly weapon to a crowd but would have free reign to angrily exhibit a gun to another individual. This interpretation, beyond being internally inconsistent, is bad policy: it incentivizes threatening displays of deadly weapons, just as long as they occur in private, and one-on-one.

A review of statutes beyond Section 18-3303 also reveals that "person," without modification, would include the defendant. For example, neighboring firearm statutes show that the legislature capably can, and does, refer to "any *other* person" when it wishes to exclude the defendant. See, e.g., I.C. §§ 18-3304 ("Any person who shall intentionally, without malice, point or aim any firearm at or toward any *other person* shall be guilty of a misdemeanor…."); 18-3306 ("Any person who shall maim or injure any *other person* by the discharge of any firearm pointed or aimed, intentionally but without malice, at any such person, shall be guilty of a misdemeanor….") (emphases added).

And the firearm statutes are not outliers; Idaho's criminal code, across the board, reveals the legislature has no compunction writing "*another* person," or just "another," when it wants to exclude the defendant. See, e.g., I.C. §§ 18-2403 ("A person steals property and commits theft when, with intent to deprive *another* of property …"); 18-4308 ("Where any ditch, canal, lateral or drain has heretofore been, or may hereafter be, constructed across or beneath the lands *of another*…"); 18-6608 (Every person who, for

the purpose of sexual arousal, gratification or abuse, causes the penetration, however slight, of the genital or anal opening *of another person*…"); 18-6711 ("Every person who telephones *another* …"); 18-7902 ("It shall be unlawful for any person, maliciously and with the specific intent to intimidate or harass *another person*"); 18-8006 ("Any person causing great bodily harm, permanent disability or permanent disfigurement to *any person other than himself*…") (emphases added).

These examples show that the legislature can and does write "another person" or "other person" where it means to exclude the defendant. Even in obvious cases where "person" could only refer to someone other than the defendant—such as victims of telephone harassment—the legislature still took pains to write out "another person," and explicitly exclude the defendant. See I.C. § 18-7902. Where the legislature does not state "another person" the omission must therefore be conscious and intentional, and Section 18-3303 should be construed accordingly.

"[T]wo (2) or more persons" means "two or more persons." This includes the defendant. Alternatively, even if this plain language is found ambiguous, sound policy and legislative intent supports construing Section 18-3303 to include the defendant. Whether the statute is plainly read, or correctly construed, the state provided ample evidence that Coleman exhibited a deadly weapon in a rude, angry, or threatening manner in the presence of two or more persons. The district court therefore correctly denied his Rule 29 motion for a judgment of acquittal.

CONCLUSION

The state respectfully requests this Court affirm Coleman's judgment of conviction.

DATED this 15th day of November, 2017.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of November, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BEN P. McGREEVY
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/s/ Kale D. Gans
KALE D. GANS
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KDG/dd