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State v. Coleman Appellant's Reply Brief Dckt. 45032

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45032
)	
v.)	BOUNDARY COUNTY
)	NO. CR 2016-1199
GEOFFREY CLAUDE)	
COLEMAN,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY 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**

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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. Mr. Coleman appealed, asserting 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. He asserted the State did not present competent evidence that he exhibited a deadly weapon in the presence of two or more persons, as required by the applicable statute, I.C. § 18-3303.

In its Respondent's Brief, the State argues the district court did not err when it denied Mr. Coleman's Rule 29 motion. (*See* Resp. Br., pp.5-13.) Specifically, the State contends that Mr. 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." (Resp. Br., p.7.) Alternatively, the State argues that "even if this Court finds it ambiguous whether 'two (2) or more persons' includes the defendant, principles of [statutory] construction support a conclusion that it does." (Resp. Br., p.10.)

This Reply Brief is necessary to show the State, by arguing Mr. Coleman was "in the presence of . . . himself," ignores the plain meaning of the words in section 18-3303. Thus, the State's argument is contrary to the Idaho Supreme Court's decisions on statutory interpretation.

This Reply Brief is also necessary to address the State's argument that, assuming section 18-3303 is ambiguous, the statute should be construed to apply to Mr. Coleman's conduct. Mr. Coleman asserts section 18-3303 is not ambiguous. If the Court decides section 18-3303 is ambiguous, the Court should interpret the statute as applying only where a defendant draws or exhibits a deadly weapon in the presence of two persons, other than the defendant.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Coleman's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

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. The Plain Language Of I.C. § 18-3303 Does Not Support The State’s Interpretation Of The Statute

Mr. Coleman asserts the plain language of I.C. § 18-3303 does not support the State’s interpretation of the statute. When the district court denied Mr. Coleman’s Rule 29 motion, it determined that under section 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.) Similarly, the State argues that “the meaning of ‘two (2) or more persons’ is plain,” and Mr. 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.” (Resp. Br., p.7.) However, this argument ignores the plain meaning of the words in section 18-3303. Thus, the State’s argument is contrary to the Idaho Supreme Court’s decisions on statutory interpretation.

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. As 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.’” *Verska v. St. Alphonsus Reg’l Med. Ctr.*, 151 Idaho 889, 893 (2011) (quoting *State v. Schwartz*, 139 Idaho 360, 362 (2003)).

The State, by arguing Mr. Coleman was in the presence of himself, ignores the plain meaning of the words in section 18-3303. In its attempt to discern the plain meaning, the State relies upon the definitions of “presence” from Black’s Law Dictionary. (*See* Resp. Br., p.7.) The entry from Black’s Law Dictionary, including example sentences, defines “presence” as: “1. The quality, state, or condition of being in a particular time and place, particularly with reference to some act that was done then and there <his presence at the scene saved two lives>”; and “2. Close physical proximity coupled with awareness <the agent was in the presence of the principal>.” Presence, BLACK’S LAW DICTIONARY (10th ed. 2014).

The example sentences from Black’s Law Dictionary indicate section 18-3303 uses the second definition of “presence,” namely, “[c]lose physical proximity coupled with awareness.” *Compare id.* (“<the agent was in the presence of the principal>”), *with* I.C. § 18-3303 (“[e]very person who . . . in the presence of two (2) or more persons”). Black’s Law Dictionary defines “proximity” as “[t]he quality, state, or condition of being near in time, place, order, or relation.” Proximity, BLACK’S LAW DICTIONARY (10th ed. 2014).

Definitions from other dictionaries of the phrase, “in the presence of someone,” also shed light on the plain meaning of the words in section 18-3303. *See* In Someone’s Presence, COLLINS ENGLISH DICTIONARY, <https://www.collinsdictionary.com/us/dictionary/english/in->

someones-presence (last accessed December 21, 2017) (“If you are in someone’s presence, you are in the same place as that person, and are close enough to them to be seen or heard. *The talks took place in the presence of a diplomatic observer.*”); In the Presence of Somebody, LONGMAN DICTIONARY OF CONTEMPORARY ENGLISH, <https://www.ldoceonline.com/dictionary/in-the-presence-of-somebody> (last accessed December 21, 2017) (“(also **in somebody’s presence**) *formal* with someone or in the same place as them”).

In view of the definitions from Black’s Law Dictionary, under the plain meaning of the words in section 18-3303, the prohibited act is a defendant drawing or exhibiting a deadly weapon in close physical proximity to two persons, *i.e.*, near in place to two persons. *See* Presence, BLACK’S LAW DICTIONARY; Proximity, BLACK’S LAW DICTIONARY. The definitions from the Collins and Longman dictionaries likewise show the statute prohibits a defendant from drawing or exhibiting a deadly weapon with two persons, or in the same place as two persons.

The above definitions together establish that, at least in everyday use of the English language, it is not said that a person is in the presence of himself or herself. It is not said that a person is in close physical proximity, or near in place, to herself; nor is it said that a person is with himself, or in the same place as himself. Thus, the act prohibited by section 18-3303 would occur when a defendant exhibits a deadly weapon in the presence of two or more persons, other than the defendant. Under the “plain, usual, and ordinary meaning” of the words in the statute, it cannot be said that Mr. Coleman was in the presence of himself. *See Verska*, 151 Idaho at 894.

By arguing that Mr. Coleman was “in the presence of . . . himself” (*see* Resp. Br., p.7), the State contends Mr. Coleman was in close physical proximity, or near in place, to himself. The State also thereby argues Mr. Coleman was with himself, or in the same place as himself. As shown by the above dictionary definitions, the State’s argument does not reflect everyday use

of the words in section 18-3303. The State's interpretation is contrary to *Verska* and its directive to give the words in a statute their "plain, usual, and ordinary meaning." *See Verska*, 151 Idaho at 894. The State ignores the plain meaning of the words in section 18-3303. Thus, the State's argument is contrary to the Idaho Supreme Court's decisions on statutory interpretation.¹

The plain language of section 18-3303 does not support the State's (and 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 discussed in the Appellant's Brief (*see* App. Br., p.8), 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.

¹ For the Court's information, in an unpublished opinion, the Idaho Court of Appeals rejected an argument on the statutory interpretation of I.C. § 18-3303 that was substantially similar to the State's argument here. *State v. Arroyo*, No. 29484, 2005 Unpublished Opinion No. 404 (Idaho Ct. App. Apr. 4, 2005).

In *Arroyo*, regarding an aggravated assault charge, the district court refused the defendant's request that it instruct the jury on exhibition of a deadly weapon as a lesser included offense. *Id.* at 2-3. While it was "uncontested that the only persons present at the time in question were the victim" and the defendant, on appeal the defendant asserted "that he counts as one of the two persons." *See id.* at 3. In response, the State argued, "[i]t makes little or no linguistic sense, however, to believe that an act is committed in the presence of a person if the actor is alone, and it makes no more sense that an actor doing an act with only he and one other present has done the act 'in the presence of two or more persons.'" Respondent's Brief at 9, *State v. Arroyo*, No. 29484 (Sept. 16, 2014).

The Court of Appeals held the "argument that section 18-3303 could be applied here is untenable," and found no ambiguity in the statute. *Arroyo*, 2005 Unpublished Opinion No. 404, at 3. The *Arroyo* Court noted that taking the defendant's "position to its logical extension would mean that a defendant can be held to have committed an act in the presence of a person if the actor is alone." *Id.*

C. I.C. § 18-3303 Is Not Ambiguous, But If This Court Decides It Is Ambiguous, The Court Should Interpret The Statute As Applying Where A Defendant Draws Or Exhibits A Deadly Weapon In The Presence Of Two Persons, Other Than The Defendant

In the alternative, the State argues that “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.” (Resp. Br., p.10.) Mr. Coleman asserts I.C. § 18-3303 is not ambiguous. If this Court decides section 18-3303 is ambiguous, Mr. Coleman asserts the Court should interpret the statute as applying where a defendant draws or exhibits a deadly weapon in the presence of two persons, other than the defendant.

1. Section 18-3303 Is Not Ambiguous

Mr. Coleman asserts section 18-3303 is not ambiguous. As the Idaho Supreme Court has held, “[a] statute is ambiguous where the language is capable of more than one reasonable construction.” *State v. Olivas*, 158 Idaho 375, 379 (2015) (internal quotation marks omitted). Here, there is only one reasonable construction of Section 18-3303—Mr. Coleman’s construction, which follows the plain language of the statute.

The State has not shown that section 18-3303 is ambiguous. The State’s construction, which ignores the plain meaning of the words in the statute, is not reasonable. A statute is ambiguous where its meaning “is so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning.” *Farmers Nat’l Bank v. Green River Dairy, LLC*, 155 Idaho 853, 856 (2014) (quoting *BHA Invs., Inc. v. City of Boise*, 138 Idaho 356, 358 (2003)). “However, ambiguity is not established merely because different possible interpretations are presented to a court.” *Id.* (quoting *BHA Invs., Inc.*, 138 Idaho at 358). Further, a statute “is not ambiguous merely because an astute mind can devise more than one interpretation of it.” *Id.* (quoting *BHA Invs., Inc.*, 138 Idaho at 358).

As shown above, the State's interpretation of section 18-3303 does not reflect everyday use of the words in the statute, and does not give the words in the statute their plain, usual, and ordinary meaning. The State's interpretation, that Mr. Coleman was in the presence of himself (*see* Resp. Br., p.7), *i.e.*, near in place to himself or with himself, is not reasonable.

The meaning of the words in section 18-3303 is not so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning. *See Farmers Nat'l Bank*, 155 Idaho at 856. The language of the statute is not capable of more than one reasonable construction. *See Olivas*, 158 Idaho at 379. Thus, section 18-3303 is not ambiguous.²

2. If This Court Decides Section 18-3303 Is Ambiguous, The Court Should Interpret The Statute As Applying Where A Defendant Draws Or Exhibits A Deadly Weapon In The Presence Of Two Persons, Other Than The Defendant

If this Court decides that section 18-3303 is ambiguous, Mr. Coleman asserts the Court should interpret the statute as applying where a defendant draws or exhibits a deadly weapon in the presence of two persons, other than the defendant. If a statute is ambiguous, "then it must be construed to mean what the legislature intended for it to mean." *Olivas*, 158 Idaho at 379 (internal quotation marks omitted). The Idaho Supreme Court has held, "[w]e determine legislative intent by examining 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." *Id.* (internal quotation marks omitted).

In the event this Court decides that section 18-3303 is ambiguous, the Court should interpret the statute as applying where a defendant draws or exhibits a deadly weapon in the presence of two persons, other than the defendant. The State argues that the Idaho Legislature

did not mean to exclude the defendant from the phrase “two (2) or more persons” in section 18-3303, because the Legislature did not write “another person” or “other person” in the statute. (*See* Resp. Br., pp.11-12.) However, former I.C. § 18-3302, enacted alongside section 18-3303, indicates otherwise. *See* 1972 Idaho Sess. Laws, ch. 336, § 1, p.911. 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).

By arguing section 18-3303 includes the defendant in the phrase “two (2) or more persons,” the State contends only one other person need be present when a defendant draws or exhibits a deadly weapon. (*See* Resp. Br., pp.11-12.) But if the Legislature had intended to cover such an act with section 18-3303, it would have used the language it used in former section 18-3302, which only required the defendant be “in the presence of one (1) or more persons.” Otherwise, following the State’s interpretation, former section 18-3302 would have criminalized a person exhibiting a deadly or dangerous weapon while completely alone. That would not be a reasonable construction of these statutes.

By covering situations where a person exhibited a deadly or dangerous weapon in the presence of one other person, former section 18-3302 meant enacting section 18-3303 with Mr. Coleman’s interpretation in mind would not, despite the State’s arguments, have given defendants “free reign to angrily exhibit a gun to another individual.” (*See* Resp. Br., p.11.) Further, that the Legislature ultimately repealed former section 18-3302 in 1990, *see* 1990 Idaho

² For the Court’s information, when the Idaho Court of Appeals in *Arroyo* held section 18-3303 was not ambiguous, it observed, “[t]he absence of the word ‘other’ before ‘persons’ does not make the statute ambiguous.” *Arroyo*, 2005 Unpublished Opinion No. 404, at 3.

Sess. Laws, ch. 256, § 1, p.732, does not suggest Mr. Coleman's interpretation of section 18-3303 would, as the State claims, "incentivize[] threatening displays of deadly weapons, just as long as they occur in private, and one-on-one." (*See* Resp. Br., p.11.) Rather, such one-on-one exhibitions of a deadly weapon could conceivably be charged as simple assault, *see* I.C. § 18-901, or aggravated assault, *see* I.C. §§ 18-901 & 18-905, or disturbing the peace, *see* I.C. § 18-6409(1).

Thus, in light of the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history, *see Olivas*, 158 Idaho at 379, if this Court decides section 18-3303 is ambiguous, the Court should interpret the statute as applying where a defendant draws or exhibits a deadly weapon in the presence of two persons, other than the defendant.

In sum, the plain language of I.C. § 18-3303 does not support an 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. Under the plain language of the statute, two persons other than the defendant must be present. Section 18-3303 is not ambiguous. Even if section 18-3303 is ambiguous, the statute should be interpreted to exclude circumstances where a person draws or exhibits a deadly weapon with only one other person present. Here, the State did not present competent evidence that Mr. Coleman exhibited the pistol in the presence of two or more persons. Thus, the evidence presented by the State was insufficient to sustain Mr. Coleman's conviction for exhibition of a deadly weapon.

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant's Brief, 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 22nd day of December, 2017.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of December, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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