2-23-2018

State v. George Appellant's Reply Brief Dckt. 45196

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45196**
Plaintiff-Appellant,	)	
	)	**Kootenai County Case No.**
v.	)	**CR-2016-21089**
	)	
SHAULA MARIE GEORGE,	)	
	)	
Defendant-Respondent.	)	
	)	

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 KOOTENAI

HONORABLE CYNTHIA K.C. MEYER
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

RUSSELL J. SPENCER
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR PLAINTIFF-APPELLANT

SALLY J. COOLEY
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712

ATTORNEY FOR DEFENDANT-RESPONDENT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE**

ARGUMENT IN REPLY

The District Court Erred When It Granted George's Motion To Dismiss Because She Is Not An Indian For Purposes Of Tribal Criminal Jurisdiction

Below, George was alleged to have possessed methamphetamine, paraphernalia, and other controlled substances while on the Coeur d'Alene Tribal Reservation. (R., pp.10-11.) Initially, those crimes were investigated by the Coeur d'Alene Tribal Police. (Id.) However, thereafter, those tribal officials determined that George was not an Indian subject to their criminal jurisdiction, due to her lack of enrollment in the Tribe, and instead referred the case to Kootenai County officials for prosecution. (R., pp.8-9.) The state then charged George with separate counts of possession of a controlled substance for Oxycodone, methamphetamine, and heroin, and with possession of paraphernalia. (R., pp.52-53.) George filed a motion to dismiss, asserting (notwithstanding the tribal officials' determination to the contrary) that she was an Indian for purposes of tribal criminal jurisdiction. (R., pp.57-61.) Disregarding the Idaho Court of Appeals' binding precedent in State v. Bonaparte, 114 Idaho 577, 759 P.2d 83 (Ct. App. 1988) (overruled on other grounds in State v. Larson, 158 Idaho 130, 344 P.3d 910 (Ct. App. 2015)), the district court determined that George was an Indian and that it, therefore, lacked jurisdiction and granted her motion. (R., pp.101-31, 134.)

In its opening brief, the state showed that (1) Bonaparte is the applicable precedent for determining George's tribal status for jurisdictional purposes and (2), under Bonaparte, George is not an Indian for purposes of tribal jurisdiction because, more than just lacking enrollment in the Coeur d'Alene Indian Tribe, she is not *eligible* to enroll as a member of the Tribe. (Appellant's brief, pp.3-7.) Like the district court below, George disregards Bonaparte, apparently asserting that Bonaparte has been superseded by the Court of Appeals' decision in Lewis v. State, 137 Idaho 882, 55 P.3d 875 (2002). (See Respondent's brief, p.8.) George is mistaken.

First, Lewis does not supersede Bonaparte. Much to the contrary, Lewis actually relies on Bonaparte. See Lewis, 137 Idaho at 885, 55 P.3d at 878. George claims that, unlike in Bonaparte, the Court of Appeals in Lewis recognized that other factors could overcome the lack of enrollment in a tribe for jurisdictional purposes. (Respondent's brief, p.8.) But the Court of Appeals never reached such a conclusion. Instead, it stated, "[*e*]*ven assuming* that Lewis's lack of enrollment in any tribe is not a bar to his claim that he is an Indian for purposes of 18 U.S.C. § 1153," he still would not qualify. Lewis, 137 Idaho at 885, 55 P.3d at 878 (emphasis added).

Moreover, the Court of Appeals' decision in Lewis is not the directly applicable precedent in this case. In Lewis, the defendant claimed that he was an Indian subject to tribal criminal jurisdiction, notwithstanding his lack of enrollment in any Indian tribe. Id. at 884-85, 55 P.3d at 877-78. The Court of Appeals specifically noted that enrollment was the most significant factor in determining whether someone was recognized as an Indian for purposes of tribal jurisdiction. Id. at 885, 55 P.3d at 878. However, it then humored Lewis by considering additional factors beyond enrollment. Id. Even after examining those factors, the Court of Appeals agreed with the district court's finding that Lewis had "no significant affiliation with" the Tribes. Id.

This conclusion—that Lewis was not an Indian for purposes of tribal criminal jurisdiction—was reached notwithstanding the fact that Lewis was likely eligible to enroll as a member of the Tribe; both Lewis's brother and sister were enrolled members of the Tribe and Lewis had an interest in real property on the reservation. See id. Were George eligible for enrollment in the Tribe, and simply had not yet enrolled, Lewis might be more applicable. But George is not even eligible to enroll in the Tribe. (See Appellant's brief, pp.5-7.) Because she is

not eligible to become a member of the Tribe, Bonaparte is the precedent directly applicable to her case, and she cannot claim Indian status for purposes of tribal criminal jurisdiction.

Like the district court, George also disregards the Court of Appeals' Bonaparte decision in favor of her personal interpretation of various decisions rendered by out-of-state and lower federal courts. (Respondent's brief, pp.8-19.) Even assuming that George has correctly interpreted these cases, Idaho courts are not bound by the decisions of out-of-state or lower federal courts—even on questions of federal law. See State v. McNeely, 162 Idaho 413, ___, 398 P.3d 146, 148 (2017) (citing Dan Wiebold Ford, Inc. v. Universal Computer Services, Inc., 142 Idaho 235, 240, 127 P.3d 138, 143 (2005)). Idaho district courts are, however, bound by the precedents of the Idaho Supreme Court and Idaho Court of Appeals. State v. Hanson, 152 Idaho 314, 325 n. 6, 271 P.3d 712, 723 n. 6 (2011) (citing State v. Guzman, 122 Idaho 981, 986, 842 P.2d 660, 665 (1992)). Idaho jurisprudence requires respect for its own precedents. The rule of *stare decisis* dictates that controlling precedent be followed "unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice." State v. Dana, 137 Idaho 6, 9, 43 P.3d 765, 768 (2002). George has not met that burden.

Finally, George ignores the one determinative factor in this case: As noted above, George was referred to the State of Idaho for prosecution by officials of the Coeur d'Alene Tribe after those officials determined that George was not an Indian for purposes of tribal criminal jurisdiction. (R., pp.8-9.) As the Idaho Supreme Court has recently declared, "[t]he Tribes have exclusive power to determine membership and eligibility for membership." Doe v. Shoshone-Bannock Tribes, 159 Idaho 741, ___, 367 P.3d 136, 142-43 (2016). Ultimately, George is asking this Court to force recognition of her claimed status as an Indian upon the Coeur d'Alene Tribe,

due to her participation in Indian culture and religion, and in activities sponsored by the Tribe. But being an *enthusiast* of the Indian Tribe and a *member* of the Indian Tribe, subject to its tribal criminal jurisdiction, are not the same thing. The Coeur d'Alene Indian Tribe, through its officials, has determined that George is not an Indian for purposes of tribal criminal jurisdiction. The State of Idaho is not competent to determine otherwise. The district court should therefore be reversed and this case remanded for further proceedings.

CONCLUSION

The state respectfully requests that this Court reverse the district court's erroneous order granting George's motion to dismiss and that it remand this case for further proceedings.

DATED this 23rd day of February, 2018.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of February, 2018, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd