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State v. Billups Respondent's Brief Dckt. 45199

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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE STATE OF IDAHO,

Plaintiff-Appellant,

vs.

RANDALL JEROME BILLUPS,

Defendant-Respondent.

NO. 45199

Ada County Case No.
CR-FE-2014-17766

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

The State has appealed from the District Court's order dismissing a Charge of Conspiracy to Traffic Heroin against Randall Jerome Billups.

STATEMENT OF THE FACT AND THE COURSE OF THE PROCEEDINGS

The state charged Randall Billups with Conspiracy to Traffic in Heroin. (#43571 R., pp. 51-53) The state alleged Billups coconspirator as being one, Alexa Chase Desire Hoffman. (R. p. 52) Randall filed a motion to suppress all physical evidence and statements made by him, which was denied by the District Court. (#43571 R., pp. 101-103, 125.) The case proceeded to trial where Randall was convicted as charged. (#43571 R., pp. 159-200.)

Billups Appealed his conviction. (#43571 R., pp. 211-215.) The Court of Appeals overturned Randall's conviction and the suppression of the tangible evidence and statements made by Randall. *State v. Billups*, No. 43571, 2017 WL 929956, at 3 (Idaho Ct. App. Mar. 9, 2017). The Court reversed Randall's conviction and held that Randall's post arrest statements and evidence obtained post arrest was illegal. *Id.*

At a post remand status conference that the State had requested to set a new trial date 5/18/17 *Transcript*, pg. 1. The case was dismissed on Randall's motion because the case was not remanded, only reversed. *Id.*

ISSUE

Did the District Court err in its dismissal of the case against Randall Jerome Billups?

ARGUMENT

The District Court Did Not Err When It Dismissed The Case

A. Introduction

The Court of Appeals reversed the conviction of Randal Billups as follows

The district court erred in denying Billups' motion to suppress because Billups' illegal arrest rendered his subsequent incriminating statements and text messages inadmissible. We therefore reverse Billups' judgment of conviction for felony conspiracy to traffic heroin. *State v. Billups*, No. 43571, 2017 WL 929956, at 3 (Idaho Ct. App. Mar. 9, 2017)

The remittitur instructed the District Court to “forthwith comply with the directive of the unpublished opinion, if any action is required.” (#43571 Remittitur). It is this statement that is how this appeal turns. There was no action required, in that no new trial was required because the case was not reversed and remanded it was simply reversed.

B. Standard of review

“Determination of the proper standard to be applied is a question of law over which we exercise free review” *State v. LePage*, 138 Idaho 803, 807 (Ct. App. 2003)

C. The District Court did not err in dismissing Randall Billups' charge because they were required to comply with the direction of the Court of Appeals.

Idaho Appellate Rule 38, in subsection a, directs that, “The filing of an opinion of the Court shall be the announcement of the opinion.” *ID R A* Rule 38. The rule further directs, in subsection c, “When the opinion filed has become final in accordance with this rule, the Clerk of the Supreme Court shall issue and file a remittitur with the district court or administrative agency appealed from and mail copies to all parties to the appeal and to the presiding district judge or chairman of the agency. The remittitur shall advise the district court or administrative agency that the opinion has become final and that the district court or administrative agency shall forthwith comply with the directive of the opinion.” *Id.*

When we look at rules and statutes we look to the intent of the drafters. In this examination of their intent we begin with the language in the statute or rule. The United States Supreme Court has held that, “Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and “the statutory scheme is coherent and consistent.” *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240, 109 S.Ct. 1026, 1030, 103 L.Ed.2d 290 (1989); see also *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–254, 112 S.Ct. 1146, 1149–1150, 117 L.Ed.2d 391 (1992). “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340–41, 117 S. Ct. 843, 846, 136 L. Ed. 2d 808 (1997).

In fact, this Court has also held that, “Our objective when interpreting a statute is “to derive the intent of the legislative body that adopted the act.” *Id.* (quoting *State v. Schulz*, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011)). Statutory interpretation begins with the statute's plain language. *Dunlap*, 155 Idaho at 361, 313 P.3d at 17. This Court considers the statute as a whole, and gives words their plain, usual, and ordinary meanings. *Id.* When the statute's language is unambiguous, the legislature's clearly expressed intent must be given effect, and we do not need to go beyond the statute's plain language to consider other rules of statutory construction. *Id.* at 361–62, 313 P.3d at 17–18.” *State v. Owens*, 158 Idaho 1, 3, 343 P.3d 30, 32 (2015)

Therefore, when the Idaho Court of Appeals “announced their opinion” with their filing. They specifically, omitted the words “reversed and remanded.” *ID R A* Rule 38. This omission is significant in that it gives no direction to the lower Court to comply with anything other than the reversal of the judgment of conviction. So, when the remittitur arrives in the lower Court, there is nothing to comply *with*, other than the direction that the Judgement of Conviction is reversed. Thereby, the District Court, rightfully, dismisses the action.

D. The Court of Appeal Was not ambiguous in its direction to the District Court

The District Court could only extrapolate the position of the Court of Appeals from the language used in the opinion. When the Court of Appeals said, “Billups' arrest was based merely on his presence in A.H.'s vehicle. Besides his presence in the car, nothing tied Billups to the package.

Billups' mere presence does not lend itself to an honest and strong presumption that Billups was guilty of any crime. An officer could not reasonably infer, based on the totality of circumstances, that Billups was involved in criminal activity.” *State v. Billups*, No. 43571, 2017 WL 929956, at 2 (Idaho Ct. App. Mar. 9, 2017). The implication is that the Court sees no cause for Randall to be arrested at all.

The Court of Appeals goes on to say, “In sum, the totality of circumstances does not demonstrate a probability or substantial chance that Billups was involved in *any* criminal activity.

Accordingly, the detective lacked probable cause to arrest Billups before transporting Billups to the police station for questioning.” *Id.*, at 3. This is an unambiguous statement that Randall should never have been arrested, or transported to the Police Station. We can ascertain from the position of the Court of Appeals that they intend to release Randall from these charges and the Conviction.

Finally, the Court of Appeals makes an unequivocal statement when they said, “The district court erred in denying Billups' motion to suppress because Billups' illegal arrest rendered his subsequent incriminating statements and text messages inadmissible. We therefore reverse Billups' judgment of conviction for felony conspiracy to traffic heroin.” *Id.* This is the sum total of the direction given to the District Court and should be followed by the District Court. Thus, the requirement to “comply forthwith” with the direction of the Court of Appeals was adhered to by the District Court.

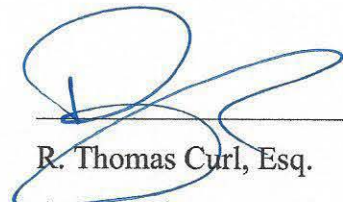
Judge Norton was accurate when she said, "I'll be honest with you. [When] I first read the Opinion, I read it as if it had been reversed and remanded. And when I went back and reread the case, I realized there was no 'and remand.' ... My understanding of reversed means reversed and without a remand back to District Court, the District Court has no jurisdiction. It is not the remittitur, it is actually the order of the Court of Appeals, and the remittitur then gives effect to the Court of Appeals order." 6/8/17 *Transcript*, pg. 2.

If the Court of Appeals had wanted the case remanded for further proceedings consistent with their decision, they would have specifically said so. They did not. Therefore, the action of the District court was appropriate in its dismissal of the case against Randall Billups.

CONCLUSION

The Respondent asks the Court to uphold the Court of Appeals decision and the action of the District Court in dismissing the case against Randall.

DATED this 14th Day of December

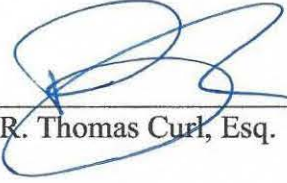


R. Thomas Curl, Esq.
Attorney for Respondent

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 15th day of December, 2017, I caused to be served a true and correct copy of the foregoing BRIEF OF RESPONDENT by placing copies in the United States mail, and addressed to the following:

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