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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)	
	)	<b>No. 45449</b>
<b>Plaintiff-Respondent,</b>	)	
	)	<b>Bingham County Case No.</b>
<b>v.</b>	)	<b>CR-2016-4577</b>
	)	
<b>DILLON GRANT GIBSON,</b>	)	
	)	
<b>Defendant,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>JUDY LUIS, Individually,</b>	)	
	)	
<b>Surety/Real Party in Interest-</b>	)	
<b>Appellant.</b>	)	
	)	

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**BRIEF OF RESPONDENT**

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**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BINGHAM**

---

**HONORABLE BRUCE L. PICKETT**  
**District Judge**

---

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## STATEMENT OF THE CASE

### Nature Of The Case

Judy Luis posted bond for her son, the defendant Dillon Grant Gibson. She challenges the district court's ruling applying the cash portion of the bond to Dillon's fines, fees and restitution.

### Statement Of The Facts And Course Of The Proceedings

The state filed a complaint against Gibson for vehicular manslaughter, alleging he killed William K. Hong while driving under the influence; for leaving the scene of an injury accident; and for two related misdemeanors. (R., pp. 12-13, 69-71.) The magistrate set bond at \$500,000. (R., pp. 14, 37.) Gibson twice asked that the bond be reduced prior to the preliminary hearing, but the court denied the requests. (R., pp. 57, 67.)

After a preliminary hearing the magistrate bound Gibson over on the charges. (R., pp. 126-32, 145-47.) The magistrate also reduced the bond to \$240,000. (R., p. 132.) Luis posted Gibson's bond by depositing a \$50,000 cash bond and a \$190,000 property bond. (R., pp. 115-22.) The magistrate thereupon ordered Gibson released, with terms. (R., pp. 123-25.)

The state filed an information charging Gibson with vehicular manslaughter, leaving the scene of an injury accident, and the two related misdemeanors. (R., pp. 149-50.) Gibson entered a plea agreement with the state, pursuant to which he pled guilty to vehicular manslaughter and agreed to pay restitution, and the state dismissed the other charges. (R., pp. 168-76, 181-82.)

A few weeks later the state moved to revoke Gibson's release for violating the terms of release by using drugs and alcohol. (R., pp. 184-88.) The district court granted the

motion and issued a bench warrant. (R., pp. 189-91.) Gibson was brought into custody and appeared before a magistrate, who ruled that the bond not be forfeited, and that Gibson be remanded to the custody of the sheriff pending the sentencing hearing. (R., pp. 192-93.)

The case proceeded to sentencing, and the court imposed a sentence of 15 years with three years determinate and ordered court costs of \$275.50 and a fine of \$1000. (R., pp. 217-22.) Gibson and the state stipulated to a restitution amount of \$300,000, which the court later ordered. (R., pp. 262, 282.) The same day the parties filed the stipulation for restitution, Luis moved to release the cash bond. (R., p. 260.) The district court denied the motion. (R., p. 278.) Luis filed a notice of appearance as a real party in interest and appealed. (R., pp. 280-81, 284-89.)

## ISSUES

Luis asserts nine issues on appeal, all challenges to the district court's order denying release of the cash bond. (Appellant's brief, pp. 10-11.)

The state rephrases the issues as:

1. Has Luis failed to show error in the district court's order that the cash bond not be released but instead applied to the court costs, fine and restitution?
2. Has Luis failed to show she is entitled to recover attorney fees for this appeal?



## ARGUMENT

### I.

#### Luis Has Failed To Show Error In The District Court's Order That The Cash Bond Be Applied To The Court Costs, Fine And Restitution

##### A. Introduction

In support of the motion for release of the cash bond, Luis argued that the court erred by not following I.C. § 19-2919(1) (“Revocation of Bail—Violation of Conditions of Release”) and that I.C. § 19-2908 (“Cash Deposit Applied to Payments of Fines, Fees, Costs, and Restitution”) did not apply. (R., pp. 268-74.) Specifically, Luis first contended that, after Gibson’s arrest on the bench warrant, the court did not comply with I.C. § 19-2919(1), alleging it did not hold a bond revocation hearing and revoke the bond. (R., pp. 271-73.) Second, Luis contended that because the bond should have been revoked it was not subject to being applied to the fine, costs and restitution pursuant to I.C. § 19-2908. (R., p. 273.)

The district court rejected Luis’ arguments. (Tr., p. 48, L. 3 – p. 50, L. 23.<sup>1</sup>) The district court found that after Gibson was arrested on the bench warrant for failure to comply with the conditions of release, he was brought before a magistrate who remanded him to the custody of the sheriff, ordered that the bonds not be revoked, and imposed a condition of posting another \$100,000 as a condition of further release. (Tr., p. 48, L. 18 – p. 49, L. 15.) The district court then found that I.C. § 19-2919(1) had been complied with and that I.C. § 19-2908 allowed the court to apply the cash bond to the costs, fine and restitution. (Tr., p. 49, L. 16 – p. 50, L. 23.)

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<sup>1</sup> All citations to the “Tr.” are to the transcript of the August 8, 2017, hearing on the motion for release of the cash bond. Line numbers are added for the Court’s convenience.

On appeal Luis asserts the lower courts erred by not including certain wording in the bench warrant (Appellant’s brief, pp. 15-17); by requiring an additional \$100,000 bond for release instead of revoking and ordering a new \$340,000 bond (Appellant’s brief, pp. 17-22); by not “exonerating” the bond under I.C. § 19-2912 (Appellant’s brief, pp. 23-24); by not revoking and exonerating bail pursuant to I.C. §§ 19-2919(1), 19-2922(6), and I.C.R. 46(i)(2) (Appellant’s brief, pp. 25-26); by concluding that the appearance before the magistrate on the bench warrant was a bail revocation hearing (Appellant’s brief, pp. 26-29); by not preparing and filing an order revoking bail under I.C. §§ 19-2919(2), 19-2921, and I.C.R. 46(j) (Appellant’s brief, pp. 29-33); and by denying her motion for release of the cash bond (Appellant’s brief, pp. 33-37). Most of these arguments are based on theories not presented to the court below, and are thus not preserved for appellate review. Review of the only preserved issue, whether Luis was entitled to recover the cash bond under I.C. § 19-2919(1) or whether it could be applied to the fine, costs and restitution under I.C. § 19-2908, shows no error by the district court.

B. Luis Has Not Preserved Issues Beyond The Application Of I.C. §§ 19-2919(1) And 19-2908

“Issues not raised below will not be considered by this court on appeal, and the parties will be held to the theory upon which the case was presented to the lower court.” State v. Garcia-Rodriguez, 162 Idaho 271, 275, 396 P.3d 700, 704 (2017) (citations omitted). Thus, even where application of the correct legal standard would show error by the district court, if that standard was not argued to the district court the appellate court will not reverse. See Id. at 275-76, 396 P.3d at 704-05 (rejecting a “wrong result-wrong theory” approach and refusing to reverse the district court by application of the correct legal

theory). This is because it is “manifestly unfair” to ask the appellate court to decide a question the party failed to present to the trial court. Id. at 276, 396 P.3d at 705 (quoting Smith v. Sterling, 1 Idaho 128, 131 (1867)).

Below, Luis argued that I.C. § 19-2908, which allows cash bonds to be applied to fines, fees and restitution, did not apply because the cash bond should instead have been previously revoked under I.C. § 19-2919(1) when Gibson was arrested on the bench warrant. (R., pp. 268-74.) On appeal, Luis tries to raise several new theories and claims of error. (See Appellant’s brief, pp. 12-37.) Specifically, on appeal Luis tries to invoke I.C. §§ 19-2912, 19-2921, and 19-2922, and I.C.R. 46 (Appellant’s brief, p. v) to support theories never raised or presented to the district court (See R.; Tr.). Even if the new theories have merit, it would be “manifestly unfair” to consider them and to address theories and issues not presented to the district court. The new theories based on these statutes and the rule, raised for the first time on appeal, cannot be considered.

C. Standard Of Review

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

D. The District Court Properly Concluded I.C. § 19-2908 Required Application Of The Cash Bond On Deposit To Gibson’s Fine, Fees And Restitution

“When interpreting statutes we begin with the literal words of the statute, which are the best guide to determining legislative intent.” Leavitt v. Craven, 154 Idaho 661, 667, 302 P.3d 1, 7 (2012) (internal quotes, brackets and citation omitted). If the plain language of the statute is unambiguous, “legislative history and other extrinsic evidence should not

be consulted for the purpose of altering the clearly expressed intent of the legislature.” Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011). Application of this standard shows the district court did not err by concluding that I.C. § 19-2908 required that the cash bond posted by Luis be applied to the fine, costs and restitution ordered by the judgment.

The court clerk “shall” apply the money of a cash bond “in satisfaction of fines, fees, costs and restitution imposed in the case” if “bail has been posted in cash deposit and remains on deposit at the time of the judgment.” I.C. § 19-2908. Only after satisfaction of such fines, fees and restitution in the case (and any other case involving the Defendant) is the “surplus, if any” to be returned to the “person posting the cash deposit.” *Id.*

The plain language of this statute leads to the conclusion reached by the district court. It is undisputed that Luis posted a cash bond which remained on deposit at the time of the judgment. Because the conditions for application of the statute were met, and because it made application of the cash to the fines, costs and restitution mandatory, the cash bond had to be applied against the fine, costs and restitution ordered in the judgment.

Although it is indisputable that the conditions requiring application of the cash bond to the judgment were met in this case,<sup>2</sup> Luis contends that the district court erred in its application of I.C. § 19-2919(1), which error in turn allows for rescission and, ultimately, exoneration of the cash bond. (Appellant’s brief, p. 35.) Luis’ preserved argument that compliance with I.C. § 19-2919(1) is a condition precedent to the application of a cash bond to a judgment under I.C. § 19-2908 is without merit.

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<sup>2</sup> Luis acknowledges that if Gibson had not violated the terms of his release the cash bond she posted would have been properly applied to the judgment. (Appellant’s brief, p. 35.)

First, as set forth above, the only factual predicate for applying a cash bond to a judgment, which was met in this case, is that it “remains on deposit at the time of the judgment.” I.C. § 19-2908. Luis acknowledged that the conditions of I.C. § 19-2908 were met because the bond remained on deposit with the court when judgment was entered, but argued that the bond “should have been revoked” pursuant to I.C. § 19-2919(1) prior to entry of the judgment. (R., p. 273.) However, nothing in the language of I.C. §§ 19-2908 or 19-2919(1) allows a party to seek the retroactive revocation of the bond. Because I.C. § 19-2908 required application of a bond on deposit with the district court to the judgment, the district court did not err by ordering the bond on deposit be applied to the judgment.

Second, even if the bond must be deemed “revoked” under I.C. § 19-2919(1), such would not affect the mandate under I.C. § 19-2908 that a cash bond *on deposit* with the court be applied to the judgment. Idaho Code § 19-2919(1) provides, in its entirety:

Upon its own motion or upon a verified petition alleging that the defendant willfully violated a condition of release, the court may issue a bench warrant directing that the defendant be arrested and brought before the court for a bail revocation hearing, or the court may order the defendant to appear before the court at a time certain. At the bail revocation hearing, if the court finds that the defendant willfully violated a condition of release and the defendant is present before the court, the court may revoke the bail and remand the defendant to the custody of the sheriff. At any time thereafter, the court may reset bail in the same or a new amount and impose conditions of release. If the defendant fails to appear at the bail revocation hearing, the court shall issue a bench warrant for the defendant’s arrest.

I.C. § 19-2919(1). The language relevant to this appeal appears to be: “At the bail revocation hearing ... the court may revoke the bail and remand the defendant to the custody of the sheriff.” *Id.* “‘Revocation of bail’ means an order by the court revoking the defendant’s release on bail.” I.C. § 19-2905(16). Nothing in this plain language addresses whether a cash bond remains on deposit.

In this case Gibson’s bail was revoked, because he was remanded to the custody of the sheriff. (R., p. 192.) However, the court ordered that the bond not be forfeited. (Id.) In addition, the court did not order that the bond be exonerated. (Id.) Because the cash bond was neither forfeited nor exonerated, it was still “deposited” at the time judgment was entered, and therefore within the scope of I.C. § 19-2908. Because nothing in I.C. § 19-2919(1) says anything about forfeiture or exoneration, it is ultimately irrelevant to the question of what should happen with the posted bond when bail is revoked.

As noted above, most of Luis’ arguments on appeal are based on new theories not presented below, and are therefore not preserved. The theory she presented to the district court is without merit. The cash bond was on deposit with the court and therefore applicable to the fine, costs and restitution in the judgment. I.C. § 19-2908. Although Gibson’s bail was revoked under I.C. § 19-2919(1), that statute does not have any provision about forfeiting or exonerating the bond, and was therefore irrelevant to application of I.C. § 19-2908. Because the district court properly rejected the theory presented by Luis below, it must be affirmed.

## II.

### Luis Has Failed To Show She Is Entitled To Recover Attorneys’ Fees In This Criminal Appeal

Luis’ argument for attorneys’ fees is frivolous. She seeks fees under I.C. § 12-117(1). (Appellant’s brief, p. 37.<sup>3</sup>) That statute applies to “[1] any administrative proceeding or civil judicial proceeding [2] involving as adverse parties a state agency or

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<sup>3</sup> She also cites I.A.R. 35(a)(5) and 41(a). (Appellant’s brief, p. 37.) Those rules do not grant the right to attorneys’ fees, but set forth the procedure for raising a claim of attorney’s fees in the briefing on appeal.

political subdivision.” I.C. § 12-117(1). This case does not meet either of those requirements.

First, this is a criminal case, not an “administrative proceeding or civil judicial proceeding.” It started with a criminal complaint. (R., pp. 12-13, 69-71.) Charges were pursued by a prosecuting attorney’s information, and concluded with a guilty plea to one charge and dismissal of others. (R., pp. 149-50, 168-76, 181-82.) The case ended with a criminal judgment of conviction. (R., pp. 220-22.) The Idaho Criminal Rules applied throughout. I.C.R. 1. Luis makes no argument that this case fits the statutory language of I.C. § 12-117(1). (See Appellant’s brief, pp. 37-39.) Her request for attorneys’ fees is frivolous.

Second, this case does not involve a “state agency or political subdivision.” I.C. § 12-117(1). A “political subdivision” for purposes of the statute is “a city, a county or any taxing district.” I.C. § 12-117(4)(b). A “state agency” is “any agency as defined in section 67-5201, Idaho Code.” I.C. § 12-117(4)(c).

“Agency” means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

I.C. § 67-5201(2). Again, Luis makes no argument trying to establish that a political subdivision or state agency is a party to this case. The closest she gets is pointing out that the Bingham County Prosecutor prosecuted this case below. (Appellant’s brief, pp. 37-39.) Idaho Code § 12-117(1) does not apply to this case, because no “state agency or political subdivision” is a party to it.

Luis has failed to show that I.C. § 12-117(1) applies to this case. Because there is no plausible argument that it does, Luis' claim to attorneys' fees is frivolous.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order applying the cash bond to the fine, costs and restitution of the judgment and deny the request for attorneys' fees.

DATED this 14th day of March, 2018.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 14th day of March, 2018, served two true and correct paper copies of the foregoing BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

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KKJ/dd