4-2-2018

State v. Gibson Appellant's Reply Brief Dckt. 45449

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. DILLON GRANT GIBSON, Defendant, and JUDY LUIS, individually, Surety/Real Party in Interest-Appellant.	Supreme Court Case No. 45449

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the
Seventh Judicial District for Bingham County
Honorable Bruce L. Pickett, District Court presiding

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INTRODUCTION

Surety/real party in interest/appellant Judy Luis (hereinafter "Appellant"), hereby submits her Reply Brief in response to the Brief of Respondent (hereinafter "Respondent's Brief) filed March 14, 2018, by respondent State of Idaho (hereinafter "Respondent"). Based on the arguments made in Appellant's Brief and below, errors were committed by the District Court and the Magistrate Court in mid-December 2016.

Had the applicable statutes and rules been properly followed by the District Court and Magistrate Court, the subject bond monies posted by Appellant on behalf of Dillon Grant Gibson, specifically the $50,000.00 cash bond amount, would have been revoked, exonerated, and returned to Appellant on or around December 14, 2016, after Mr. Gibson was remanded to the custody of the Bingham County Sheriff's Office for violation of the conditions of his release on bail. The subject bond monies, specifically the $50,000.00 cash bond amount at issue in this appeal, would have never "remain[ed]on deposit at the time of the judgment" (IDAHO CODE § 19-2908); the January 12, 2017, Judgment of Conviction – Order of Commitment for Mr. Gibson (R, pp. 220-223). IDAHO CODE § 19-2908 would not have been discussed as applicable in this matter because there would have been no cash bond monies with Bingham County[1] to begin paying the fees, fines, costs, and restitution ordered against Mr. Gibson.

Appellant respectfully requests that this Court reverse the District Court's August 9, 2017, Order Denying Defendant's Motion for Release of Bond Money and remand this matter back to

1 It is unsure how the bond monies (whether it be cash bond, property bond, or surety bond) are held by Bingham County once they are paid on behalf of a Defendant. For ease of reference the term "Bingham County" will be used in this Reply Brief to refer to the holder of the bond monies at issue in this matter.

the District Court with instructions: 1) to revoke and exonerate the $50,000.00 cash bond amount posted by Appellant pursuant to IDAHO CODE §§ 19-2912, 19-2919(1)-(2), 19-2922(6), and I.C.R. 46(i) (2016 version); and 2) to return said monies back to Appellant as should have been done on or about December 14, 2016. Appellant also respectfully requests that this Court award her reasonable attorney's fees and costs related to this appeal.

ARGUMENT

For the convenience of the Court, the arguments in this Reply Brief will be made in the same order as made in Respondent's Brief.

I. Errors by the Magistrate Court and District Court Have Been Shown by Appellant and the Cash Bond Monies Should Be Revoked and Exonerated, Not Applied to the Court Costs, Fines, and Restitution.

A. Introduction.

In the second paragraph of p. 4 in Respondent's Brief, Respondent incorrectly recites facts that the Magistrate Court "remanded [Mr. Gibson] 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.)".

First, while the Magistrate Court did remand Mr. Gibson to the custody of the Bingham County Sheriff's Office on December 14, 2016, (R, p. 192), the Magistrate Court did not "order[] that the bonds not be revoked". Respondent's Brief, p. 4. The Magistrate Court instead advised Mr. Gibson that "it (the $100,000.00 bond amount added by the District Court through Bench Warrant 1, R, p. 191) does not forfeit" the $240,000.00 bond already posted by Appellant. *See* Tr, p. 3 (parenthesis added); *see also* R, p. 192. The term "forfeit" is an incorrect term to use

when it comes to how bond monies are treated and processed when a Defendant violates the conditions of his release on bail.

"'Forfeiture' means an order of the court reciting that the defendant failed to appear as ordered and stating that bail is forfeited." IDAHO CODE § 19-2905(9). At no time in this matter did Mr. Gibson fail to appear as ordered for any hearing or other proceeding which would "forfeit" the bond monies posted by Appellant. Further, "forfeiture" of the bond monies for failing to appear is governed by IDAHO CODE § 19-2915; which statute is not at issue in this matter because Mr. Gibson violated the conditions of his release on bail which is governed by IDAHO CODE § 19-2919.

As argued in Appellant's Brief, the Magistrate Court should have ordered that the bond monies be revoked when it remanded Mr. Gibson to the custody of the Bingham County Sheriff's Office after he violated the conditions of his release on bail. For the Magistrate Court to not revoke the bond monies under § 19-2919(1) was error. *See* Appellant's Brief, Part E, pp. 25-26.

Second, the Magistrate Court did not "impose[] a condition of posting another $100,000 as a condition of further release." Respondent's Brief, p. 4. The Magistrate Court instead advised Mr. Gibson that the bond amount of $100,000.00 was "in addition to the previously posed bond". *See* R, p. 192; *see also* Tr, p. 3. This $100,000.00 increase of Mr. Gibson's bail was set by the District Court when issuing the Bench Warrant. *See* R, p. 191 (Bench Warrant 1); *see also* Statements of Fact 12, 13, and 15 in Appellant's Brief, pp. 5-6.

As argued in Appellant's Brief at Part D, pp. 23-24, it was also error to not exonerate the already posted bond monies when the District Court increased the bail amount from $240,000.00

to $340,000.00. Bingham County, whether through the District Court Clerk's Office or however the bond monies are held once paid on behalf of a Defendant, cannot continue to hold onto what now becomes a partial payment of the bail amount waiting for the remainder to be paid (*see Id.*, p. 24) "as a condition of further release" as asserted by Respondent's Brief at p. 4. Respondent cites no statute or case law where partial bail payments are held by the county "as a condition of further release" when bail is increased by the Court; especially when the specific statute, IDAHO CODE § 19-2912, requires exoneration.

The posted bail of $240,000.00 should have been revoked, exonerated, and returned to Appellant pursuant to the applicable statutes of the Idaho Bail Act, IDAHO CODE §§ 19-2901 *et seq.*, and I.C.R. 46 (i) and (j) (2016 version) while Mr. Gibson remained in custody until he came up with the increased bail amount of $340,000.00. This was not done and this was error as asserted in Appellant's Brief, p. 24.

B. Appellant Has Not Argued Issues Beyond the Application of IDAHO CODE §§ 19-2919(1) and 19-2908.

1. No New Theories Have Been Raised on Appeal; Only an Explanation of the Required Processes That Were Not Completed Under the Idaho Bail Act Which Started with IDAHO CODE § 19-2919(1).

Respondent's main argument is that the arguments in Appellant's Brief:

> 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.

Respondent's Brief, p. 5; *see also* all arguments in Part B at pp. 5-6.

It is well settled law in Idaho that:

> "This Court will not consider issues raised for the first time on appeal." "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. ("We have held generally that this court will not review issues not presented in the trial court, and that parties will be held to the theory on which the cause was tried.").
>
> * * *
>
> We have long held that "[a]ppellate court review is limited to the evidence, theories and arguments that were presented below."

State v. Garcia-Rodriguez, ___ Idaho ___, ___, 396 P.3d 700, 704 (2017) (internal citations omitted).

In this matter Appellant is not raising any new theories or issues for the first time on appeal. All theories, issues, and arguments are based on what was argued before the District Court on the Motion for Release of Bond Money: that IDAHO CODE § 19-2919(1) was not followed and that the cash bond amount of $50,000.00 still held by Bingham County should be revoked, exonerated, and returned to Appellant as should have been done on or about December 14, 2016.

The Idaho Bail Act, enacted in 2009, contains the applicable statutes regarding the setting of bail and what to do in various circumstances when the bail monies/sureties become at issue—including when a Defendant violates the conditions of his release while out on bail as is the case in this matter. No one statute within the Idaho Bail Act contains all of the requirements of what a Court may or must do regarding bail. The statutes within the Idaho Bail Act must be read together to understand what must be done in a given circumstance regarding the bail monies.

I.C.R. 46 (2016 version in this matter) also sets out the rules for a Court to follow as it deals with matters regarding bail.

In this matter, it is argued that the District Court and Magistrate Court committed errors under the Idaho Bail Act when Mr. Gibson admitted to violating the conditions of his release on bail. The requirements of what a Court may and must do when it is alleged that a Defendant has violated the conditions of his release on bail starts with IDAHO CODE § 19-2919 "Revocation of bail — Violation of conditions of release." All arguments made by Appellant as to the errors committed by the District Court and Magistrate Court start with § 19-2919(1), which is where a Court should start when a Defendant is alleged to have violated the conditions of his release on bail.

IDAHO CODE § 19-2919(1) starts a Court on the pathway of how to deal with the Defendant and the bond monies/sureties posted for him. Other statutes of the Idaho Bail Act and I.C.R. 46 (specifically subsections (i) and (j) (2016 version in this matter)), guide a Court as it makes its decisions under § 19-2919(1) so that all actions and processes are properly done with regard to the bond monies/sureties posted for the Defendant. The requirements contained within the other applicable statutes of the Idaho Bail Act along with I.C.R. 46 (i) and (j) must be followed or the process is not completed; which is what happened in this matter.

Appellant's Brief explains the errors made by the District Court and Magistrate Court under § 19-2919(1), which started the ball rolling to the other errors by these Courts by not following the requirements found in other statutes of the Idaho Bail Act, specifically §§ 19-

2912, 19-2919(2), 19-2921, and 19-2922(6). These arguments are not refuted by Respondent anywhere in Respondent's Brief.

a. Examples of Other Statutes Needed to Complete the Process Begun by § 19-2919(1).

In Part D of Appellant's Brief, pp. 23-24, Appellant argues that it was error for the District Court to not exonerate the previous bail amount of $240,000.00 when increasing the bail amount by an additional $100,000.00 in Bench Warrant 1. § 19-2919(1) states that "At any time thereafter (the bail revocation hearing), the court may reset bail in the same or a new amount and impose conditions of release." Assuming, *arguendo*, it is found under § 19-2919(1) that Bench Warrant 1 properly increased Mr. Gibson's bail amount and the December 13, 2016, hearing was in fact a bail revocation hearing—and Appellant continues to assert that neither of these are true but rather errors under § 19-2919(1)—the assessment and actions of the Court does not stop there because § 19-2912—not § 19-2919(1)—directs what happens to the previously posted bail when bail is increased by the Court (emphasis added):

> After a defendant has been admitted to bail, the court in which the charge is pending may, upon good cause shown, increase or reduce the amount of bail. If the amount is increased, the court shall order the defendant to be committed to the actual custody of the sheriff until bail is posted in the increased amount. *Any previous bail posted in the case shall be exonerated by the court.* If the defendant applies for a reduction of the amount of bail, notice of the application shall be served upon the attorney for the state and the person posting bail within five (5) business days.

"Any previous bail posted in the case shall be exonerated by the court." § 19-2912 Even though it is a different statute discussing bail, it now becomes a requirement of what the Court must do as a result of what it did by increasing the bail amount under § 19-2919(1).

The same happens with § 19-2922, "The court shall order the bail exonerated in the following circumstances: . . . (6) The court has revoked bail and has ordered that the defendant be recommitted." Respondent admits that "[i]n this case Gibson's bail was revoked, because he was remanded to the custody of the sheriff." Respondent's Brief, p. 9. Respondent, holding to the position that only § 19-2919(1) is preserved on appeal, therefore admits that Mr. Gibson's bail was revoked and he was remanded to custody pursuant to § 19-2919(1).

However, revoking a Defendant's bail and remanding him to custody of the sheriff under § 19-2919(1) is not the end of the process. Other required processes and actions must take place and those are found in other statutes of the Idaho Bail Act. In this case, § 19-2922(6), which requires that bail shall be exonerated when "[t]he court has revoked bail and has ordered that the defendant be recommitted."

The above examples are not new theories on appeal that was not raised below, but rather explanations that § 19-2919(1) now has additional requirements found in other statutes that must be followed based on what the Court did through § 19-2919(1). The path of action was started by § 19-2919(1), requires additional actions found in other Idaho Bail Act statutes in order to properly complete the process after a Defendant has been found to have willfully violated the conditions of his release on bail.

The same analysis can be made for the other statutes and Rules discussed in Appellant's Brief that Respondent's Brief, pp. 5-6, asserts are "new theories" on appeal that were not raised before the District Court on the Motion for Release of Bond Money.

b. Conclusion to Subpart 1.

A Court cannot stop part way on the path under the Idaho Bail Act. It must follow through to the end regardless of what statute under the Act requires action. Appellant has not raised any new theories or claims of error on appeal as asserted by Respondent in its Brief at pp. 5-6. Appellant's Brief simply shows that the asserted errors by the District Court and Magistrate Court made under IDAHO CODE § 19-2919(1) led to further errors by failing to take actions that were required by other statutes in the Idaho Bail Act which complete the process regarding the bond monies posted on behalf of Mr. Gibson.

Respondent's arguments in Part B fail and the Court should consider all of the arguments and analysis found within Appellant's Brief.

2. The Errors Under IDAHO CODE § 19-2919(1) Still Require Reversal and Remand to the District Court.

In the event it is held by this Court that only the provisions IDAHO CODE § 19-2919(1) are preserved on appeal because the other statutes and required actions cited in Appellant's Brief were not raised before the District Court in the Motion for Release of Bond Money, errors within the provisions of § 19-2919(1) still occurred that require reversal of the District Court's August 9, 2017, Order Denying Defendant's Motion for Release of Bond Money and remanding this matter back to the District Court with instructions to revoke, exonerate, and return the $50,000.00 cash bond amount posted by Appellant.

IDAHO CODE § 19-2919(1) states:

> 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.

a. The First Sentence of IDAHO CODE § 19-2919(1).

Regarding the first sentence of § 19-2919(1):

> 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.

The District Court did not file its own motion "alleging that the defendant willfully violated a condition of release"; so that part need not be considered. A "verified petition", however, was filed by the Bingham County Prosecuting Attorney on December 13, 2016, in the form of the Motion to Revoke Release and the accompanying Affidavit of Danyett Cloward. R, pp. 184-188. However, there is nothing within either the Motion or Affidavit "alleging that the defendant willfully violated a condition of release". There is only a statement that "[Mr. Gibson] signed an admit form on December 12, 2016 admitting to drinking alcohol on December 7, 2016 and admitted to using methamphetamine on December 8, 2016." R, p. 187.

After receiving the "verified petition", the District 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." § 19-2919(1). In this matter, the District Court issued a Bench Warrant, but it did not contain language that Mr. Gibson "be arrested and brought before the court for a bail revocation hearing." The District Court did not issue an order that Mr. Gibson "appear before the court at a time certain." *See* Part B of Appellant's Brief, pp. 15-17; *see also* R, pp. 191, 193.

From the facts of this matter, Mr. Gibson was arrested and brought before the Magistrate Court as directed by the District Court in the Bench Warrant. There was no direction to the Magistrate Court that it hold a bail revocation hearing pursuant to § 19-2919(1) because the Bench Warrant failed to include such language.

The requirements of the first sentence of § 19-2919(1) were not met by the District Court after receiving the "verified petition" because the Bench Warrant did not direct that Mr. Gibson be brought before the Court for a bail revocation hearing as required by this section. This was error by the District Court. Respondent did not refute or argue against this position in Respondent's Brief.

b. The Second Sentence of IDAHO CODE § 19-2919(1).

Regarding the second sentence of § 19-2919(1), "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." As argued in Part F of Appellant's Brief, pp. 26-29, what occurred before the Magistrate Court on December 14, 2016, was not a bail revocation hearing pursuant to § 19-2919(1).

It was hardly a "hearing" at all—it was more the Magistrate Court just giving information to Mr. Gibson. All that was discussed between the Magistrate Court and Mr. Gibson was the following:

> a. that the underlying bond amount of $240,000.00 was not being forfeited;
> b. that the $100,000.00 bond amount on the Bench Warrant was "on top of that" bond amount of $240,000.00 already posted by Appellant on Mr. Gibson's behalf;
> c. that "there's a $100,000 bond in - - on top of the other", again, referring the $240,000.00 bond already posted on his behalf; and
> d. "there's a new bond."

See Tr, pp. 3-4; *see also* R, p. 192. Nothing about the Bench Warrant other than confirming that Mr. Gibson had seen it. Tr, p. 4. Nothing about alleged violations of the conditions of his release on bail. Nothing by the Magistrate Court finding Mr. Gibson had "willfully violated a condition of release" pursuant to § 19-2919(1).

Even though the Magistrate Court did not find that Mr. Gibson had "willfully violated a condition of release" as required by the second sentence of § 19-2919(1) on December 14, 2016, it still remanded Mr. Gibson to the custody of the Bingham County Sheriff's Office where he stayed until his January 10, 2017, sentencing hearing before the District Court. Appellant contends that by remanding Mr. Gibson to custody of the sheriff mandates revocation of bail under § 19-2919(1).

Either bail is revoked ***and*** the Defendant is remanded to custody of the sheriff, or bail is not revoked ***and*** the Defendant is released from custody on the original bail amount already posted. There are no other options under the second sentence of § 19-2919(1) if a Defendant

is found to have "willfully violated a condition of release." *See* Part C of Appellant's Brief, pp. 18-19.

The requirements of the second sentence of § 19-2919(1) were not met by the Magistrate Court at the December 14, 2016, "hearing" when it met with Mr. Gibson. No bail revocation hearing was held. No finding by the Magistrate Court of a willful violation by Mr. Gibson of a condition of his release. No revocation of bail—although Respondent's Brief at p. 9 asserts that Mr. Gibson's bail was revoked. The only provision of this sentence that was followed by the Magistrate Court was that Mr. Gibson was remanded to the custody of the Bingham County Sheriff's Office.

Respondent does not refute or argue against this position in Respondent's Brief.

c. The Third and Fourth Sentences of IDAHO CODE § 19-2919(1).

Regarding the third sentence of § 19-2919(1) (parenthesis added), "At any time thereafter (after the bail revocation hearing), the court may reset bail in the same or a new amount and impose conditions of release." Here, the District Court reset bail to $340,000.00 *before* the alleged bail revocation hearing by inserting it in the December 13, 2016, Bench Warrant 1. *See* R, p. 191. The Magistrate Court also did not reset bail on or after the December 14, 2016, "hearing". It only advised Mr. Gibson that the District Court had increased the bail amount by $100,000.00 "on top of" the already posted $240,000.00. *See* Tr, pp. 3-4, R, p. 192.

The provisions of the third sentence of § 19-2919(1) are not met because the bail was not properly reset by the District Court or the Magistrate Court. Respondent does not refute or argue against this position in Respondent's Brief.

The fourth sentence of § 19-2919(1) is not applicable to this matter because Mr. Gibson did not fail to appear at the bail revocation hearing. He was already in custody of the Bingham County Sheriff's Office at the time of the December 14, 2016, "hearing" before the Magistrate Court—which Appellant continues to argue was not a bail revocation hearing required under § 19-2919(1).

d. Conclusion to Subpart 2.

All of the above shows several errors by the District Court and Magistrate Court in December 2016, regarding the provisions and requirements found in IDAHO CODE § 19-2919(1). These errors are explained in more detail in Appellant's Brief. None of these errors were refuted by Respondent in Respondent's Brief or argued to show why the District Court or Magistrate Court did not err.

Because of these errors this Court should reverse the District Court's August 9, 2017, Order Denying Defendant's Motion for Release of Bond Money and remand this matter back to the District Court with instructions: 1) to revoke and exonerate the $50,000.00 cash bond amount posted by Appellant pursuant to IDAHO CODE §§ 19-2912, 19-2919(1)-(2), 19-2922(6), and I.C.R. 46(i) (2016 version); and 2) to return said monies back to Appellant as should have been done on or about December 14, 2016.

3. What Happens Next?

The errors by the District Court and Magistrate Court under IDAHO CODE § 19-2919(1) leave the matter unresolved regarding the posted bond monies. There are no actions or processes within § 19-2919(1) regarding what to do with the bond monies posted on Mr. Gibson's behalf after he was remanded to custody of the sheriff other than revoking the bail. The process regarding bail is not complete.

The questions which must be asked are, "what happens next?" and "what does a Court do regarding the bail posted on behalf of a Defendant after the provisions and processes of § 19-2919(1) have taken place?" If we stay only within the language of § 19-2919(1), these questions cannot be answered and we are left with an unresolved situation.

This is where the other statutes of the Idaho Bail Act and the applicable parts of I.C.R. 46 (2016 version) come into play—not as "new theories" or arguments not raised to the District Court as asserted by Respondent, but to explain what has to happen to complete the process regarding bail when decisions have been made under § 19-2919(1). We have to look at these other statutes in the Idaho Bail Act and the applicable Rules to see how to finish things because § 19-2919(1) does not provide the manner in which to complete the process regarding bail.

a. Another Example of Other Statutes Needed to Complete the Process Begun by § 19-2919(1).

Respondent's Brief at p. 9 states that "Gibson's bail was revoked, because he was remanded to the custody of the sheriff." Since the term "revocation of bail" is not defined in § 19-2919(1), we must look elsewhere in the Idaho Bail Act for a definition to know what that

term means and what a Court must do. This is found at IDAHO CODE § 19-2905(16), "'Revocation of bail' means an order by the court revoking the defendant's release on bail."

If we follow Respondent's assertion that Mr. Gibson's bail was revoked "because he was remanded to the custody of the sheriff" (Respondent's Brief, p. 9), and if the definition of "revocation of bail" found at § 19-2905(16) includes "an order by the court revoking the defendant's release on bail", then where is this required Order Revoking Bail by either the Magistrate Court or District Court in this matter? There is none found in the Record. Neither the Bench Warrant (R, pp. 191, 193) nor the December 14, 2016, Minute Entry (R, p. 192) qualify as an Order Revoking Bail. It is obvious we need more than what § 19-2919(1) provides to complete this process and properly deal with the bond monies posted on behalf of Mr. Gibson.

The requirements for such an Order Revoking Bail are found in § 19-2919(2) (emphasis added), "*In its order revoking bail*, the court shall recite generally the facts upon which revocation of bail is founded *and order that the defendant be recommitted* to the custody of the sheriff of the county where the action is pending to be detained until legally released." There is no Order Revoking Bail on or after December 14, 2016, when, as Respondent asserts, Mr. Gibson's bail was revoked.

After defining "revocation of bail", and then seeing the requirements of what goes into an Order Revoking Bail, we then have to ask "what happens next" after a Court has ordered a Defendant's bail revoked and ordered recommitment of Defendant to custody of the sheriff under the provisions of § 19-2919(1)? "***The court shall order the bail exonerated***" pursuant

to § 19-2922(6). What does the term "exonerated" mean under the Idaho Bail Act? We then must go to § 19-2905(8) for the definition. "'Exoneration' means a court order directing the full or partial release and discharge from liability of the surety underwriting a bail bond or the person posting a cash deposit or a property bond."

Another order is required from the Court exonerating all or part of the cash or property bond posted by Appellant on behalf of Mr. Gibson. We do not have any Order Exonerating Bail required by § 19-2905(8) from either the District Court or Magistrate Court on or after December 14, 2016, after Mr. Gibson was committed to the custody of the sheriff. Again, neither the Bench Warrant (R, pp. 191, 193) nor the December 14, 2016, Minute Entry (R, p. 192) qualify as an Order Exonerating Bail.

b. Conclusion to Subpart 3.

All of the applicable statutes under the Idaho Bail Act work together to bring a Court to the proper end of the process regarding bail that was started by deciding what to do with a Defendant under § 19-2919(1) because § 19-2919(1) does not have everything necessary to complete the process regarding bail. All required actions that must take place on this pathway after revoking a Defendant's bail and committing him to the custody of the sheriff under § 19-2919(1) lead to the mandatory exoneration of the previously-posted bail; which is found in other statutes of the Idaho Bail Act.

4. Conclusion to Part B.

As shown above, these new requirements—not new theories or new claims not argued to the District Court—come into the process and must be followed after a Court decides what action

to take under the provisions of § 19-2919(1). There is no order revoking his bail as required by § 19-2905(16), with the required language required by §§ 19-2919(2) and 19-2921. There is no order exonerating the previously posted bail required by § 19-2905(8), either due to the revocation of bail and commitment to custody of the sheriff under § 19-2922(6) or due to the increase of the bail amount by the District Court under § 19-2912. There is no order committing Mr. Gibson to custody of the sheriff and exonerating the previously-posted bail as required by § 19-2912 when the District Court increased the bail amount. All we have is Mr. Gibson in the custody of the Bingham County Sheriff's Office from December 13, 2016, to January 10, 2017, and Bingham County still holding onto the bond monies posted on his behalf by Appellant.

As argued in the Appellant's Brief and above, these new requirements were not followed by the District Court or the Magistrate Court in December 2016, after Mr. Gibson admitted to violating the conditions of his release on bail and after these Courts supposedly took action under § 19-2919(1). The failure to follow the provisions of § 19-2919(1) and these new required actions was error. Respondent does not refute or argue against any of these positions in Respondent's Brief.

The provisions of § 19-2919(1) were not followed. The required orders and actions found in other statutes of the Idaho Bail Act that come into the process after the decisions made under § 19-2919(1) were not followed. The end result is nonetheless clear: the bond monies posted by Appellant should have been revoked and exonerated by the required orders from the

District Court or Magistrate Court on or about December 14, 2016, and those monies then returned to Appellant. This was not done.

Unrefuted errors by the District Court or Magistrate Court started under § 19-2919(1) and followed to the other required actions because such actions were not taken pursuant to the other statutes as argued here and in Appellant's Brief. This Court should reverse the District Court's August 9, 2017, Order Denying Defendant's Motion for Release of Bond Money and remand this matter back to the District Court with instructions: 1) to revoke and exonerate the $50,000.00 cash bond amount posted by Appellant pursuant to IDAHO CODE §§ 19-2912, 19-2919(1)-(2), 19-2922(6), and I.C.R. 46(i) (2016 version); and 2) to return said monies back to Appellant as should have been done on or about December 14, 2016.

C. Standard of Review.

Respondent's Brief at p. 6 briefly states the standard that statutory construction questions are subject to free review by this Court. Appellant's Brief, pp. 13-15 states the same standard therefore and will not be discussed further in this Reply Brief as the parties agree on the applicable standard of review. The statutes in the Idaho Bail Act are unambiguous and should be given their "plain, obvious and rational meaning" (*Idaho Youth Ranch v. Ada Cty. Bd. Of Equalization*, 157 Idaho 180, 184, 335 P.3d 25, 29 (2014)), starting with § 19-2919(1) and moving through the other statutes addressed in Appellant's Brief and above.

D. IDAHO CODE § 19-2908 Does Not Apply in this Matter.

The arguments raised in Appellant's Brief and above regarding the errors made by the District Court and Magistrate Court led to the subject $50,000.00 cash bond monies posted by

Appellant for Mr. Gibson remaining "on deposit" with Bingham County at the time of Mr. Gibson's sentencing on January 10, 2017, and subsequent entering of the Judgment of Conviction – Order of Commitment filed on January 12, 2017. *See* R, pp. 220-223. These circumstances were error and had all actions and processes been properly followed as argued by Appellant the $50,000.00 cash bond monies would not have been held by Bingham County at the time of Mr. Gibson's sentencing in January 2017. Therefore, § 19-2908 would not have any application in this matter because there would have been no cash monies "on deposit at the time of the judgment."

The arguments found in Part I. D. of Respondent's Brief, pp. 6-9, set out a dangerous line of reasoning with inequitable and undesirable consequences. Put bluntly, Respondent asserts that if there is cash bond money "which remain[s] on deposit at the time of the judgment" (p. 7), then these monies must be used by the Court Clerk pursuant to the mandates of IDAHO CODE § 19-2908. Respondent basically asserts that it does not matter *why* the cash bond monies "remain[] on deposit at the time of judgment", the fact that there are cash bond monies still with the county is all that matters.

Respondent ignores the fact that there are reasons for having cash bond monies still on deposit at the time of judgment which, if properly explored, would lead to the conclusion that the monies should have been revoked, exonerated, and returned before the judgment is entered but for some reason were not. All that matters to Respondent is that there are cash bond monies "on deposit at the time of the judgment", which means that they shall be used pursuant to § 19-2908.

As argued in Respondent's Brief at pp. 6-9, the fact is that the $50,000.00 cash bond monies posted by Appellant were still with Bingham County when Mr. Gibson was sentenced. Those

monies must be used under § 19-2908 because "The cash bond was on deposit with the court and therefore applicable to the fine, costs and restitution in the judgment." Respondent's Brief, p. 9.

1. Hypothetical Examples Where Cash Bond Monies Might Remain "On Deposit at the Time of the Judgment".

Similar circumstances under other scenarios within the Idaho Bail Act may also lead to cash bond monies remaining "on deposit at the time of the judgment" which, as here, should not have been with the county but rather revoked, exonerated and not available for use under § 19-2908.

a. Hypothetical 1—Increasing Bail Under IDAHO CODE § 19-2912.

A Defendant is out on $100,000.00 bail posted by a cash bond. The Court, upon good cause shown, increases Defendant's bail amount to $500,00.00 one (1) week before sentencing. Pursuant to IDAHO CODE § 19-2912, by proper Order of Commitment and Order Exonerating Bail from the Court are filed. The Defendant is recommitted to the custody of the sheriff and the previous bail posted is being exonerated. Unfortunately, the processing of the bail exoneration takes longer than anticipated and the $100,000.00 remains on deposit with the county at the time of the Defendant's sentencing and subsequent entry of the Judgment of Conviction. Fines, fees, costs, and restitution total over $250,000.00.

Under this hypothetical scenario, the cash bond monies "remain[ed] on deposit at the time of the judgment". § 19-2908. Following Respondent's line of reasoning, despite the fact that the cash bond money was ordered exonerated but took longer to process and return to Defendant (or to whomever posted it on his behalf), the money must be used to pay the fines, fees, costs, and

restitution under § 19-2908. Period. No discussion. No understanding that the money should not have been with the county when the Defendant was sentenced. The money is "on deposit at the time of the judgment"—it cannot be returned to Defendant as it should have but must be used pursuant to § 19-2908.

b. Hypothetical 2—Intentional Holding of Cash Bond Monies Until After Judgment is Entered.

Although very unlikely, this hypothetical proves the point that Respondent's reasoning and argument of strict compliance within the plain meaning of § 19-2908 when there are cash bond monies "remain[ing]on deposit at the time of the judgment" (*Id.*)—regardless of the reason they remain on deposit—is dangerous and lead to inequitable results.

A Defendant is out on $25,000.00 bail posted by a cash bond. Regardless of why bail should be exonerated under the Idaho Bail Act, it is ordered by the Court that bail be exonerated. The county clerk responsible for exonerating the bail is sympathetic to the victims of Defendant's actions and wants to see them recover something by way of restitution. The clerk intentionally keeps the cash bond monies "on deposit" until after the Judgment of Conviction is filed with a restitution order so. Following Respondent's reasoning, "The cash bond was on deposit with the court and therefore applicable to the fine, costs and restitution in the judgment" under § 19-2908 and the victims would be able receive whatever restitution is ordered by the Court.

Again, Respondent's argument is that because the cash bond monies were "on deposit" they must be used for those § 19-2908 factors regardless of why they were still "on deposit at the time of the judgment." *Id.*

2. IDAHO CODE § 19-2908 Would Not Apply in these Hypotheticals and Should Not Apply in this Matter.

It goes without saying that in the above hypothetical scenarios the posted cash bond monies should not have never been "on deposit at the time of the judgment" and therefore subject to the mandatory uses found in § 19-2908. Upon reasonable inquiry it would be easily found that while the cash bond monies did remain with the county at the time the judgment was entered against the Defendants in these hypotheticals, the monies were still there because of unforeseen errors (or intentionally held) when, in reality, they should have never been "on deposit at the time of the judgment." *Id.* The cash bond monies in these hypotheticals should be properly revoked, exonerated, and rightfully returned to the Defendant (or to whomever posted the cash bond monies) rather than be used to pay the fines, fees, costs, and restitution mandated by § 19-2908 as asserted by Respondent. Any Court would see that is the equitable result of these unfortunate but very probable scenarios.

It is simple and reasonable logic. The monies should not have been with the county but they were when judgment was entered. The monies should be returned rather than be used subject to § 19-2908. Respondent's logic is dangerous and inequitable. Although unambiguous and being read with its "plain, obvious and rational meaning" (*Idaho Youth Ranch*, *supra*), the outcome must be different because of the underlying facts leading to the cash bond monies remaining with the county at the time of the judgment.

It is the same with this matter. As discussed at p. 35 of Appellant's Brief, because the $50,000.00 cash bond amount should have been revoked and exonerated on December 14, 2016,

those monies should have never been with Bingham County at the time of Mr. Gibson's sentencing on January 10, 2017, and the filing of the Judgment of Conviction – Order of Commitment on January 12, 2017. Just like the above hypotheticals, the cash bond monies in this case were still "on deposit at the time of the judgment" because of errors that, upon reasonable inquiry, can be identified and rectified and the monies properly returned Appellant as if they did not "remain on deposit at the time of the judgment" (§ 19-2908) in January 2017.

3. Conclusion to Part D.

IDAHO CODE § 19-2908 does not apply in this matter. But for the errors of the District Court and Magistrate Court in December 2016, there would have been no cash bond monies with Bingham County to apply to fees, fines, costs, and restitution pursuant to § 19-2908. Had all of the proper actions and procedures taken place in the District Court and Magistrate Court—as discussed in Appellant's Brief and above—the $50,000.00 cash bond amount would have been revoked, exonerated, and returned to Appellant long before Mr. Gibson was sentenced and judgment entered against him.

Respondent's logic that if cash bond money is "on deposit at the time of the judgment" then § 19-2908 applies no matter the reason the monies are still with the county is dangerous and will lead to inequitable and unintended consequences as shown above and in this matter. This Court is strongly urged to not follow such logic and reasoning.

It was error for the District Court to hold that § 19-2908 applied in this matter and to deny the Motion for Release of Bond Money. This Court should reverse the District Court's August 9, 2017, Order Denying Defendant's Motion for Release of Bond Money and remand this matter

back to the District Court with instructions: 1) to revoke and exonerate the $50,000.00 cash bond amount posted by Appellant pursuant to IDAHO CODE §§ 19-2912, 19-2919(1)-(2), 19-2922(6), and I.C.R. 46(i) (2016 version); and 2) to return said monies back to Appellant as should have been done on or about December 14, 2016.

E. Conclusion to Section I.

No new theories or claims have been raised on appeal by Appellant. Additional actions in other statutes of the Idaho Bail Act are required once the decisions are made under IDAHO CODE § 19-2919(1). In addition to the errors made by the District Court and Magistrate Court under the provisions of § 19-2919(1), additional errors were made when the additional required actions as discussed in Appellant's Brief and above were also not taken after Mr. Gibson's bail was revoked (Respondent's Brief, p. 9) and he was remanded to the custody of the Bingham County Sheriff's Office.

None of these arguments made in Appellant's Brief or above were refuted or opposed in any way within Respondent's Brief. IDAHO CODE § 19-2908 does not apply in this case based on the errors made by the District Court and Magistrate Court in December 2016. The cash bond monies posted should have never been with Bingham County when judgment was entered against Mr. Gibson in January 2017. Therefore, there is no application to § 19-2908 because, in reality, there was no cash bond monies to apply under this statute.

Appellant respectfully requests that this Court reverse the District Court's August 9, 2017, Order Denying Defendant's Motion for Release of Bond Money and remand this matter back to the District Court with instructions: 1) to revoke and exonerate the $50,000.00 cash bond amount

posted by Appellant pursuant to IDAHO CODE §§ 19-2912, 19-2919(1)-(2), 19-2922(6), and I.C.R. 46(i) (2016 version); and 2) to return said monies back to Appellant as should have been done on or about December 14, 2016.

II. Appellant is Entitled to Recover Her Attorney's Fees and Costs on Appeal.

Respondent asserts the arguments on pp. 37-39 of Appellant's Brief (Part J) regarding attorney's fees on appeal are frivolous because Appellant seeks her fees under IDAHO CODE § 12-117(1), which does not apply to criminal appeals. *See* Respondent's Brief, pp. 9-11. As will be shown below, the action before the District Court and this appeal to recover the cash bond monies is allowed under § 12-117(1) for purposes of attorney's fees and costs and should be awarded to Appellant on appeal.

IDAHO CODE § 12-117(1) states (emphasis added):

> Unless otherwise provided by statute, in *any proceeding involving as adverse parties* a state agency or *a political subdivision and a person*, the state agency, political subdivision or the court hearing the proceeding, including on appeal, *shall award the prevailing party* reasonable attorney's fees, witness fees and other reasonable expenses, *if it finds that the nonprevailing party acted without a reasonable basis in fact or law*.

The arguments at pp. 9-11 of Respondent's Brief are based on the pre-2012 version of § 12-117(1), in which attorney's fees were allowed for administrative proceedings or civil judicial proceedings only. *See* 2010 Bound Volume for Titles 7-13, Idaho Code, p. 659. In 2012, § 12-117(1) was amended to delete the words "administrative proceeding or civil judicial" so as to make it applicable to any proceeding—administrative, civil, or criminal—involving state agencies or

political subdivisions and persons. *See* 2017 Cumulative Pocket Supplement for Titles 7-13, Idaho Code, pp. 147-148.

IDAHO CODE § 12-117(5) states in pertinent part:

> For purposes of this section:
> (a) "Person" means any individual, partnership, limited liability partnership, corporation, limited liability company, association or any other private organization;
> (b) "Political subdivision" means a city, a county, any taxing district or a health district;

As it relates to Appellant's Motion for Release of Bond Money (R, pp. 260-261) and this appeal, it is a proceeding for the recovery of cash bond monies paid by Appellant, a "person", against Bingham County, a "political subdivision" that is holding said monies. Whether this matter is a civil action (Appellant appealed this matter pursuant to I.A.R. 11(a)(1) for civil actions (*see* Notice of Appeal, R, p. 285) and paid the civil action filing fee of $129.00 pursuant to Civil Fee Category L. 4. and I.A.R. 23(c)(1) for this appeal (*see* Clerk's Certificate on Appeal, p. 2)), or a criminal action is not relevant to the fact that § 12-117(1) applies to award reasonable attorney's fees and "other reasonable expenses" to the prevailing party of "any proceeding involving as adverse parties . . . a political subdivision and a person" if the Court "finds that the nonprevailing party acted without a reasonable basis in fact or law." *Id.*

Respondent's only argument in Respondent's Brief on the issue of attorney's fees is that § 12-117(1) does not apply. *See* pp. 9-11. Arguments made in Respondent's Brief on this issue are frivolous by citing an outdated version of § 12-117(1). By these frivolous arguments Respondent has "acted without a reasonable basis in fact or law." *Id.*

Respondent does not refute any of the arguments made in Appellant's Brief at pp. 37-39 that Bingham County, through the Bingham County Prosecuting Attorney, "acted without a reasonable basis in fact or law when it opposed the Motion for Release of Bond Money." *Id.*, p. 37. Those arguments remain valid and show the Bingham County Prosecuting Attorney's unreasonable actions by opposing the Motion for Release of Bond Money at the August 8, 2017, hearing. Respondent has failed to show how those actions and arguments of the Prosecuting Attorney at the hearing were of "a reasonable basis in fact or law". § 12-117(1).

Based on the unrefuted arguments made in Part J of Appellant's Brief, pp. 37-39, Appellant should be awarded her reasonable attorney's fees and costs pursuant to IDAHO CODE § 12-117(1) and I.A.R. 35(a)(5) 40(a), and 41(a) as the prevailing party on appeal because Bingham County, through the Bingham County Prosecuting Attorney, acted without a reasonable basis in fact or law when it opposed the Motion for Release of Bond Money and argued its position to the District Court on August 8, 2017, as well as by Respondent's frivolous arguments made in Respondent's Brief on appeal.

CONCLUSION

As argued in Appellant's Brief and in this Reply Brief, several errors occurred by both the District Court and Magistrate Court on December 13-14, 2016, with regard to the bond monies posted by Appellant on Dillon Grant Gibson's behalf after he admitted violating the conditions of his release on bail. These errors came as a result of the District Court and Magistrate Court not following the provisions of IDAHO CODE § 19-2919(1) and the requirements found in the other applicable statutes under the Idaho Bail Act and the applicable parts of I.C.R. 46 (2016 version).

Because of these errors, the subject bond monies posted by Appellant were not revoked and exonerated as they should have been after Mr. Gibson was remanded to the custody of the Bingham County Sheriff's Office. These monies remained with Bingham County until Mr. Gibson was sentenced on January 10, 2017.

No new theories or arguments were raised on appeal that were not argued before the District Court. Appellant's Brief merely explained the additional required actions that a Court must do under the Idaho Bail Act after deciding what to do with a Defendant that is found to have willfully violated the conditions of his release on bail pursuant IDAHO CODE § 19-2919(1); specifically, when revoking one's bail by remanding him to custody of the County Sheriff as was the case in this matter with Mr. Gibson.

None of those required actions under the Idaho Bail Act were taken by the District Court or the Magistrate Court in December 2016, which led to the cash and property bond monies posted for Mr. Gibson being held until his sentencing in January 2017. Under the Idaho Bail Act those monies had to be exonerated by the Courts and returned to Appellant in December 2016 but were not. IDAHO CODE § 19-2908 also is not applicable in this matter as the cash bond monies should not have been with Bingham County in January 2017, but for the assigned errors of the District Court and Magistrate Court.

Respondent refutes none of the above arguments and none that are in Appellant's Brief. Respondent attempts to rely on technical positions that have no merit as well as outdated statutory language to refute the issues on appeal. There are no arguments, cited case law, or other positions taken by Respondent that show the District Court did not err in denying the Motion for Release of

Bond Money on August 8-9, 2017 (*see* Tr, pp. 48-51; see also R, pp. 276-279), which denial is a culmination of all of the other errors committed in December 2016.

As requested in Appellant's Brief and this Reply Brief, Appellant respectfully requests that this Court reverse the District Court's August 9, 2017, Order Denying Defendant's Motion for Release of Bond Money and remand this matter back to the District Court with instructions: 1) to revoke and exonerate the $50,000.00 cash bond amount posted by Appellant pursuant to IDAHO CODE §§ 19-2912, 19-2919(1)-(2), 19-2922(6), and I.C.R. 46(i) (2016 version); and 2) to return said monies back to Appellant as should have been done on December 14, 2016.

Appellant also respectfully requests that this Court award her reasonable attorney's fees and costs related to this appeal.

DATED this 2nd day of April 2018.

BLASER, OLESON & LLOYD, CHARTERED

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April 2018, a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF** was served by the method indicated below and addressed to each of the following:

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