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State v. Lantis Appellant's Reply Brief Dckt. 46171

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 46171**
Plaintiff-Appellant,	)	
	)	**Ada County Case No.**
v.	)	**CR01-2017-7609**
	)	
AARON LANTIS,	)	
	)	
Defendant-Respondent.	)	
	)	

REPLY BRIEF OF APPELLANT

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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ARGUMENT

The District Court Erred By Concluding That Lantis's Actions Did Not Constitute Disturbing The Peace Of H.H.

The district court erred when it concluded that Lantis's act of sending sexual pictures of H.H. to her employer in an effort to get her fired was not an act of disturbing the victim's peace. (Appellant's brief, pp. 3-10.) Specifically, the district court erred when it concluded that the disturbing the peace statute, I.C. § 18-6409(1), exclusively criminalizes disturbances of the "exterior or sensory peace" of the victim. (Id.) Lantis generally argues that the district court correctly concluded that the disturbing the peace statute did not criminalize his conduct. (Respondent's brief, pp. 2-17.) Analysis shows his arguments have no merit.

Lantis first argues that "disturbing the peace" is a term of art, and therefore the state's argument based on the plain language of the statute is without merit. (Respondent's brief, pp. 2-5 (citing State v. Pierce, 159 Idaho 661, 365 P.3d 417 (Ct. App. 2015).) This argument is directly contrary to the legal standard that the words of a statute are to be given their plain, ordinary meaning. State v. Thiel, 158 Idaho 103, 106, 343 P.3d 1110, 1113 (2015); In re Adoption of Doe, 156 Idaho 345, 349, 326 P.3d 347, 351 (2014) ("The literal words of the statute 'must be given their plain, usual, and ordinary meaning ….'"); Boudreau v. City of Wendell, 147 Idaho 609, 612, 213 P.3d 394, 397 (2009) (statutory "words must be given their plain, usual, and ordinary meaning" (internal quotations omitted)). Even assuming that "disturbing the peace" had a common law meaning, the legislature was not bound by that meaning, and the legislative intent is shown by the words they employed.

Nor does Lantis's argument find support in the decision in Pierce, 159 Idaho 661, 365 P.3d 417. As pointed out in the state's brief, the court in Pierce addressed a no-contact order and did not address the scope of I.C. § 18-6409(1). (Appellant's brief, pp. 8-9.) Even if the court in Pierce had determined that Pierce's conduct was not made illegal by I.C. § 18-6409(1), such would not mean that Lantis's different conduct was not within the statute's scope. (Appellant's brief, p. 9.) Lantis's argument—that because Pierce concluded that the phrase "disturb the peace" did not invoke an ordinary meaning outside of the statute, the phrase "offensive conduct" within the statute should not be given its ordinary meaning—is supported by neither logic nor law.

Second, Lantis argues that the phrase "offensive conduct" is so broad that it must be limited to conduct that offends the exterior or sensory peace. (Appellant's brief, pp. 5-11.) Lantis proposes that this limitation, to conduct that is externally offensive and not internally offensive, is suggested by the other specifically prohibited actions under the statute by applying the statutory interpretation principle of "*noscitur a sociis*," that words in a statute must be interpreted consistently with each other. (Respondent's brief, pp. 3, 5, 11.) Lantis's analysis is flawed by the fact that he simply ignores the most relevant examples of the words consistent with the state's interpretation.

The relevant statutory language provides that a person may disturb the peace of another in several ways, including (1) "loud … noise"; (2) "unusual noise"; (3) "tumultuous … conduct"; (4) "offensive conduct"; (5) "threatening"; (6) "traducing"; (7) "quarreling"; (8) "challenging to fight"; (9) "fighting"; (10) "fir[ing] any gun or pistol"; or (11) using certain language before children "in a loud and boisterous manner." I.C. § 18-6409(1). Most of these activities would disturb the external peace of an individual.

However, "threatening," "challenging to fight," and "traducing," by definition, are disturbances of internal peace. They are, in effect, verbal attempts to inflict harm, which would disturb the peace of an individual only to the extent it causes inner turmoil. A calm, quiet threat or challenge to fight is within the scope of the statute, as is a calm and quiet traducement. As pointed out in the state's brief, exposing the victim to shame or blame by means of falsehood and misrepresentation[1] no more violates her "exterior or sensory peace" than exposing the victim to shame or blame by means of sending sexual pictures of her to her employer. (Appellant's brief, pp. 6-7.)

Lantis contends that because the Idaho Supreme Court limited disturbing the peace to "face-to-face" traducement of the sort that might provoke a violent response, "the prohibited acts within [I.C.] § 18-6409 are those that constitute some jarring and abrupt assault on the senses, or conduct calculated to incite or provoke immediate violence, on the scene." (Respondent's brief, pp. 13-14 (citing State v. Poe, 139 Idaho 885, 895, 88 P.3d 704, 714 (2004).) This argument both miscomprehends Poe, and is irrelevant.

In Poe the Court addressed a facial overbreadth challenge to the constitutionality of I.C. § 18-6409. 139 Idaho at 892, 88 P.3d at 711.[2] The Court concluded that the prohibition on disturbing the peace by "offensive conduct" was a regulation of "conduct, not pure speech" and was "neutral with respect to the content of any expressive element of such conduct that may exist in any particular circumstances" and therefore there was no showing of an overbreadth problem. Id. at 895, 88 P.3d at 714. In addressing the threatening and

[1] This is the dictionary definition of "traduce" provided in Merriam-Webster's online dictionary.

[2] Lantis's argument that his conduct was protected by the First Amendment is addressed below.

traducing manners of committing the crime, the Court concluded that, as used in the statute, threatening "encompass[ed] statements where the speaker intends to communicate a serious expression of an intent to commit an act of unlawful violence," and traducing encompassed only speech that fell within the "fighting words" exception, meaning "face-to-face" and "likely to provoke the average person to retaliation." Id. (internal quotations omitted). By limiting threatening and traducing to only circumstances that did not involve protected speech, the Court did not declare that the statute encompassed only disturbing external sensibilities. Indeed, as interpreted by Poe, threatening and traducing still involve personal affront. The Court said nothing that supports Lantis's argued exterior/interior peace distinction. The plain language of the legislature still does not support Lantis's argument.

Third, Lantis argues that giving the disturbing the peace statute it plain and ordinary meaning would render it void for vagueness. (Respondent's brief, pp. 11-16.) Application of the relevant legal standards shows this argument is without merit.

"[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." State v. Knutsen, 158 Idaho 199, 202, 345 P.3d 989, 992 (2015) (quoting Kolender v. Lawson, 461 U.S. 352, 357 (1983)). "[T]he more important aspect of vagueness doctrine 'is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement.'" Id. (quoting Kolender, 461 U.S. at 358).

As a constitutional matter "[a] conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained 'fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.'" F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012) (quoting United States v. Williams, 553 U.S. 285, 304 (2008)). Accordingly, "the void-for-vagueness doctrine addresses concerns about (1) fair notice and (2) arbitrary and discriminatory prosecutions." Skilling v. United States, 561 U.S. 358, 412 (2010) (citing Kolender, 461 U.S. at 357). But the doctrine also grants statutes a "strong presumption" of validity and the court must, if possible, "construe, not condemn" them. See id. at 402-403 (internal quotes and citations omitted). Even if a statute's "outermost boundaries" are "imprecise" that fact has little relevance where "appellant's conduct falls squarely within the 'hard core' of the statute's proscriptions." Broadrick v. Oklahoma, 413 U.S. 601, 608 (1973); see also Skilling, 561 U.S. at 412 (citing Broadrick).

As set forth in the state's opening brief, Lantis maliciously and willfully disturbed H.H.'s peace by deliberately interfering with her work relationships by sending sexual photographs of her to her employers and co-workers. (Appellant's brief, pp. 1, 5.) The statute, employing dictionary definitions and an objective reasonable person standard, provides notice to both citizens and law enforcement that "every person who maliciously and willfully disturbs another's freedom from oppressive thoughts or emotions or harmony in personal relations, by conduct intended to cause unpleasant or painful sensations, displeasure or resentment, is guilty of disturbing the peace." (Appellant's brief, p. 5.) Lantis's argument, that the statute failed to notify him that his conduct could constitute

disturbing the peace because it makes "no reference to email or any other electronic communication" (Respondent's brief, p. 15) is no more persuasive than challenging the homicide statutes because they do not make reference to revolvers, ropes, knives, wrenches lead pipes, or candlesticks.

Finally, Lantis argues his interpretation must be accepted to avoid overbreadth. However, as already noted above, the Idaho Supreme Court has already addressed this question, and found the statute is not overbroad. Poe, 139 Idaho at 895, 88 P.3d at 714. The statute withstood a constitutional overbreadth challenge in Poe, and Lantis has not claimed or shown Poe was wrongly decided.

The district court erred when it engrafted an external/internal peace dichotomy not found in the statutory language. As noted, the statute clearly includes manners of commission (threatening, challenging to fight, and traducing) that do not rely on volume or other external factors to qualify as disturbing the peace. By intentionally trying to sabotage H.H.'s working relationships, Lantis committed the crime of disturbing the peace of another person.

CONCLUSION

The state respectfully requests that this Court reverse the district court's order on appeal and reinstate Lantis's conviction for disturbing the peace.

DATED this 5th day of February, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of February, 2019, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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