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

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| **STATE OF IDAHO,** | ) | |
| | ) | **No. 46422-2018** |
| **Plaintiff-Respondent,** | ) | |
| | ) | **Lewis County Case No.** |
| **v.** | ) | **CR-2017-294** |
| | ) | |
| **CATHERYN D. FIELDS,** | ) | |
| | ) | |
| **Defendant-Appellant.** | ) | |
| | ) | |

## BRIEF OF RESPONDENT

## APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEWIS

## HONORABLE GREGORY FITZMAURICE
District Judge

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## STATEMENT OF THE CASE

### Nature Of The Case

Catheryn D. Fields appeals from her convictions on three counts of battery on a law enforcement officer.

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

Officers Bowman and Robideau responded to a call of a fight in progress at the Hub Bar and Grill. (Tr., p. 178, L. 8 – p. 180, L. 18; p. 226, L. 21 – p. 228, L. 20; see also Tr., p. 295, L. 5 – p. 299, L. 14.) Once there they found Fields being detained by other bar patrons (including off-duty officers) and placed Fields in handcuffs. (Tr., p. 180, L. 19 – p. 182, L. 10; p. 229, L. 2 – p. 231, L. 4; p. 299, L. 15 – p. 301, L. 2.) Fields hit, kicked and otherwise battered the officers repeatedly as they attempted to place her in a police car, as they attempted to control her at the scene, and again at the jail. (Tr., p. 182, L. 11 – p. 183, L. 4; p. 184, L. 8 – p. 192, L. 2; p. 195, L. 8 – p. 197, L. 11; p. 231, L. 5 – p. 248, L. 16; State's Exhibits 1, 2.) Fields later battered an officer who responded to a request from jailers to help control Fields. (Tr., p. 301, L. 17 – p. 308, L. 1; p. 326, L. 14 – p. 333, L. 24.)

The state charged Fields with three counts of battery on a law enforcement officer. (R., pp. 52-53.) Prior to trial, Fields requested an instruction stating that a "peace officer may make an arrest" if there is "probable cause," and an officer "making an unlawful arrest is not engaged in the performance of his or her duties." (R., p. 96.) At the jury instruction conference during the trial, the district court declined the proposed instruction. (Tr., p. 290, L. 10 – p. 292, L. 4.) The jury convicted Fields on all three counts. (R., p. 153.) Fields filed a notice of appeal, timely from entry of the judgment. (R., pp. 166-70.)

## ISSUE

Fields states the issue on appeal as:

> Did the court err in refusing to give the defense requested instruction on when a peace officer may arrest?

(Appellant's brief, p. 7.)

The state rephrases the issue as:

> Has Fields failed to show that declining her proposed instruction was error because the instruction misstated the law and was inconsistent with the facts?

## ARGUMENT

### Fields' Proposed Instruction Misstated The Law And Was Inconsistent With The Facts

### A. Introduction

The district court concluded that Fields' proposed instruction was neither "required" nor "appropriate." (Tr., p. 290, Ls. 10-11.) First, the district court did not see the instruction as consistent with applicable law, especially State v. Kelly, 158 Idaho 862, 353 P.3d 1096 (Ct. App. 2015). (Tr., p. 290, L. 12 – p. 291, L. 10.) Second, "the evidence at this point in time doesn't give rise to any finding" and it would be an "improper comment upon the evidence" for the court to "focus in solely on" the issue of the arrest where the officers testified that "they arrested for battery upon a law enforcement officer while there was a detention before that situation." (Tr., p. 291, Ls. 11-21.[1]) Finally, the district court reasoned that the "Idaho Standard Criminal Jury Instructions do not contemplate taking this approach" in defining the officer's duties, which can be "wide-ranging." (Tr., p. 291, Ls. 21-24.)

Fields argues that the district court erred, contending the proposed instruction correctly states the law, that the evidence supports the giving of the instruction, and the instruction does not comment on the evidence. (Appellant's brief, pp. 7-15.) Fields is incorrect. First, whether the officers were "engaged in the performance of [their] duties," I.C. § 18-915(3)(b), did not depend on the existence of probable cause to arrest Fields. Rather, the officers were engaged in the performance of their duties to investigate a reported bar fight regardless of whether there was, or was not, a Fourth Amendment

[1] The district court left open the option of renewing a request for the instruction based on the evidence later presented (Tr., p. 291, L. 25 – p. 292, L. 3), but Fields did not renew her request (Tr., p. 358, L. 19 – p. 359, L. 10).

violation. Second, the evidence did not support the instruction, because none of the three batteries happened at a time there was even arguably a lack of probable cause. The evidence showed that the first battery *preceded* the arrest, and the second and third battery were committed after Fields' arrest for the first battery, which was clearly (and admittedly) supported by probable cause. Finally, the district court properly concluded that the scope of the officer's duties was a matter for evidence and factual determination, not instructions trying to establish what is and is not within the scope of an officer's duties.

B. Standard Of Review

Whether a jury was properly instructed is a question of law over which this Court exercises free review. State v. Severson, 147 Idaho 694, 710, 215 P.3d 414, 430 (2009). "An error in jury instructions only constitutes reversible error when the instruction misled the jury or prejudiced the party challenging the instruction." Id. (citation omitted). "If the instructions, considered as a whole, fairly and adequately present the issues and state the applicable law, then no error has been committed." Id. (quotations, citation and brackets omitted).

"We exercise free review over statutory interpretation because it is a question of law." State v. Owens, 158 Idaho 1, 3, 343 P.3d 30, 32 (2015).

C. The Instruction Was Neither Legally Nor Factually Appropriate

"A trial court presiding over a criminal case must instruct the jury on all matters of law necessary for the jury's information." State v. Severson, 147 Idaho 694, 710, 215 P.3d 414, 430 (2009) (citing I.C. § 19-2132). "This necessarily includes instructions on the 'nature and elements of the crime charged and the essential legal principles applicable to

the evidence that has been admitted.'" Id. (citing State v. Gain, 140 Idaho 170, 172, 90 P.3d 920, 922 (Ct. App. 2004)). It also includes, when requested, instructions on "every defense or theory of the defense having any support in the evidence." State v. Turner, 136 Idaho 629, 633, 38 P.3d 1285, 1289 (Ct. App. 2001) (citing State v. Hansen, 133 Idaho 323, 328, 986 P.2d 346, 351 (Ct. App. 1999)). Although "[e]ach party is entitled to request the delivery of specific instructions," "such instructions will only be given if they are 'correct and pertinent.'" Severson, 147 Idaho at 710, 215 P.3d at 430 (citing I.C. § 19-2132). "A proposed instruction is not 'correct and pertinent' if it is: (1) an erroneous statement of the law; (2) adequately covered by other instructions; or (3) 'not supported by the facts of the case.'" Severson, 147 Idaho at 710-11, 215 P.3d at 430-31 (citing State v. Olsen, 103 Idaho 278, 285, 647 P.2d 734, 741 (1982)). "[T]he court should not use an instruction that misleads the jury or misstates the law." State v. Dudley, 137 Idaho 888, 890, 55 P.3d 881, 883 (Ct. App. 2002). Application of these standards shows that the district court properly concluded that Fields' proposed instruction was neither "required" nor "appropriate." (Tr., p. 290, Ls. 10-11.)

The state charged Fields under I.C. § 18-915(3)(b). (R., pp. 52-53.) That subsection criminalizes a battery (except unlawful touching) "[w]hile the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that such victim is a peace officer." I.C. § 18-915(3)(b). Under this subsection, the state did not need to prove that Fields battered the officers "*because of* the performance of his or her official duty" or "official status." State v. Kelly, 158 Idaho 862, 865, 353 P.3d 1096, 1099 (Ct. App. 2015) (emphasis original). Rather, the state "must show that the officer was performing his or her duty" and need not show that the officer

was "engaged in any *specific* duty." Id. (emphasis added). "Without question, an officer's duties include responding to calls for assistance and helping citizens." Id. at 866, 353 P.3d at 1100.

Fields' proposed instruction was contrary to the plain language of the statute and the analysis in Kelly. That proposed instruction, after quoting the statutory probable cause standard for arrest, provided that "[a] peace officer making an unlawful arrest is not engaged in the performance of his or her duties." (R., p. 96.) However, "[w]ithout question, an officer's duties include responding to calls" regarding bar fights. Kelly, 158 Idaho at 866, 353 P.3d at 1100. Nothing in the plain language of the statute or in the analysis of that statute in Kelly suggests that some illegality during the course of that response means the officer is no longer engaged in the performance of his duties. This instruction would have improperly limited the jury's consideration of whether the officers were "engaged in the performance of [their] duties" to the sole question of whether their arrest of Fields was supported by probable cause. The proposed instruction is incompatible with the plain language of the statute and the analysis in Kelly—that the "statute does not require that the officer be engaged in any specific duty." 158 Idaho at 865, 353 P.3d at 1099.

The district court correctly recognized that reducing the element of "engaged in the performance of his duties" to whether Field's arrest was supported by probable cause was inconsistent with the applicable law and facts. The first two victims were responding to a call about a bar fight and initially investigating that potential crime. (Tr., p. 178, L. 8 – p. 180, L. 18; p. 226, L. 21 – p. 228, L. 20; see also Tr., p. 295, L. 5 – p. 299, L. 14; p. 180, L. 19 – p. 182, L. 10; p. 229, L. 2 – p. 231, L. 4; p. 299, L. 15 – p. 301, L. 2.) Their duties

encompassed far more than their arrest of Fields, and her batteries at the scene occurred while the officers were engaged in those other duties as well. The third battery happened at the jail substantially after the arrest, to an officer completely uninvolved in the arrest itself. (Tr., P. 301, L. 17 – p. 308, L. 1; p. 326, L. 14 – p. 333, L. 24.) The argument that none of batteries (especially the last officer, battered at the jail and uninvolved in the arrest) occurred while the officers were "engaged in the performance of his duties" because of a misstep when first encountering Fields is senseless. The instruction was not an accurate statement of the law, was inapplicable under the facts, and would have been at best misleading and confusing.

Fields contends that the district court erred in relying on Kelly, which she claims is not applicable. (Appellant's brief, pp. 8-10.) However, in making this argument Fields discusses a completely different portion of the Kelly opinion than the portion cited by and relied on by the district court. (Appellant's brief, pp. 9-10.) The district court specifically relied on the portion of the Kelly opinion related to an officer's duties. (Compare Tr., p. 290, L. 23 – p. 291, L. 10 (statutory discussion of parts A and B and community safety or removing persons from a bar) with Kelly, 158 Idaho at 865-66, 353 P.3d at 1099-1100 (discussing subsections (a) and (b) "responding to calls for assistance" in removing a person from a bar).) Fields, however, addresses only a different part of the Kelly decision, relating to whether Kelly was entitled to a self-defense instruction. (Appellant's brief, pp. 9-10 (citing Kelly, 158 Idaho at 867, 353 P.3d at 1101).) Rather than address the district court's reasoning and the relevant analysis in Kelly, Fields has chosen to address a straw man. Having ignored the district court's analysis and discussed an irrelevant part of the authority the district court relied on, Fields has failed to show error.

After ignoring the relevant part of Kelly, Fields next relies on State v. Wilkerson, 114 Idaho 174, 178, 755 P.2d 471, 475 (Ct. App. 1988). (Appellant's brief, pp. 10-11.) Keeping with a pattern, Fields also ignores the relevant parts of Wilkerson.

In Wilkerson the defendant was charged with resisting and obstructing by refusing to comply with an officer's command that she not stand between her son's car and a tow truck the officer had requested to tow the car. Wilkerson, 114 Idaho at 174-77, 755 P.2d at 471-74. The court was careful to point out that Wilkerson's resistance to her arrest was not part of the charge: "Wilkerson was arrested and apparently charged and prosecuted for her conduct *before* the arrest," conduct that "consisted of obstructing the tow truck operator and refusing to obey the deputy's order to cease that obstruction." Id. at 177, 755 P.2d at 474 (emphasis original). The court then carefully distinguished the "mere passive resistance" present in that case from the "recourse to force or violence" addressed in State v. Richardson, 95 Idaho 446, 511 P.2d 263 (1973). Wilkerson, 114 Idaho at 178-79, 755 P.2d at 475-76. The court then held that "where an individual refuses to obey an order or obstructs an act of a public officer which is contrary to the law, be it statute or constitution, that individual does not violate I.C. § 18-705." Id. at 180, 755 P.3d at 477. "We interpret 'duty' as used in that statute to encompass only those lawful and authorized acts of a public officer." Id.

Fields contends that last sentence about "duty" is controlling. (Appellant's brief, p. 11.) Although this argument may hold some superficial appeal, it does not withstand analysis. Such closer analysis shows Fields' argument is instead contrary to the reasoning of Wilkerson.

First, the Court in Wilkerson stated that "[i]n the arrest-resistance context courts have defined official duties broadly" and cited the applicable test in that context as:

> "'Engaged in … performance of official duties' is simply acting within the scope of what the agent is employed to do. The test is whether the agent is acting within that compass or is engaging in a personal frolic of his own. *It cannot be said that an agent who has made an arrest loses his official capacity if the arrest is subsequently adjudged to be unlawful.*"

Wilkerson, 114 Idaho at 179, 755 P.2d at 476 (emphasis added) (quoting United States v. Heliczer, 373 F.2d 241, 245 (2nd Cir. 1967). Thus, the general rule, that some attendant unlawfulness does not demonstrate the officer was not performing official duties, was recognized in Wilkerson. That rule, directly opposed to the proposed instruction, was the law applicable here.

More importantly, the Wilkerson court was "not prepared to accept the proposition that our legislature intended to criminalize *passive* disobedience to any act of a police officer," and thus concluded "the legislature intended that the term 'duty'" in the resist and obstruct misdemeanor statute "*should be interpreted more narrowly than the comparable term*" in the felony battery statute, I.C. § 18-2703, addressed in Richardson. Id. at 180, 755 P.2d at 477 (emphasis added). The statute in Richardson provided: "Every person … who knowingly resists by the use of force or violence, such officer, in the performance of his duty, is punishable …." I.C. § 18-2703 (1972) (repealed Idaho Session Laws 1981, Ch. 319, § 1, p. 666). As Wilkerson recognized, the Idaho Supreme Court had already concluded that a defendant was not entitled to an instruction that a defendant had a right to violently resist even an unlawful arrest. Richardson, 95 Idaho at 449-451, 511 P.2d at 266-269. The Wilkerson court distinguished, but did not (and could not) overrule Richardson's

holding, and it is Richardson's holding that applies in this case because Fields' resistance was violent.

In Richardson the Idaho Supreme Court adopted "the rule that a private citizen may not use force to resist a peaceful arrest by one he knows, or has good reason to believe, is an authorized peace officer performing his duties, *regardless of whether the arrest is illegal under the circumstances*." 95 Idaho at 450, 511 P.2d at 267 (emphasis added). "*Regardless of whether the arrest is illegal under the circumstances of the occasion*, we hold that an individual may not use force to resist an arrest by one he knows or has good reason to believe is an authorized peace officer in the performance of his duties." Id. at 451, 511 P.2d at 268 (emphasis added). The court in Wilkerson distinguished Richardson by noting that Wilkerson did not use force, but only passively resisted the officer's commands. Wilkerson, 114 Idaho at 180, 755 P.2d at 477. Because Fields' resistance was anything but passive, she was not entitled to an instruction that the legality of her arrest was relevant, much less controlling. Fields' proposed instruction was not a correct statement of the law relevant to her violent, as opposed to passive, conduct.

Fields also contests the district court's conclusion that the facts did not support giving the instruction. (Appellant's brief, pp. 12-14.) The district court noted that the officers testified that they arrested Fields only after she committed the first battery on an officer. (Tr., p. 291, Ls. 14-20; see also Tr., p. 190, Ls. 2-15; p. 230, L. 21 – p. 233, L. 2; p. 237, Ls. 2-3.) Fields argues the district court was incorrect because "there is a reasonable view of the evidence that the method used by the police" when investigating the bar fight "was not the least intrusive method reasonably available to them" and therefore they

"arrested [her] when they held her to the ground and handcuffed her." (Appellant's brief, pp. 12-13.) There are several flaws with this argument.

First, Fields did not request an instruction on when an investigative detention was exceeded and resulted in a *de facto* arrest. The only evidence the jury had before it was that Fields was not arrested until after she battered one of the officers, and was arrested for that offense. The jury would not have been in a position to evaluate the legality of the investigative detention because Fields did not request any instruction on the legality of the investigative detention, only regarding the arrest.

Second, there is no reasonable view of the evidence suggesting the arrest for battery, as testified to by the officers, was not based on probable cause. Fields in fact acknowledges that, accepting her theory of the case, "she would still be guilty of misdemeanor battery." (Appellant's brief, p. 10.) There is no reasonable view of the evidence suggesting the officers lacked probable cause to arrest Fields after she first started kicking them. Thus, there is no reasonable view of the evidence that officers were not engaged in the performance of their duties after they formally arrested Fields.

Third, even if the jury could have concluded an arrest happened when the officers first put Fields in handcuffs, the batteries did not occur then. They happened later. (In the third count much later, at a different location, and to an officer that had no involvement in the arrest.) In other words, even accepting Fields' theories the officers were engaged in duties *other than conducting the alleged unlawful* de facto *arrest* at the time of the batteries.

The evidence in this case does not support Fields' argument that her batteries did not occur "[w]hile the victim[s] [were] engaged in the performance of [their] duties." I.C. § 18-915(3)(b). Even if Field's legal premise (that an arrest unsupported by probable cause

is outside of official duties) is accepted, and her factual premise (that an unlawful arrest happened when Fields was first handcuffed) is likewise accepted, there is no basis for believing officers were not engaged in the performance of their duties *at the time of the batteries*, which (accepting Fields' theories) occurred significantly *after* the arrest. Indeed, to accept Fields' factual arguments requires the assumption that *all actions by the officers after the alleged* de facto *arrest* were outside the scope of duty. The facts show that Fields started battering the officers when they attempted to put her in a police car. Fields continued to batter the officers when they formally arrested her and took control of her after the initial battery. Fields then battered officers at the jail on two different occasions, one resulting in a charge for battering an officer uninvolved in the initial fracas. Fields' argument assumes that putting her in a police car, arresting and controlling her after she battered an officer, and controlling her at the jail quite a bit later, were, in addition to the alleged *de facto* arrest, outside the three officers' duties. There is no legal basis for this assumption. Because the batteries occurred *after* the allegedly unlawful *de facto* arrest, while the officers were engaged in duties other than conducting the alleged initial arrest, there is no basis for instructing that a lack of probable cause for the initial *de facto* arrest was a defense under the facts of this case.

Fields next argues that the instruction was not an improper comment on the evidence because it was not a statement on the "probative value of certain evidence." (Appellant's brief, p. 14.) This argument miscomprehends the district court's ruling and fails to show error. As found by the district court, there are no ICJIs detailing what is and is not within the scope of an officer's duties, and to "focus in solely on the issue of the purported and alleged arrest" would be "improper comment upon the evidence." (Tr., p.

291, Ls. 10-20.) The district court was correct: to instruct the jury that if the alleged *de facto* arrest was unlawful such would be a defense would be to comment on the evidence because it would focus the jury on one aspect of the evidence at the expense of others. The evidence in this case, as set forth in the factual statement above, was that Fields engaged in a long course of violent conduct against at least three different officers. The officers were engaged in many duties, only one of which was alleged to be unlawful. Instructing the jury on which actions taken by the jury were within or without the scope of the officer's duties amounts to a comment on the evidence.

The instructions giving the statutory language requiring a finding that the battery was committed "while" the officer was "engaged in the performance of his duties" (R., pp. 141-43; I.C. § 18-915(3)(b)) adequately instructed the jury on this element. Any instruction parsing which acts may or may have been outside that duty would have misled the jury as to its proper focus and amounted to a comment on the evidence. Fields has shown no error by the district court in rejecting her legally erroneous, factually irrelevant, and ultimately misleading jury instruction.

D. Although There Was No Error, The Claimed Error Is Necessarily Harmless

Harmless error analysis applies unless "an improper jury instruction affected the entire deliberative process." State v. Perry, 150 Idaho 209, 224, 245 P.3d 961, 976 (2010). An erroneous description of an element of the crime is not an error that affects the entire deliberative process, and is therefore subject to harmless error analysis. State v. Larson, 158 Idaho 130, 137, 344 P.3d 910, 917 (Ct. App. 2014). Instructional error is harmless if it is "'clear beyond a reasonable doubt that a rational jury would have found the defendant

guilty absent the error.'" State v. Bahr, 163 Idaho 433, 436, 414 P.3d 707, 710 (Ct. App. 2018) (quoting Neder v. United States, 527 U.S. 1, 3 (1999)).

As set forth above, Fields did not just hit an officer once, she engaged in a course of hitting, kicking and biting several officers both before and well after her arrest. (Tr., p. 182, L. 11 – p. 183, L. 4; p. 184, L. 8 – p. 192, L. 2; p. 195, L. 8 – p. 197, L. 11; p. 231, L. 5 – p. 248, L. 16; p. 301, L. 17 – p. 308, L. 1; p. 326, L. 14 – p. 333, L. 24; State's Exhibits 1, 2.) According to Fields, she was arrested when placed in handcuffs at the very initiation of the encounter. (Appellant's brief, pp. 12-13.) Ironically, this was the only time Fields *was not* battering officers. Rather than show a battery "while" the officers were conducting an allegedly unlawful *de facto* arrest, the evidence shows that Fields battered the officers "while [they were] engaged in the performance of [their] duties" related to her formal arrest for the first battery and maintaining order at the jail.

Fields' appellate theory depends on the officers exercising only one police duty—the duty to arrest—and unlawfully exercising that duty at the very beginning of the encounter. However, there were a myriad of police duties accomplished here, including formally arresting her after the initial violence, controlling her so she could be transported, and controlling her at the jail. At a minimum, the first kick gave rise to grounds to *legally* arrest her, and the violence she thereafter unleashed on the two officers at the scene and the third officer at the jail were a proper and inevitable basis for finding that she battered the officers "[w]hile [they were] engaged in the performance of [their] duties." I.C. § 18-915(3)(b). Because the evidence establishes that Fields battered all three victims *after* her undeniably legal arrest for the first kick, no reasonable jury could have entertained a reasonable doubt that the batteries *after* the formal arrest were committed while the officers

were engaged in the performance of their duties, even had the requested instruction been given. The claimed error is clearly, beyond a reasonable doubt, harmless.

## CONCLUSION

The state respectfully requests this Court to affirm the judgment of conviction.

DATED this 9th day of October, 2019.

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

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of October, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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KKJ/dd