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Idaho Supreme Court
Karel Lehrman, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 47210-2019**
Plaintiff-Respondent,	)	
	)	**IDAHO COUNTY NO. CR25-19-86**
v.	)	
	)	
WILLIAM E. CLARK,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

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

HONORABLE GREGORY FITZMAURICE
District Judge

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STATEMENT OF THE CASE

Nature of the Case

The case involves the interpretation and application of the term "fresh pursuit," as defined by I.C. § 19-705, to the crime of unlawful entry. After a bench trial, the district court found William Clark guilty of two counts of unlawful entry, a felony offense due solely to a "fresh pursuit" element. Mr. Clark argues the State presented insufficient evidence to prove this element beyond a reasonable doubt. The State's evidence showed, when Mr. Clark fled into two homes, the officers were pursuing him to execute an arrest warrant. Mr. Clark asserts the fresh pursuit definition in I.C. § 19-705 does not include an officer's pursuit to execute a warrant. Rather, "fresh pursuit" means an officer's prompt pursuit upon his observation or knowledge of the suspect's nearly contemporaneous commission of a suspected felony. As such, the State's evidence was insufficient—the officers were not pursuing Mr. Clark for the present commission of any offense. Therefore, Mr. Clark maintains the district court erred by finding him guilty of two count of felony unlawful entry, and he respectfully requests this Court vacate his judgment of conviction.

Statement of Facts and Course of Proceedings

The State filed a Criminal Complaint alleging Mr. Clark committed two counts of unlawful entry during fresh pursuit, a felony, in violation of I.C. § 18-7034(2), one count of resisting and obstructing an officer, and one count of providing false information to law enforcement. (R., pp.10–11.) After a preliminary hearing, the magistrate found probable cause for the offenses and bound Mr. Clark over to district court. (R., pp.20–22.) Consequently, the State filed an Information charging Mr. Clark with two counts of unlawful entry during fresh

pursuit, one count of resisting and obstructing, and one count of providing false information. (R., pp.23–26.) Mr. Clark pled not guilty. (R., pp.27–28.)

After Mr. Clark waived a jury trial, the district court held a one-day bench trial. (R., pp.38, 40, 46–47.) The facts from the trial are as follows.

Around 10:30 a.m. on January 9, 2019, Officer Drew and Officer Graham responded to a call from dispatch on a possible robbery at a trailer home in a trailer park. (Tr. Vol. II,[1] p.20, L.1–p.21, L.3, p.68, Ls.3–13.) There were several people in and around the trailer when the officers arrived, and Officer Drew had responded to calls there in the past. (Tr. Vol. II, p.22, Ls.13–15, p.70, Ls.12–16.) Mr. Clark was one of the individuals inside the trailer. (Tr. Vol. II, p.71, L.2.) Officer Graham smelled marijuana on Mr. Clark and did a pat down for weapons. (Tr. Vol. II, p.71, Ls.2–5.) He did not find any weapons, and there was no evidence of any marijuana in Mr. Clark's possession. (Tr. Vol. II, p.94, Ls.19–21; *see* Tr. Vol. II, p.66, L.4–p.97, L.7 (Officer Graham's testimony).) Officer Graham then went to go speak with another individual at the scene. (Tr. Vol. II, p.71, Ls.5–6.)

A few minutes later, Officer Drew radioed dispatch with Mr. Clark's name and date of birth. (Tr. Vol. II, p.24, L.15–p.25, L.2, p.25, L.24–p.26, L.6.) Officer Graham heard Officer Drew relay this information and "immediately" recognized Mr. Clark's name as "someone who I had been briefed had a warrant for his arrest and had officer safety concerns." (Tr. Vol. II, p.71, Ls.7–9.) To this end, about one week prior, Officer Graham's supervisor had informed him that Mr. Clark had a felony arrest warrant. (Tr. Vol. II, p.73, L.3–p.75, L.18.) Officer Graham also

[1] There are two transcripts on appeal contained in one electronic file titled "Appeal Volume 1-Transcripts.pdf." The first transcript, cited as Volume I, contains the verdict hearing, held on May 10, 2019 (pages 1 to 16 of the overall document). The second transcript, cited as Volume II, contains a motion hearing, held on April 22, 2019, the court trial, held on May 8, 2019, and the sentencing hearing, held on July 8, 2019 (pages 17 to 170 of the overall document).

had confirmed the existence of the warrant in a national law enforcement database. (Tr. Vol. II, p.75, L.19–p.77, L12.) Officer Graham understood charges were felony malicious harassment and misdemeanor battery arising in a different county. (Tr. Vol. II, p.77, Ls.16–19.)

Upon his recollection of the arrest warrant, Officer Graham attempted to arrest Mr. Clark, but Mr. Clark fled. (Tr. Vol. II, p.29, Ls.9–11, p.29, L.21–p.30, L.2, p.79, Ls.11–15.) Right before or after Mr. Clark's flight, dispatch informed both officers that Mr. Clark had an active felony arrest warrant. (Tr. Vol. II, p.24, Ls.3–5, p.48, Ls.7–15, p.87, Ls.10–12.) Officer Drew and Officer Graham chased after Mr. Clark. (*See* Tr. Vol. II, p.31, L.6–p.32, L.6, p.32, L.24–p.33, L.17, p.79, L.16–p.80, L.16.) Officer Drew and Officer Graham both testified that Mr. Clark's flight hindered or delayed their robbery investigation. (Tr. Vol. II, p.33, L.18–p.34, L.6, p.82, L.21–p.83, L.1.)

During Mr. Clark's flight, he hid in two other trailers. In the first trailer, the owner woke up while Mr. Clark was attempting to hide, and she kicked him out. (Tr. Vol. II, p.50, L.s7–8, p.52, L.9–p.53, L.24.) As Mr. Clark was leaving, the owner saw him run towards another trailer, owned by other members of her family. (Tr. Vol. II, p.55, Ls.1–13, p.59, L.23–p.60, L.1, p.60, Ls.10–11.) The officers found Mr. Clark hiding in that second trailer and arrested him on the warrant. (Tr. Vol. II, p.34, Ls.7–23, p.80, Ls.17–18, p.81, L.12–p.82, L.4, p.82, Ls.9–11, p.87, Ls.2–15.) Both trailer owners denied giving Mr. Clark permission to be in their homes. (Tr. Vol. II, p.54, Ls.18–20, p.60, L.25–p.61, L.3, p.64, Ls.1–3.)

After the officers arrested Mr. Clark, Officer Graham obtained confirmation of the warrant. (Tr. Vol. II, p.88, Ls.5–22.) The warrant was a bench warrant for Mr. Clark's arrest for his failure to appear at a preliminary conference for charges of malicious harassment, a felony, and battery, a misdemeanor, in Nez Perce County. (State's Ex. 3.) The judge had issued the

bench warrant on November 20, 2018. (State's Ex. 3, p.1.) Officer Drew's and Officer Graham's body cam videos showed their initial interactions with Mr. Clark, Officer Graham's attempt to arrest him, Mr. Clark's flight, and the officers' eventual discovery of Mr. Clark in the second trailer. (*See* State's Exs.1, 2.)

In closing arguments, the State argued the district court should find Mr. Clark guilty of all three offenses. On the two counts of unlawful entry during fresh pursuit, the State asserted the statutory definition of "fresh pursuit" included pursuit upon an officer's knowledge of an arrest warrant. (Tr. Vol. II, p.112, L.17–p.113, L.17.) In contrast, Mr. Clark argued an officer's pursuit on an arrest warrant did not qualify as "fresh pursuit." (Tr. Vol. II, p.118, L.11–p.119, L.24.)

After closing arguments, the district court announced its verdict. (*See* Tr. Vol. II, p.125, L.3–p.128, L.14.) First, the district court found Mr. Clark not guilty of providing false information and acquitted him of that charge. (Tr. Vol. II, p.125, L.15–p.126, L.1.) Second, the district court found Mr. Clark guilty of resisting and obstructing a police officer. (Tr. Vol. II, p.126, L.1–p.127, L.4.) The district court explained, however, it did not find Mr. Clark guilty of this offense for resisting and obstructing "a purported action for what has been referred to as a robbery in this matter," contrary to the officers' testimony and the State's argument. (Tr. Vol. II, p.126, L.13–p.127, L.1.) Rather, the district court found Mr. Clark resisted and obstructed by delaying "the officer's duty to apprehend individuals with outstanding warrants." (Tr. Vol. II, p.126, Ls.16–17.) The district court reasoned that Mr. Clark "in running from the officers once the officer determined that a warrant was outstanding" constituted resisting and obstructing the officer's duty to execute a warrant from a different county. (Tr. Vol. II, p.126, Ls.17–23, *see also* Tr. Vol. II, p.127, Ls.2–4.)

Lastly, the district court addressed the two counts of unlawful entry during fresh pursuit. (Tr. Vol. II, p.127, L.4–p.128, L.12.) The district court found, on both counts, Mr. Clark entered the trailers without consent. (Tr. Vol. II, p.127, L.14–p.128, L.2.) The district court recognized these findings would satisfy the elements for misdemeanor unlawful entry. (Tr. Vol. II, p.128, Ls.2–5.) On the fresh pursuit element, which elevates the offense to a felony, the district court took the matter under advisement to determine whether it was "applicable in this case." (Tr. Vol. II, p.128, Ls.5–12.) At the next hearing, the district court found "the requisite proof was present to meet the elements of fresh pursuit" and, therefore, Mr. Clark was guilty of two counts of unlawful entry during fresh pursuit. (Tr. Vol. I, p.5, L.18–p.6, L.21; *see also* R., p.48.) The district court did not provide any explanation on its interpretation of "fresh pursuit" and its application to this case. (*See* Tr. Vol. I, p.5, L.9–p.6, L.23.)

At sentencing, the district court commuted Mr. Clark's sentences for unlawful entry during fresh pursuit to eight months in county jail, to be served concurrently. (Tr. Vol. II, p.152, Ls.2–8; R., p.50.) Shortly thereafter, the district court entered a judgment of conviction for two counts of unlawful entry during fresh pursuit. (R., pp.51–57.) The next day, the district court granted the State's motion to dismiss the resisting and obstructing count. (R., pp.59, 60.) Mr. Clark timely appealed from the district court's judgment of conviction. (R., pp.64–66.)

ISSUE

Did the district court err by finding Mr. Clark guilty of unlawful entry during fresh pursuit because the officers' pursuit of Mr. Clark to execute an arrest warrant does not qualify as "fresh pursuit" as defined by I.C. § 19-705?

ARGUMENT

The District Court Erred By Finding Mr. Clark Guilty Of Unlawful Entry During Fresh Pursuit Because The Officers' Pursuit Of Mr. Clark To Execute An Arrest Warrant Does Not Qualify As "Fresh Pursuit" As Defined By I.C. § 19-705

A. Introduction

Mr. Clark challenges the district court's guilty verdict for two counts of unlawful entry during fresh pursuit. He argues the statutory definition of "fresh pursuit" in I.C. § 19-705 does not include a police officer's pursuit of an individual to execute an arrest warrant. The statute's plain language, the Uniform Act on Fresh Pursuit, the legislative history for unlawful entry and fresh pursuit, and public policy support this interpretation. Because the meaning of "fresh pursuit" excludes pursuit to execute a warrant, the State presented insufficient evidence to satisfy the fresh pursuit element—the sole element that elevates unlawful entry from a misdemeanor to a felony. Therefore, the district court erred by finding Mr. Clark guilty, and this Court should vacate his judgment of conviction.

B. Standard Of Review

The Court exercises "free review over statutory interpretation because it is a question of law." *State v. Owens*, 158 Idaho 1, 3 (2015).

> "This Court will not overturn a judgment of conviction, entered upon a jury verdict, where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt." *State v. Sheahan*, 139 Idaho 267, 285 (2003). "Evidence is substantial if a reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact has been proven." *State v. Eliasen*, 158 Idaho 542, 546 (2015). A conviction can be based primarily upon circumstantial evidence, *State v. Stevens*, 93 Idaho 48, 50–51 (1969), and "even when circumstantial evidence could be interpreted consistently with a finding of innocence, it will be sufficient to uphold a guilty verdict when it also gives rise to reasonable inferences of guilt," *Severson*, 147 Idaho at 712.

State v. Smith, 161 Idaho 782, 790 (2017). The Court views "the evidence in the light most favorable to the prosecution." *Eliasen*, 158 Idaho at 546 (quoting *State v. Adamcik*, 152 Idaho 445, 460 (2012)).

C. The State Presented Insufficient Evidence For The District Court To Find Mr. Clark Guilty Of Unlawful Entry During Fresh Pursuit Because Pursuit To Execute An Arrest Warrant Is Not "Fresh Pursuit" As Defined By I.C. § 19-705

Mr. Clark contends the State failed to meet its burden to prove him guilty of two counts of unlawful entry, a felony by virtue of the officers' alleged fresh pursuit, because the statutory definition of "fresh pursuit" excludes pursuit to execute an outstanding warrant for an individual's arrest. First, he argues the statute's plain language clearly defines fresh pursuit as an officer's pursuit of person who has committed a crime shortly after the officer observes or learns of the crime's commission. It excludes pursuit of persons with outstanding arrest warrants. Second, if the fresh pursuit statute is ambiguous, Mr. Clark argues the rules of statutory construction all point to an interpretation that excludes pursuit to execute an arrest warrant. As such, without any evidence of Officer Drew and Officer Graham's "fresh pursuit" of Mr. Clark, the State presented insufficient evidence to find Mr. Clark guilty of unlawful entry during fresh pursuit.

1. The plain language of the "fresh pursuit" definition in I.C. § 19-705 does not include an officer's pursuit to execute an arrest warrant

Idaho Code § 18-7034 criminalizes unlawful entry—a person's entry into a home or other structure without the owner's consent. I.C. § 18-7034. The statute contains a misdemeanor and felony section. The misdemeanor section states:

> Every person, except under landlord-tenant relationship, who enters any dwelling house, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, closed vehicle, closed trailer, airplane, railroad car

> or outbuilding, without the consent of the owner of such property or his agent or any person in lawful possession thereof, is guilty of a misdemeanor.

I.C. § 18-7034(1). The second section elevates this offense to a felony if the unlawful entry occurs during fresh pursuit:

> Any person who enters any permanent or temporary dwelling without the consent of the owner of such property or his agent or any person in lawful possession thereof *while being pursued by a peace officer* is guilty of a felony. For purposes of this subsection "pursued" means "fresh pursuit" as defined in section 19-705, Idaho Code.

I.C. § 18-7034(2) (emphasis added). The State charged Mr. Clark with this felony offense because, at the time of his entry into the two trailers, Officer Drew and Officer Graham were pursing him to execute an arrest warrant out of Nez Perce County for Mr. Clark's failure to appear at hearing for a criminal case. (R., pp.23–24; State's Ex. 3; Tr. Vol. II, p.112, L.17–p.113, L.17 (State's closing argument).)

As indicated in I.C. § 18-7034(2), the legislature adopted the "fresh pursuit" definition in I.C. § 19-705 to define "pursued" for felony unlawful entry. Idaho Code § 19-705 states in full:

> The term "fresh pursuit" as used in this act[2] shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

I.C. § 19-705. Accordingly, fresh pursuit includes two types: (1) common law fresh pursuit and (2) pursuit of a person who has committed or reasonably suspected to have committed a felony.

[2] This act is the Uniform Act on Fresh Pursuit. I.C. § 19-707. This act discussed in detail in Part C.2.

No Idaho appellate court has interpreted the second part of the fresh pursuit definition, but the Court of Appeals has outlined the elements of common law fresh pursuit. The common law elements are:

> (1) whether the police acted without unnecessary delay; (2) whether the pursuit was continuous and uninterrupted, even if surveillance or knowledge of the suspect's location was interrupted; and (3) whether a close temporal relationship existed between the commission of the offense, the commencement of the pursuit, and the apprehension of the suspect.

State v. Scott, 150 Idaho 123, 125 (Ct. App. 2010) (citing cases from other jurisdictions). The common law elements plainly exclude pursuit to execute an arrest warrant. Pursuit to execute a warrant would fail element 3 of a close temporal relationship between the suspect's commission of the offense, the start of the pursuit, and the officer's apprehension of the suspect. Indeed, the *Scott* Court recognized, under the common law, "[a]ll that appears to be required . . . is that the officer had knowledge that a crime or infraction was committed within the jurisdiction and the officer pursued the suspect beyond the jurisdiction[3] with the purpose of making an arrest, citing the suspect, or investigating the offense." 150 Idaho at 126. *Scott* did not address the second part of the fresh pursuit definition.[4] *See id.* at 124–26.

Nonetheless, by its plain language, this second part of the fresh pursuit definition also excludes pursuit to execute an arrest warrant. "Statutory interpretation begins with the statute's plain language. That language is to be given its plain, obvious and rational meaning. If that language is clear and unambiguous, the Court need merely apply the statute without engaging in any statutory construction." *State v. Brand*, 162 Idaho 189, 191 (2017) (citations and internal

[3] The Uniform Act on Fresh Pursuit and an officer's authority to pursue a suspect outside his jurisdiction is discussed in Part C.2.

[4] The issue in *Scott* was whether the officer was in fresh pursuit of the defendant for speeding after the defendant drove outside the officer's city jurisdiction. *See id.* at 124–26. The second part of fresh pursuit was inapplicable because speeding is a traffic infraction, not a felony. *Id.* at 125–26.

quotation marks omitted). "Provisions should not be read in isolation, but rather within the context of the entire document . . . The Court must give effect to all the words in the statute so that none will be void or superfluous." *State v. Smalley*, 164 Idaho 780, 784 (2019). "To ascertain the ordinary meaning of an undefined term in a statute, [this Court has] often turned to dictionary definitions of the term." *Marek v. Hecla, Ltd.*, 161 Idaho 211, 216 (2016) (quoting *Arnold v. City of Stanley*, 158 Idaho 218, 221 (2015)). Here, this second part of fresh pursuit is "pursuit without unreasonable delay" of a person "who has committed a felony" or "is reasonably suspected of having committed a felony," even if "no felony has actually been committed." I.C. § 19-705. In light of this language, the question is whether the "committed a felony" means present commission only, such as an officer's observation of a felony and prompt pursuit of the fleeing perpetrator, or if this language incorporates past commission of a felony, such as an arrest warrant or even a prior felony conviction. The plain language indicates the legislature intended to exclude the commission of past felonies from "fresh pursuit."

First, the legislature's use of the word "committed" refers to the present commission of a suspected felony. The legislature did not include fresh pursuit of a person "charged" with or "convicted" of a felony. "Committed" denotes the act itself, before the start of criminal proceedings. Black's Law Dictionary defines "commit" as "to perpetrate (a crime)." *Commit*, BLACK'S LAW DICTIONARY (11th ed. 2019). Similarly, Merriam-Webster's defines "commit" as "to carry into action: perpetrate," and Webster's defines it as "do, perform." THE MERRIAM-WEBSTER DICTIONARY 144 (2016); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 457 (2002); *see also Commit*, MERRIAM-WEBSTER ONLINE DICTIONARY, *available at* https://www.merriam-webster.com/dictionary/commit ("to carry into action deliberately: perpetrate") (last visited Mar. 17, 2020). Thus, the reference to a person "who has committed" a

suspected felony plainly denotes a present action or perpetration of the offense. This language excludes a previously charged offense resulting in an outstanding arrest warrant.

Second, the remaining language in the definition confirms the legislature's intent to exclude fresh pursuit to execute an arrest warrant. The plain language twice references an officer's reasonable suspicion of a felony—fresh pursuit occurs when an officer "reasonably suspect[s]" or has "reasonable ground" to believe the suspect committed a felony offense. I.C. § 19-705. Moreover, an officer lawfully engages in fresh pursuit even if no felony "has actually been committed," as long as the officer's belief was reasonable. This language must signify pursuit *before* the issuance of an arrest warrant because, if an arrest warrant was pending, the officer would have more than reasonable suspicion of a felony. Depending the basis for the arrest warrant, an officer would have at least probable cause and at most a finding of guilt for the offense. The statute's language on the officer's reasonable suspicion of the offense would be rendered superfluous if an officer could engage in fresh pursuit to execute an arrest warrant. Further, the plain language references "not necessarily . . . instant pursuit, but pursuit without unreasonable delay." I.C. § 19-705. Again, this language must signify pursuit *before* the issuance of a warrant—the very nature of an outstanding warrant means there will always be delay prior to the execution of that warrant. The requirement of prompt pursuit plainly limits the timeframe of pursuit to shortly after the suspect's actual commission of the offense. This language would also rendered superfluous if an officer could engage in "fresh pursuit" in the days, weeks, or months after the commission of the offense to execute a warrant. Therefore, these definitional phrases, along with the "committed" language, exclude pursuit to execute an arrest warrant and, instead, require pursuit close-in-time to the suspect's actual commission of the suspected felony.

In sum, the second part of "fresh pursuit" definition is clear and unambiguous. Its rational meaning is to define fresh pursuit as an officer's instantaneous or reasonably prompt pursuit of a suspect upon the officer's observation or knowledge of the suspect's nearly contemporaneous commission of a suspected felony. In other words, it requires "fresh" pursuit of a suspect who just committed a crime, as opposed to "stale" pursuit on a past offense. As such, this definition excludes an officer's pursuit to execute a pre-existing arrest warrant.

2. If the "fresh pursuit" definition is ambiguous, the rules of statutory construction confirm its exclusion of an officer's pursuit to execute an arrest warrant

If the second part of the fresh pursuit definition is ambiguous, the rules of statutory construction make the legislative intent behind its definition abundantly clear. When the legislature adopted the Uniform Act on Fresh Pursuit in 1941, and again when the legislature adopted the felony unlawful entry section in 2017, the legislature intended "fresh pursuit" to exclude execution of arrest warrants. Moreover, public policy on the necessary limitations of the fresh pursuit doctrine verify this interpretation.

> When this Court must engage in statutory construction because an ambiguity exists, it has the duty to ascertain the legislative intent and give effect to that intent. To ascertain such intent, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute and its legislative history. It is incumbent upon a court to give an ambiguous statute an interpretation which will not render it a nullity. Constructions of an ambiguous statute that would lead to an absurd result are disfavored.

State v. Coleman, 163 Idaho 671, 674 (Ct. App. 2018) (citations omitted).

First, the Uniform Act on Fresh Pursuit provides valuable insight on the legislature's intent on the meaning of "fresh pursuit." In 1935, state and federal representatives formed the Interstate Commission on Crime to "to discuss ways and means of overcoming loopholes in the criminal laws which worked to the advantage of the criminal and against the interests of society."

THE INTERSTATE COMMISSION ON CRIME, THE HANDBOOK ON INTERSTATE CRIME CONTROL 12 (4th ed. 1942).[5] One of those loopholes was "criminals . . . utilizing state lines to handicap our police in their apprehension." *Id.* at 16. The Commission explained:

> At the present time our most desperate criminals head straight across state lines after the commission of a crime, knowing that there is comparative safety beyond the border. For in the foreign state the pursuing officer from the state wherein the crime was committed is, in general, no longer an officer.

Id. To remedy this "abnormality," the Commission drafted the Uniform Act on Fresh Pursuit. *Id.* Under this Act,

> the moment an officer in fresh pursuit of a criminal crosses a state line, the state he enters will authorize him to catch and arrest such criminal within its bounds. The statute grants this right only when the officer is in fresh pursuit of a criminal, that is, pursuit without unreasonable delay, by a member of a duly organized peace unit, and only in cases of felonies or supposed felonies occurring outside the boundaries of the state adopting the act. It is thus based upon the little-known common-law doctrine of fresh pursuit, from which the statute has derived its name.

Id. The common law doctrine of fresh pursuit originated from a warrantless arrest "by hue and cry," "the old common-law process" of chasing suspects "immediately upon robberies and felonies committed" from town to town "with horn and voice" until "they be taken and delivered to the sheriff." *Id.* at 19. This "hue and cry" doctrine evolved to permit an officer or private person to arrest "without a warrant" upon immediate pursuit of a person who committed a felony and fled. *Id.* at 19–20 (discussing legal authorities). Although this fresh pursuit doctrine "was known to the common law," the Commission explained there was "great contrariety" in the states with the common law doctrine. *Id.* at 20. And, the Commission noted, many officers had no knowledge of their state's common law doctrine. *Id.* Therefore, the Act would preserve each state's fresh pursuit under its common law while adding a uniform fresh pursuit doctrine, also

[5] This book is available online through the HathiTrust Digital Library at https://hdl.handle.net/2027/mdp.39015028062191.

based on the common law, to apply to all states. *Id. See also* Che Odom, *Police Violate Due Process Rights by Crossing State Borders and Ignoring Fresh-Pursuit Laws*, 36 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 319, 321–22 (2010) (footnotes omitted) ("A state does not have authority to extend its police power or its criminal law into another state. This means that, as a rule, officers of one state cannot make arrests in another, but exceptions exist. Officers are permitted to arrest a suspect after a chase into another state if such authority has been granted by that other state at common law or by enactment of the Uniform Act on Fresh Pursuit."); *see also* Judith V. Royster & Rory SnowArrow Fausett, *Fresh Pursuit Onto Native American Reservations: State Rights "To Pursue Savage Hostile Indian Marauders Across the Border,"* 59 U. COLO. L. REV. 191, 249–51 (1988) (discussing interstate fresh pursuit). By 1955, thirty-nine states had adopted the Commission's Act. THE COUNCIL OF STATE GOVERNMENTS, THE HANDBOOK ON INTERSTATE CRIME CONTROL ii, 3–4 (Rev. ed. 1955).[6] *See also Arrest without a Warrant*, 3 WAYNE R. LAFAVE, SEARCH & SEIZURE § 5.1(b) (5th ed. Oct. 2019 update) (text accompanying footnotes 82 to 87); 2 LAFAVE, CRIMINAL PROCEDURE § 3.5(a) (4th ed. Dec. 2019 update) (text accompanying footnotes 23 to 27)

The Act itself contained nine sections, and Idaho adopted it in full in 1941. THE INTERSTATE COMMISSION ON CRIME, THE HANDBOOK ON INTERSTATE CRIME CONTROL at 18; *see also* Ch. 69, 1941 Idaho Sess. Laws at 133–34. Idaho's Act is codified in Chapter 7 of Title 19. *See* I.C. §§ 19-701 to -707. The first section allows any officer from another state to enter Idaho in "fresh pursuit" to arrest the person "on the ground that he is believed to have committed a felony in such other state," and it gives the out-of-state officer the same authority to arrest and detain as an Idaho officer. I.C. § 19-701. This section mirrors the Commission's Act and has

[6] This book is also available online through the HathiTrust Digital Library at https://hdl.handle.net/2027/uc1.b3270990.

been unchanged since 1941. *See* Ch. 69, § 1, 1941 Idaho Sess. Laws at 133. The second section, I.C. § 19-701A, outlines the authority of Idaho officers in fresh pursuit. Notably, it gives Idaho officers broader authority than out-of-state officers in fresh pursuit. It states in part:

> Any peace officer of this state *in fresh pursuit* of a person who is reasonably believed by him to have committed a felony in this state or has committed, or attempted to commit, any criminal offense or traffic infraction in this state in the presence of such officer, *or for whom a warrant of arrest is outstanding for a criminal offense,* shall have authority to pursue, arrest and hold in custody or cite such person anywhere in this state.

I.C. § 19-701A (emphasis added). The legislature enacted this section in 1980, and it mirrors another proposed law by the Commission on intrastate pursuit.[7] Ch. 152, § 1, 1980 Idaho Sess. Laws at 322; *see* THE INTERSTATE COMMISSION ON CRIME, THE HANDBOOK ON INTERSTATE CRIME CONTROL at 31 (Section 1 of the Uniform Act of Instra-State Fresh Pursuit of Criminals). This section's language, quoted above, has been unchanged (except in 1987 when the legislature added pursuit for traffic infractions.) Ch. 85, § 2, 1987 Idaho Sess. Laws at 160–61. The last relevant section, section 5, contains the definition of fresh pursuit. Ch. 69, § 5, 1941 Idaho Sess. Laws at 133–34. Again, I.C. § 19-705 reads in full:

> The term "fresh pursuit" as used in this act shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

[7] The legislature had adopted a different version of intrastate pursuit in 1941. At that time, the legislature added intrastate pursuit into an existing statute on "powers of policemen." 1941 Idaho Sess. Laws 132. This section was first codified at I.C. § 49-331, but recodifed at I.C. § 50-209 in 1967. Ch. 429, § 73, 1967 Idaho Sess. Laws at 1249–50, 1273. Eventually, in 1980, the legislature added Commission's proposed intrastate pursuit law as a new section, codified as I.C. § 19-701A, and reworded I.C. § 50-209 on police powers to refer back to Idaho's fresh pursuit laws in Title 19, Chapter 7. Ch. 152, § 2, 1980 Idaho Sess. Laws at 322–23.

I.C. § 19-705. As intended, this definition kept Idaho's common law on fresh pursuit intact, while also including a uniform definition to apply across state lines. Idaho's definition is identical to the Commission's proposed definition, and it has not been changed since its enactment in 1941. *Compare* I.C. § 19-705, *with* THE INTERSTATE COMMISSION ON CRIME, THE HANDBOOK ON INTERSTATE CRIME CONTROL at 17.

The upshot of this legislative history is simple—the Act's meaning of "fresh pursuit" did not include pursuit to execute a warrant. This is evident from the Commission's discussion on the Act's purpose and the evolution of the common law fresh pursuit doctrine. Throughout the Commission's discussion, there is no mention of "fresh pursuit" to execute an arrest warrant. The Act further demonstrates that the concepts of fresh pursuit and execution of an arrest warrant are mutually exclusive. That is because "it is a well-established principle of law that a warrant from one state has no force or validity outside the boundaries of that state." *State v. Bradley*, 106 Idaho 358, 360 (1983). If the Act also intended to remedy this jurisdictional limitation, it would have said so. There would have been a vastly different definition of "fresh pursuit" and a vastly different law on the authority of interstate officers. The legislative history of this Act shows the legislature did not intend to define "fresh pursuit" as pursuit to execute an arrest warrant.

Also in support of this division between fresh pursuit and arrest warrants is Idaho's broader grant of authority to intrastate officers. As explored above, I.C. § 19-701A allows an Idaho officer to engage in "fresh pursuit" throughout the state without losing his city, county, or other territorial authority. However, I.C. § 19-701A also grants an Idaho officer the authority to pursue a person "for whom a warrant of arrest is outstanding for a criminal offense." I.C. § 19-701A. This provision on outstanding arrest warrants is wholly absent from the first section on interstate officer pursuit in I.C. § 19-701. This means that the legislature understood, and

rightfully so, that the authority to pursue for a warrant was not included in the existing definition of "fresh pursuit." The legislature found it necessary to add a specific provision to allow for an Idaho officer's pursuit to execute a warrant within the state. The comparison of these two sections—interstate pursuit in I.C. § 19-701 and intrastate pursuit in I.C. § 19-701A—again confirms the statutory meaning of "fresh pursuit" to exclude pursuit to execute an arrest warrant.

Next, the legislature history on unlawful entry confirms the legislature's intent on the definition of fresh pursuit. Prior to 2017, unlawful entry was a misdemeanor offense only. *See* I.C. § 18-7034 (2016). Then, in 2017, a state senator introduced a bill to elevate the offense from a misdemeanor to a felony if "the person is being pursued by law enforcement officials." S.B. 1093, 64th Leg., 1st Reg. Sess. (Idaho 2017), *available at* https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/legislation/S1093.pdf. In the Senate Judiciary and Rules Committee meeting, the senator was specifically asked if "having an arrest warrant pending would be considered being pursued by law enforcement" under the proposed statute. S.B. 1093, S. Jud. & Rules Comm. Minutes, 64th Leg., 1st Reg. Sess., at 2 (Idaho Mar. 1, 2017). The senator responded that no, "it would be not be considered being pursued, but being sought by law enforcement." *Id. See also* S.B. 1093, S. Jud. & Rules Comm. Audio, 64th Leg., 1st Reg. Sess., at 12:38–13:17 (Idaho Mar. 1, 2017) (senator responding "no," "'pursued' is something different" than being "wanted" or "sought," and he had discussed that distinction with "various attorneys"). After the bill was passed in the senate, the House Judiciary, Rules, and Administration Committee had similar concerns. S.B. 1093, H. Jud., Rules, & Admin. Comm. Minutes, 64th Leg., 1st Reg. Sess., at 1 (Idaho Mar. 21, 2017); *see also* S.B. 1093, H. Jud., Rules, & Admin. Comm. Video, 64th Leg., 1st Reg. Sess., at 1:02–21:54 (Idaho Mar. 21, 2017). The video recording of the committee meeting shows, among other questions, one representative

asked about the meaning of "pursued," and the senator responded that a warrant would not qualify. S.B. 1093, H. Jud., Rules, & Admin. Comm. Video, 64th Leg., 1st Reg. Sess., at 10:35–11:36 (Idaho Mar. 21, 2017). In light of a missing definition for "pursued," and other issues with the scope of the bill, the committee agreed to send the bill to general orders. S.B. 1093, H. Jud., Rules, & Admin. Comm. Minutes, 64th Leg., 1st Reg. Sess., at 1 (Idaho Mar. 21, 2017); *also* S.B. 1093, H. Jud., Rules, & Admin. Comm. Video, 64th Leg., 1st Reg. Sess., at 20:30–23:44 (Idaho Mar. 21, 2017). The same day, the bill was amended to adopt the definition of "fresh pursuit" in I.C. § 19-705 and to change "law enforcement officials" to "a peace officer." *See* S.B. 1093, H. Amendment, 64th Legis., 1st Reg. Sess. (Idaho 2017), *available at* https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/legislation/S1093A1.pdf. The amended bill also pared down the extensive list of structures in the misdemeanor provision to a "permanent or temporary dwelling" only for a felony. *Id.*; *compare* I.C. § 19-705(1) ("any dwelling house, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, closed vehicle, closed trailer, airplane, railroad car or outbuilding"), *with* I.C. § 19-705(2) ("any permanent or temporary dwelling"). Shortly thereafter, both houses passed the amended bill. *See* S.B. 1093, 2017 Legislation, https://legislature.idaho.gov/sessioninfo/2017/legislation/S1093/. The Statement of Purpose explained: "This bill raises unlawful entries committed while the offender is fleeing from the police to a felony. The bill would also clarify that the victim can recover restitution.[8]" *Statement of Purpose*, RS25234, S.B. 1093, 64th Leg., 1st Reg. Sess. (Idaho 2017). The Fiscal Note

[8] The second purpose on restitution was abandoned when the bill was amended to include the "fresh pursuit" definition. *Compare* S.B. 1093, 64th Leg., 1st Reg. Sess. (Idaho 2017), *available at* https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/legislation/S1093.pdf, *with* House Amendment to S.B. 1093, 64th Legis., 1st Reg. Sess. (Idaho 2017), *available at* https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2017/legislation/S1093A1.pdf.

indicated: "There is likely to be minimal fiscal impact to the General Fund, as well as to counties. This type of unlawful entry does not occur often, but does occur enough that there is a potential for incarceration of one or more individuals in some years." *Id.*

This legislative history verifies the legislature's intent to exclude pursuit to execute an arrest warrant from the definition of fresh pursuit. In response to concerns about the reach of this bill, the sponsoring senator informed both the senate and the house that "pursued" would not include warrants. Nevertheless, the house still had concerns, and it did not pass the bill until it included a definition of "pursued." Since the chosen definition for "pursued" was "fresh pursuit" in I.C. § 19-705, it follows that the legislature understood this definition not to include pursuit to execute an arrest warrant. This narrower view of "fresh pursuit" is consistent with the house's overall goal in amending the proposed bill to limit the felony provision. Therefore, this legislative history establishes the legislature's intent to elevate unlawful entry from misdemeanor to a felony in limited situations where an officer chases after a suspect who had just committed a suspected felony.

Finally, public policy considerations support an interpretation of "fresh pursuit" that excludes the execution of arrest warrants. If the Court declines to adopt a narrow interpretation, the felony unlawful entry offense would extend far beyond the legislature's intent. With a broad interpretation, it is foreseeable that the State would bring felony unlawful entry charges against any person with a prior felony conviction because that person has "committed a felony." I.C. § 19-705. Although that interpretation would be inconsistent with the statute's plain language, and contrary to the rules of statutory construction, that position is at least feasible. This interpretation, however, would lead to a great expansion of the number of felony unlawful entry charges. Any person with a prior felony conviction, even if it occurred years ago, would be

subject to a felony for unlawful entry. This immensely broadens the scope of the statute and seems contrary to the legislature's fiscal note of a "minimal" impact with very few cases.

In summary, the Court should interpret "fresh pursuit" how the legislature intended it in 1941 when adopting the Uniform Act on Fresh Pursuit and again in 2017 when adopting the felony unlawful entry provision. The legislative history of these statutes, and reading them in context, leads to an interpretation of "fresh pursuit" that requires an officer's prompt pursuit upon the present commission of a suspected felony. The interpretation should not include a pursuit to execute an outstanding arrest warrant.

3. The State's evidence was insufficient for the district court to find the "fresh pursuit" element of unlawful entry during fresh pursuit because Mr. Clark's entry in the trailers occurred during the officers' pursuit to execute an arrest warrant

In light of the statutory meaning of "fresh pursuit," the State presented insufficient evidence to prove Officer Drew and Officer Graham were in "fresh pursuit" of Mr. Clark when he unlawfully entered the two trailers. The officers were not pursuing him upon their observation or knowledge of Mr. Clark's nearly contemporaneous commission of a suspected felony. Rather, the officers were pursing him to execute an arrest warrant. Due to the insufficient evidence to prove the "fresh pursuit" element, this Court should vacate Mr. Clark's judgment of conviction.

First, the State's evidence failed to meet the "as defined by the common law" part of the fresh pursuit definition. *See* I.C. § 19-705. Again, the common law requires (1) the police to act without unnecessary delay; (2) a continuous and uninterrupted pursuit; and (3) "a close temporal relationship existed between the commission of the offense, the commencement of the pursuit, and the apprehension of the suspect." *Scott*, 150 Idaho at 125. Here, there was no close temporal relationship to satisfy element 3. The felony malicious harassment and misdemeanor battery charges occurred on September 4, 2018, in Nez Perce County. (State's Ex. 3, pp.3–5.) The judge

issued a bench warrant for Mr. Clark's failure to appear at a preliminary conference for these charges on November 20, 2018. (State's Ex. 3, p.1.) The Nez Perce sheriff's office received the warrant on November 21, 2018. (State's Ex. 3, p.1.) Officer Graham and Officer Drew pursued Mr. Clark on January 9, 2019, and Officer Graham served the warrant on Mr. Clark on that day. (State's Ex. 3, p.1; *see* Tr. Vol. II, p.31, L.6–p.32, L.6, p.34, Ls.7–23, p.79, L.16–p.80, L.18, p.81, L.12–p.82, L.11, p.87, Ls.2–15.) In short, the officers' apprehension of Mr. Clark occurred months after his commission of the Nez Perce County offenses and the issuance of the bench warrant. There was not a close temporal relationship. Therefore, the State presented insufficient evidence for the district court to find common law fresh pursuit.

Second, the State's evidence failed to meet the second part of the fresh pursuit definition: "the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony." I.C. § 19-705. As discussed in Parts C.1 and C.2, this statutory term excludes pursuit to execute an arrest warrant. That was the sole basis for the officers' pursuit here. The State presented no evidence on Mr. Clark's connection to the supposed robbery, and, in fact, the district court rejected the State's position that the officers were delayed in their "purported" robbery investigation by Mr. Clark's flight. (Tr. Vol. II, p.126, L.23–p.127, L.2.) There was no evidence that Officer Drew and Officer Graham reasonably suspected Mr. Clark of committing a felony at the time of their pursuit. Therefore, the State presented insufficient evidence for the district court to find the "committed a felony" part of the fresh pursuit definition.

Due to the insufficiency of the evidence for "fresh pursuit," the State failed to meet its burden to prove the elements of unlawful entry during fresh pursuit beyond a reasonable doubt.

The district court erred by finding Mr. Clark guilty of two counts of felony unlawful entry, and this Court should vacate his judgment of conviction.

CONCLUSION

Mr. Clark respectfully requests this Court vacate his judgment of conviction for two counts of felony unlawful entry and remand this case to the district court for further proceedings.

DATED this 17th day of March, 2020.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of March, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCS/eas