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State v. Daniels Appellant's Reply Brief Dckt. 41997

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	Nos. 41997, 41998
Plaintiff-Appellant,)	
)	Canyon Co. Case Nos.
vs.)	CR-2009-16551, CR-2013-26916
)	
JOHN HUEY DANIELS,)	
)	
Defendant-Respondent.)	

REPLY BRIEF OF APPELLANT

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

HONORABLE BRIAN D. LEE, Magistrate Judge
HONORABLE KAREN J. VEHLLOW, Magistrate Judge
HONORABLE D. DUFF MCKEE, District Judge

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Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

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ARGUMENT

The District Court Erred By Concluding That The Orders Dismissing This Criminal Case Were Not Appealable

Orders “granting a motion to dismiss an information or complaint” or “terminating a criminal action” are appealable orders. I.A.R. 11(c)(3) and (4); see also I.C.R. 54.1(c). An exception to this general rule applies to orders dismissing a criminal complaint at a preliminary hearing “when the remedy of re-filing is available.” State v. Ruiz, 106 Idaho 336, 338, 678 P.2d 1109, 1111 (1984).¹ In this case the statute of limitations has run; therefore the remedy of re-filing is unavailable, and the exception to appealability does not apply. (Appellant’s brief, pp. 4-7.) Because the exception does not apply, the general rule that orders dismissing criminal cases are appealable applies and the district court erred by dismissing the appeals. (Id.)

Daniels spots what he believes is a logical fallacy in the state’s argument. (Respondent’s brief, pp. 6-7.) To cure the flaw in the state’s logic he then re-writes the state’s argument to be one of relative equities, an argument he has fabricated from whole cloth. (Respondent’s brief, pp. 7-8.) This argument is specious.

There is no logical flaw in the state’s argument. The state is not arguing that because “A implies B” that “non-A implies non-B.” (Respondent’s brief, p.

¹ Citing State v. Loomis, 146 Idaho 700, 201 P.3d 1277 (2009), Daniels asserts there is no right to appeal from the preliminary hearing stage despite the language in Ruiz. (Respondent’s brief, pp. 4-5.) The state’s argument that Loomis reaffirmed rather than altered the rule in Ruiz is found in the Appellant’s brief, at pages 4-5.

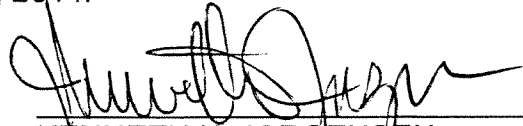
7.) To put forth the state's argument formulaically: A. The general rule is that orders dismissing criminal cases are appealable. B. Orders dismissing criminal cases as a result of findings of no probable cause at a preliminary hearing are not appealable if the remedy of re-filing is available. C. In this case the remedy of re-filing is not available. THEREFORE: the exception to the general rule of appealability (B) does not apply, the general rule (A) applies, and the orders are appealable.

The state requests that the argument it is actually making be addressed by this Court, rather than the straw man constructed by Daniels. Application of the law shows that because the remedy of re-filing was unavailable to the state, the district court erred by applying the exception to appealability instead of the general rule that orders dismissing criminal cases are appealable as a matter of right.

CONCLUSION

The state respectfully requests that this Court reverse the district court's order dismissing these appeals and remand for the appeals to proceed.

DATED this 20th day of August, 2014.



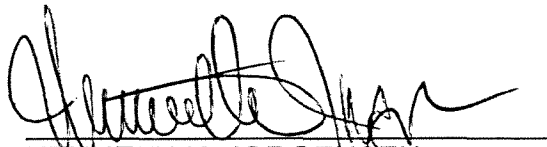
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of August, 2014, served a true and correct copy of the attached APPELLANT'S REPLY BRIEF by causing a copy addressed to:

SARA B. THOMAS
STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/pm