

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37277

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 606
	)	
<b>Plaintiff-Respondent,</b>	)	<b>Filed: September 7, 2011</b>
	)	
v.	)	<b>Stephen W. Kenyon, Clerk</b>
	)	
STANLEY CRAW,	)	<b>THIS IS AN UNPUBLISHED</b>
	)	<b>OPINION AND SHALL NOT</b>
<b>Defendant-Appellant.</b>	)	<b>BE CITED AS AUTHORITY</b>
	)	

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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Custer County. Hon. William H. Woodland, District Judge.

Judgment of conviction for aggravated battery and battery with intent to commit a serious felony, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Stanley Craw appeals from the judgment of conviction entered upon a jury verdict finding him guilty of one count of aggravated battery and one count of battery with the intent to commit a serious felony. For the reasons set forth below, we affirm.

**I.**

**FACTS AND PROCEDURE**

One night Craw went out to a local bar. A woman, who Craw did not know, was at the same bar celebrating her birthday. Both Craw and the woman were consuming alcohol and had several drinks at the bar. As the woman got up to leave, Craw asked her if she would like to go for a drive in his truck. The two departed from the bar and proceeded to drive toward a local campground. On the drive, Craw and the woman continued to consume alcohol and began flirting. As Craw’s advances escalated to physical touching, the woman resisted by throwing Craw’s hand off of her body. Craw responded by punching the woman in the face. The two

continued to the campground and further altercations occurred, which resulted in significant physical injuries to the woman.<sup>1</sup> The next day the woman reported to the police that Craw had beaten and raped her.

Based on these allegations, Craw was charged with aggravated assault, I.C. § 18-905; aggravated battery, I.C. § 18-907; burglary, I.C. § 18-1401; and rape, I.C. § 18-6101, or alternatively, battery with intent to commit a serious felony, I.C. § 18-911. Craw pled not guilty to the charges and proceeded to trial. A jury found Craw guilty of aggravated battery and battery with intent to commit a serious felony. Craw filed a motion for new trial, arguing that the jury verdict form was erroneous. After a hearing, the district court denied Craw's motion. Craw appeals.

## II. ANALYSIS

On appeal Craw argues that the district court erred in denying his motion for new trial. Craw also argues that his due process rights were violated when the state introduced evidence referencing Craw's post-*Miranda*<sup>2</sup> silence.

### A. Verdict Form

Craw argues that the district court erred in denying his motion for new trial because the jury verdict form was misleading. The verdict form contained four counts: Count 1--aggravated assault; Count 2--aggravated battery; Count 3--burglary; and Count 4--rape or, alternatively, battery with intent to commit a serious felony. Under each of the first three counts, the verdict form contained separate blanks where the jury could indicate either guilty or not guilty. Under Count 4, the verdict form instructed the jury to mark only one of the listed verdicts and then provided blank spaces where the jury could indicate either "guilty of rape," "guilty of battery with an intent to commit a serious felony," or "not guilty of rape." There was no blank space under Count 4 where the jury could indicate a finding of "not guilty of battery with intent to commit a serious felony." Craw argues that the district court erred in denying his motion for

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<sup>1</sup> At trial, Craw and the woman presented differing versions of what transpired at the campground.

<sup>2</sup> See *Miranda v. Arizona*, 384 U.S. 436 (1966).

new trial because the lack of a blank space on the verdict form where the jury could indicate “not guilty of battery with intent to commit a serious felony” was misleading to the jury.

The question whether the jury has been properly instructed is a question of law over which we exercise free review. *State v. Severson*, 147 Idaho 694, 710, 215 P.3d 414, 430 (2009). Reversible error occurs when an instruction misleads the jury. *State v. Bond*, 12 Idaho 424, 442 86 P. 43, 48 (1906). When reviewing jury instructions, we ask whether the instructions as a whole, and not individually, fairly and accurately reflect applicable law. *State v. Bowman*, 124 Idaho 936, 942, 866 P.2d 193, 199 (Ct. App. 1993).

Here, jury instruction 3 instructed the jurors that they must return a verdict of not guilty if, after considering all the evidence, they held reasonable doubt as to Craw’s guilt. Instruction 5 informed the jury that Craw was charged with rape or, in the alternative, battery with intent to commit a serious felony. Instruction 9 informed the jury that each count was a separate and distinct offense and that the jury must decide each count separately and not be influenced by its decision as to any other count. Instruction 9 also instructed the jury that Craw could be found guilty or not guilty on each of the charged offenses. Instruction 16 provided the jury with the elements the state had to prove before it could find Craw guilty of battery with intent to commit a serious felony. Instruction 16 also instructed the jurors that, if any of the elements of battery with intent to commit a serious felony were not proven beyond a reasonable doubt, they must find Craw not guilty.

Although the jury verdict form did not provide a blank space where the jury could indicate Craw was not guilty of battery with intent to commit a serious felony, if that had been the jurors’ intent, they could have accomplished it by marking “not guilty of rape.” The rest of the jury instructions taken as a whole fairly and accurately informed the jury it had the option of finding Craw not guilty on that charge. The instructions, taken together, made clear that the jury was not to find Craw guilty of any of the charged offenses unless the state proved the crime occurred beyond a reasonable doubt. The jury instructions as a whole clearly stated that the jury had to find that all of the elements of battery with intent to commit a serious felony had been proven beyond a reasonable doubt before it could find Craw guilty of that charge. We presume that the jury followed the district court’s instructions. *See State v. Kilby*, 130 Idaho 747, 751, 947 P.2d 420, 424 (Ct. App. 1997); *State v. Hudson*, 129 Idaho 478, 481, 927 P.2d 451, 454 (Ct.

App. 1996). Therefore, we hold that the verdict form did not mislead the jury. Accordingly the district court did not err in denying Craw's motion for new trial.

### **B. Post-*Miranda* Silence**

Craw argues that his Fifth and Fourteenth Amendment rights were violated when the state elicited testimony regarding his post-*Miranda* silence. On several occasions throughout the trial, police officers testified that, after being read his *Miranda* rights, Craw invoked his right to remain silent. The officers went on to testify that, despite invoking his right to remain silent, Craw continued to talk with them and to disclose additional information regarding the investigation.

Craw made no contemporaneous objection to the testimony at trial. Generally, issues not raised below may not be considered for the first time on appeal. *State v. Fodge*, 121 Idaho 192, 195, 824 P.2d 123, 126 (1992). Idaho decisional law, however, has long allowed appellate courts to consider a claim of error to which no objection was made below if the issue presented rises to the level of fundamental error. *See State v. Field*, 144 Idaho 559, 571, 165 P.3d 273, 285 (2007); *State v. Haggard*, 94 Idaho 249, 251, 486 P.2d 260, 262 (1971). In *State v. Perry*, 150 Idaho 209, 245 P.3d 961 (2010), the Idaho Supreme Court abandoned the definitions it had previously utilized to describe what may constitute fundamental error. The *Perry* Court held that an appellate court should reverse an unobjected-to error when the defendant persuades the court that the alleged error: (1) violates one or more of the defendant's unwaived constitutional rights; (2) the error is clear or obvious without the need for reference to any additional information not contained in the appellate record; and (3) the error affected the outcome of the trial proceedings. *Id.* at 226, 245 P.3d at 978.

The testimony elicited by the state regarding Craw's post-*Miranda* silence was improper. *See State v. Tucker*, 138 Idaho 296, 299, 62 P.3d 644, 647 (Ct. App. 2003) (officer's brief statement that, after receiving a *Miranda* warning, the defendant refused to say anything violated due process); *State v. Martinez*, 128 Idaho 104, 112, 910 P.2d 776, 784 (Ct. App. 1995) (officer's testimony that, after receiving a *Miranda* warning, defendant chose not to talk violated due process). Therefore, the alleged error violated Craw's due process rights and was clear and obvious.

We must also consider, however, whether the error affected the outcome of the trial. The testimony regarding Craw's post-*Miranda* silence was elicited, not to imply that Craw was guilty

of the charged crimes, but to describe the context in which Craw continued to make statements to the police after having invoked his right to remain silent. The testimony served to demonstrate that Craw's continued statements to the police were not made in violation of his *Miranda* rights. While the references to Craw's post-*Miranda* silence were inappropriate and unnecessary, the error was harmless. The statements regarding Craw's post-*Miranda* silence were made as part of a narrative of events and were not elicited to infer that Craw was guilty or to comment on Craw's exercise of his right to remain silent. The focus of the officer's testimony was not on Craw's silence, but on the voluntary statements he thereafter made concerning the charged offenses. This situation is materially different from a situation in which the defendant's silence is commented on or exploited to bolster the prosecution's case. In addition, the evidence that Craw committed battery was compelling in that the victim's nose was broken during the encounter. Therefore, based on the record, we are convinced beyond a reasonable doubt that a jury would have found Craw guilty of aggravated battery and battery with intent to commit a serious felony even if the officers had not referenced Craw's silence. Accordingly, we conclude that the officer's reference to Craw's post-*Miranda* silence did not constitute fundamental error. *See Tucker*, 138 Idaho at 300, 62 P.3d at 648. Therefore, we will not further address this argument on appeal.

### **III. CONCLUSION**

We hold that the district court did not err in denying Craw's motion for a new trial. We also hold that reference to Craw's post-*Miranda* silence at trial was harmless. Accordingly, Craw's judgment of conviction for aggravated battery and battery with intent to commit a serious felony is affirmed.

Judge LANSING and Judge GUTIERREZ, **CONCUR.**