IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37044

STATE OF IDAHO,	)	**2011 Unpublished Opinion No. 638**
Plaintiff-Respondent,	)	**Filed: September 29, 2011**
v.	)	**Stephen W. Kenyon, Clerk**
STEVEN HARLEY MAIDWELL,	)	**THIS IS AN UNPUBLISHED OPINION AND SHALL NOT BE CITED AS AUTHORITY**
Defendant-Appellant.	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Ronald J. Wilper, District Judge.

Judgment of conviction for use of a deadly weapon in commission of aggravated assault and misdemeanor eluding a peace officer, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant. Diane M. Walker argued.

Hon. Lawrence G. Wasden, Attorney General; Elizabeth A. Koeckeritz, Deputy Attorney General, Boise, for respondent. Elizabeth A. Koeckeritz argued.

WALTERS, Judge Pro Tem

Steven Harley Maidwell appeals his judgment of conviction for use of a deadly weapon in the commission of aggravated assault and misdemeanor eluding a peace officer rendered on a jury verdict. Maidwell claims three errors in the jury instructions. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Maidwell owed money to the lienholder on his International truck and had missed making payments. The lienholder requested Western International Recovery Bureau (WIRB) to repossess the truck. Scott Legg and Travis Turner worked for WIRB and discovered that Maidwell was keeping the truck at his father's house in Nampa behind a locked gate and was attempting to sell his truck through eBay. They decided to act as an interested buyer in order to repossess the truck. Neither had a commercial driver's license (CDL), so they hired Martin Wallace to pose as the buyer because he had a CDL and was knowledgeable about trucks.

Wallace initially visited Maidwell's father's house and inspected the truck, but Maidwell would not allow Wallace to drive it because it was not insured.

Wallace returned approximately one week later with his fifteen-year-old son, C.W., and proof of insurance. Maidwell drove the truck off of his father's property to a nearby parking lot and then let Wallace drive. Wallace drove onto the freeway and continued for approximately ten miles until exiting next to the airport in Boise. He continued down a road that ended at a lot enclosed by a six-foot fence. The lot was leased by WIRB, but did not have any signs identifying the property as being leased by WIRB. As they approached the lot, Legg opened the gate leading into the lot and hid behind it. Wallace and C.W. testified that as Wallace was telling Maidwell the truck was being repossessed, Maidwell pulled the emergency brake to bring the truck to a stop, pulled out a handgun, and ordered Wallace and C.W. out of his truck. Maidwell allegedly then engaged a round in the chamber of the gun and told Wallace "Get out of my truck or I'll kill you." He also pointed the handgun at C.W. As Wallace was exiting the truck, Legg climbed up next to the driver's side door and tried to grab the keys. Maidwell pointed the handgun at Legg and yelled at him to get away from his truck or he would shoot. Legg testified that Maidwell kicked him to get him off the truck as Maidwell moved into the driver's seat. Maidwell then drove off with the repossession agents following as they called the police to let them know their location.

Before Maidwell entered the freeway, an officer arrived and tried to initiate a stop with lights and sirens. Approximately four police cars arrived to assist in the stop. Maidwell, who admitted to seeing a number of police cars with lights on, entered the freeway and continued driving in a normal manner approximately ten miles back to his father's house in Nampa, with the police cars following him. Maidwell was arrested at his father's house without incident. The officers searched Maidwell and found in a holster a Springfield .40 caliber handgun with a twelve round clip that contained eleven rounds. One round was found on the floorboard of the truck.

Detective Wudarcki with the Boise Police Department interviewed Maidwell at the Canyon County Jail. Wudarcki verified that Maidwell had a concealed weapon permit. In a recording that was played for the jury, Maidwell explained to the officer that he thought he was allowing an interested buyer to test drive his truck. He began to get nervous when Wallace said he was looking for a place to pull over or turn around, but then passed a number of safe

opportunities and began to approach a fenced yard. Maidwell asserted that he saw one person standing behind the fence, and he thought he was going to be robbed. At that point he pulled the emergency brake and ordered them out of his truck. While acknowledging he carried a permitted concealed weapon and that he was acting to protect his life and his property, he never admitted to using his handgun in a threatening manner. Maidwell acknowledged that he was behind in his payments and that he knew the lienholder had referred the matter to a collection agency. He maintained that he had no contact from the repossession agency. While Maidwell heard one person outside the truck at the repossession lot say that it was a repossession, by that time, Maidwell was in the act of defending himself and wanted to get out of what he perceived to be a dangerous situation. When questioned about why, if he believed he had almost been robbed, he did not stop when the police cars were behind him with their lights flashing, Maidwell replied that a person from the lot was also following him and he wanted to get his truck to a secure location so it would not get towed.

The State charged Maidwell with three counts of felony aggravated assault against Wallace, C.W., and Legg for pointing the pistol at them, Idaho Code § 18-901(b), 905(a); three counts of use of a deadly weapon during the commission of the aggravated assaults, I.C. § 19-2520; eluding a peace officer, I.C. § 49-1404; and misdemeanor battery for kicking Legg, I.C. § 18-903(b). Maidwell was convicted by a jury of aggravated assault against Legg, use of a deadly weapon, and eluding a peace officer. The jury found him not guilty of the other two counts of aggravated assault and of battery. On the aggravated assault and use of a deadly weapon conviction, the district court imposed a unified sentence of seven years with two years determinate. On the misdemeanor eluding a peace officer conviction, the court imposed jail for eighty-eight days with credit for time served of eighty-eight days, to be served concurrently with the felony sentence. The court, however, suspended the sentence and placed Maidwell on probation for seven years. Maidwell appeals.

II.
DISCUSSION

Maidwell argues first that the trial court erred in failing to instruct the jury on repossession law. Second, he contends the trial court gave an erroneous defense of property instruction. Finally, he asserts that the jury instructions unconstitutionally limited his ability to present a defense. Each will be addressed in turn.

The question whether the jury had 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). 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). The Idaho Supreme Court in *State v. Elison*, 135 Idaho 546, 552, 21 P.3d 483, 489 (2001) (citing *State v. Bush*, 131 Idaho 22, 32, 951 P.2d 1249, 1259 (1997); *State v. Howley*, 128 Idaho 874, 878, 920 P.2d 391, 395 (1996), explained the standard of review for jury instructions: "The question of whether a reasonable view of the evidence supports an instruction to the jury is a matter left within the discretion of the trial court." This Court exercises free review when determining "[w]hether jury instructions fairly and adequately present the issues and state the applicable law." *State v. Humpherys*, 134 Idaho 657, 659, 8 P.3d 652, 654 (2000); *Bush*, 131 Idaho at 32, 951 P.2d at 1259.

A. Omission of Jury Instruction on Repossession Law and Breach of the Peace

Maidwell asserts that the trial court erred by refusing to give instructions on repossession law and what constituted breach of the peace. Idaho has a self-defense statute that allows people to protect themselves, others, and property. Idaho Code § 19-202 states:

> Resistance sufficient to prevent the offense may be made by the party about to be injured:
>
> 1. To prevent an offense against his person, or his family, or some member thereof.
> 2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

The defendant's right to defend his property was communicated to the jury through Instruction 30, which stated: "When conditions are present which under the law justify a person in using force in defense of property in the person's lawful possession, that person may use such degree and extent of force as would appear to be reasonably necessary to prevent the threatened injury."

Maidwell proposed two other instructions, which he claims were erroneously denied by the district court. Maidwell requested to communicate the language of I.C. § 28-9-609 to the jury with: "After default, a secured party may take possession of the collateral, without judicial process, if it proceeds without breach of the peace." To define "breach of the peace," Maidwell proposed instructing the jury that:

In considering whether a "breach of the peace" has occurred, you shall consider:

1. Where the repossession took place;
2. the debtor's express or constructive consent;
3. the reactions of third parties;
4. the type of premises entered, and;
5. the creditor's use of deception.

The trial court rejected Maidwell's proposed instructions on repossession law and breach of the peace. The trial court reasoned that instructing the jury on repossession law would require the jury to also make a finding on whether the repossession agents breached the peace in attempting to repossess the truck. The trial court concluded that it did not matter whether or not a breach of the peace occurred. What mattered was whether the level of force used by Maidwell in defense of property was reasonable. The court concluded that the jury should just be deciding whether Maidwell's level of force was reasonable and that to also have the jury decide whether a breach of the peace occurred would confuse the jury.

Maidwell argues that there was error because the trial court failed to instruct the jury on repossession law. He begins with the principle of I.C. § 19-202 that a person can use sufficient resistance to prevent illegal attempts to take property lawfully in one's possession. He points out that I.C. § 28-9-609 authorizes a secured party to take possession of a vehicle without judicial process only if the party proceeds without breach of the peace. He asserts that if the repossession agents took the truck while breaching the peace, they would be committing a theft. Maidwell cites a number of civil cases to define breach of the peace. Maidwell concludes there was error in the instructions because the jury was not instructed that he had lawful possession of the truck and the repossession agents might not have had legal authority to take the truck. Maidwell's argument appears to be that he would have liked to argue that he was reasonable in using a handgun to stop the repossession because the repossession agents breached the peace.

The State argues the jury instructions on repossession law were properly rejected because they were not accurate statements of the law. The State asserts that because Wallace and Legg desisted in the repossession attempt when confronted by Maidwell, they cannot be accused of breaching the peace. The State argues Maidwell, not the repossession agents, breached the peace by using a handgun to threaten Legg. Thus, the State concludes the repossession instructions would have been improper. The State also contends that the remedy for breach of the peace in a repossession is set out by I.C. § 28-9-625(a) and (b), which allows for court restraints on the

repossessor and monetary damages. The remedy does not include use of a handgun to stop the repossession.

Maidwell's claim of error fails because the civil law does not create a defense to assault. The cases Maidwell cited with regard to breach of the peace were from civil trials and focused on civil remedies. The official comment to I.C. § 28-9-609 directs parties to look to I.C. § 28-9-625 for the damages a person can recover for a repossession agent's breach of the peace. Idaho Code § 28-9-625 allows for orders to prohibit the repossessor from disposing of the collateral or for damages. The remedies designed in the statute do not contemplate a defense in a criminal trial. A stated purpose of the statute is to "permit the continued expansion of commercial practices through custom, usage, and agreement of the parties." I.C. § 28-1-103. Allowing debtors to use the statute, which encourages self-help, as a defense to aggravated assault against a creditor attempting to collect a vehicle would seem to undermine the commercial code's purpose of expanding commercial practices.

A court in Colorado faced an issue similar to the one before this Court and its holding is instructive. *People v. Shearer*, 650 P.2d 1293 (Colo. App. 1982). *See also State v. Hussen*, 2009 WL 3526568 (Ariz. Ct. App. 2009) (unpublished). Similar to the facts before this Court, the district court gave a defense of property instruction and refused to give an instruction on the law of repossession. *Shearer*, 650 P.2d at 1295. The court in *Shearer* held that "[t]he question as to whether the agents were legally repossessing is not pertinent to this defense; the issue is whether the defendant used reasonable force against the agents under these circumstances." *Id.* We too believe that it is not pertinent to a defense of property whether the repossessors violated the law of repossession.

Whether or not there occurred a breach of the peace, not amounting to a crime, during the repossession effort was irrelevant to whether Maidwell was justified in defending his property pursuant to I.C. § 19-202. Defense of property is only proper where there is "an illegal attempt by force to take or injure property." I.C. § 19-202. Here, the evidence showed that the creditor had the legal right to possession because Maidwell had defaulted. With the legal right to possession, the repossessor did not commit any illegal act in regard to repossessing the vehicle. No evidence or argument was presented that Maidwell did not lawfully possess his truck, which could have undermined his defense of property argument. The trial court told Maidwell that he was free to argue that he believed he was being abducted or robbed and that he acted reasonably

in defending himself or his property. The trial court appropriately put the focus on the self-defense and defense of property instructions.

B. Defense of Property Instruction

Maidwell complains that the trial court gave an erroneous instruction on the defense of property. Maidwell requested the trial court to include a number of Idaho Criminal Jury Instructions, including Idaho Criminal Jury Instruction (ICJI) 1522 for "Defense of Property--Reasonable Force." The trial court gave ICJI 1522 as Instruction 30, which stated:

> When conditions are present which under the law justify a person in using force in defense of property in the person's lawful possession, that person may use such degree and extent of force as would appear to be reasonably necessary to prevent the threatened injury. Reasonableness is to be judged from the viewpoint of a reasonable person placed in the same position and seeing and knowing what the defendant then saw and knew. Any use of force beyond that limit is unjustified.

Maidwell now complains that there was error in Instruction 30. In addition to arguing that there was no error in the instruction, the State contends that Maidwell cannot complain about Instruction 30 because any error was invited by Maidwell's request to include the instruction.

A party is estopped, under the doctrine of invited error, from complaining that a ruling or action of the trial court that the party invited, consented to, or acquiesced in was error. *State v. Carlson,* 134 Idaho 389, 402, 3 P.3d 67, 80 (Ct. App. 2000). The purpose of the invited error doctrine is to prevent a party who "caused or played an important role in prompting a trial court" to take a particular action from "later challenging that decision on appeal." *State v. Blake*, 133 Idaho 237, 240, 985 P.2d 117, 120 (1999). In short, invited errors are not reversible. Accordingly, a party cannot assert as an error on appeal instructions that he himself requested. *State v. Aragon*, 107 Idaho 358, 363, 690 P.2d 293, 298 (1984). *See also Blake*, 133 Idaho at 237, 985 P.2d at 120; *State v. Wilkerson*, 121 Idaho 345, 349, 824 P.2d 920, 924 (Ct. App. 1992).

In a motion for jury instructions, Maidwell requested seven instructions, including ICJI 1522 (Defense of Property--Reasonable Force). Jury Instruction 30 is identical to ICJI 1522. Maidwell does not address the State's claim that he invited the error. This Court agrees with the State that Maidwell requested the instruction and he cannot complain on appeal that the requested instruction was error.

C. Restriction on Maidwell's Argument that the Repossession was Illegal

Maidwell argues that the district court denied his Fourteenth Amendment right to due process or his Sixth Amendment right to present a complete and meaningful defense by prohibiting him from arguing that the repossession agents' actions were illegal. Defendants have a right to present a defense, which is rooted in the Compulsory Process Clause or Confrontation Clause of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment, and which includes the right to offer testimony of witnesses, to compel their attendance, and to present the defendant's version of the facts. *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006); *State v. Molen*, 148 Idaho 950, 956, 231 P.3d 1047, 1053 (Ct. App. 2010). A defendant's right to present a defense, however, does not afford a criminal defendant a right to present evidence that is irrelevant or confuses the issues. *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986); *Molen*, 148 Idaho at 956-57, 231 P.3d at 1053-54.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." I.R.E. 401. We review questions of relevance de novo. *State v. Raudebaugh*, 124 Idaho 758, 764, 864 P.2d 596, 602 (1993).

As discussed above, Maidwell requested a number of jury instructions, including instructions on the law of repossession and what constitutes a breach of the peace. The trial court rejected Maidwell's instructions on repossession and breach of the peace because it was irrelevant and would confuse the jury. The court also stated:

> I will at this time admonish defense counsel not to argue that the alleged victim's conduct was unlawful and therefore justifying the defendant's alleged conduct.
>
> You can argue all you want that he had made a mistake, that your client had made a mistake, regarding the repossession and that he mistakenly believed that either he was being abducted or kidnapped, as you suggested, or that his car was being--or that his vehicle was being, that he was being robbed of his vehicle.
>
> It seems to me that that is a legitimate area of argument that you can make to the jury. Now, whether or not they believe that is up to the jury, but I think that that is the way we should go on this. I think it will avoid confusion.
>
> So what I'm saying is, you can, if you wish, argue that the defendant mistakenly believed he was being abducted or robbed, and that question is open to argument and the decision is up to the jury. So that is going to be my ruling on that important issue.

Maidwell asserts the district court disallowed him from presenting his defense theory of the case when the court ordered him not to argue that the taking by the repossession agents was

unlawful. However, whether or not the repossession was illegal under the self-help statute would only aid Maidwell's defense if the civil statute could assist Maidwell in constructing a defense. As discussed in the section above, Maidwell failed to demonstrate the civil statute was applicable in this case. Thus, whether the repossession agents violated the self-help statute was irrelevant to Maidwell's defense, and the trial court did not err in refusing presentation of irrelevant argument and evidence where Maidwell's conduct, not the agents' conduct, was at issue by virtue of the criminal charges.

III.

CONCLUSION

Maidwell failed to demonstrate that the self-help statute was relevant to instruct the jury on the proper defense for aggravated assault. Maidwell invited the error, if any, by requesting the defense of property jury instruction, which cannot be reviewed on appeal. The trial court did not err in excluding Maidwell's argument or evidence that the repossession agents violated the self-help statute. The judgment of conviction is affirmed.

Judge LANSING and Judge MELANSON **CONCUR.**