

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33978

STATE OF IDAHO,)	2008 Opinion No. 9
)	
Plaintiff-Respondent,)	Filed: February 6, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
MYRON DALE LOOMIS, JR.,)	
)	
Defendant-Appellant.)	
_____)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Valley County. Hon. Thomas F. Neville, District Judge. Hon. Henry R. Boomer, III, Magistrate.

Order of the district court on appeal from the magistrate, vacated.

Wilcox & Hallin, McCall, for appellant. Jonathon D. Hallin argued.

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

GUTIERREZ, Chief Judge

Myron Dale Loomis, Jr., appeals from the district court’s order remanding the case to the magistrate for a determination on whether the state met its burden of showing probable cause on each of the material elements of aggravated assault. We vacate the order of the district court for the reasons set forth below.

I.

BACKGROUND

The facts of this case were produced at the preliminary hearing as follows: On June 29, 2005, Loomis was driving his dump truck on Davis Creek Road in Valley County when he encountered Darrel Richard Kelley, his brother-in-law. Kelley is a retired Idaho State Police Officer, married to Loomis’s sister, and has known Loomis for approximately sixteen years. Kelley was also having an affair with Loomis’s wife, which Loomis knew about. Kelley was servicing portable toilets and had just gone to a shooting range to service a toilet located there.

The toilet was not in its usual location; instead Kelley discovered it about a mile from the shooting range, dumped sideways along the side of the road. Two individuals at the shooting range informed Kelley that Loomis had moved the toilet. Admittedly angry at this point, Kelley put the toilet on the back of his truck intending to return to the shop to clean up the mess. Kelley then encountered Loomis on Davis Creek Road, traveling in the opposite direction. Both men stopped their trucks and Kelley exited his vehicle, approaching Loomis's truck with the intent to engage him in a fight. Kelley said to Loomis, "Get out of the truck, asshole." Kelley wanted to provoke Loomis so that Loomis would take a swing at him and Kelley could "put him in the hospital."

When Loomis didn't move, Kelley reached up for the hand-hold to step onto Loomis's truck. Kelley intended to open the door of the truck, and although he hadn't thought through his plan as to what he would do next, he admitted he probably would have grabbed Loomis and forcibly removed him from the truck in order to provoke a fight. Before Kelley could accomplish any of these things however, Loomis pointed a revolver at Kelley, cocked it, and told him to get back. Kelley took one step back from the truck, placing himself several feet from Loomis's door. Even though the gun was pointed at his chest, Kelley continued to yell at Loomis, taunting him that he didn't have the guts to shoot and calling him a chicken. Loomis fired one shot from his revolver into the pavement between Kelley's feet. Due to the limited distance between the two men at the time the shot was fired, Kelley believed that Loomis could have hit him if he had tried. Kelley also became aware that Loomis's six-year-old son was in the truck when the boy screamed at the sound of the gun-fire. Kelley ran back to his truck, yelling that Loomis would go to jail over the incident.

Loomis was charged with aggravated assault, Idaho Code §§ 18-901, 18-905, a felony. After the preliminary hearing the magistrate dismissed the case, finding that Loomis's actions were justified by self-defense, and therefore did not constitute a crime. The state appealed to the district court contending that it was held to an unreasonable burden of disproving self-defense and claiming that the magistrate should not have considered any evidence of self-defense. The district court agreed that the state is not required, at the preliminary hearing stage, to prove the inapplicability of any affirmative defenses. It found that, even if the state had this burden, the magistrate erred when he inferred facts not in evidence and not supported by the record and did not make findings with regard to all of the elements necessary to raise self-defense. The district

court remanded the case to the magistrate for reconsideration of its probable cause determination. Loomis appealed.

II. DISCUSSION

Loomis appeals from the district court's order remanding the case to the magistrate for probable cause findings as to each element of aggravated assault based on the record from the preliminary hearing. On review of a decision of the district court, rendered in its appellate capacity, we examine the record of the trial court independently of, but with due regard for, the district court's intermediate appellate decision. *State v. Bowman*, 124 Idaho 936, 939, 866 P.2d 193, 196 (Ct. App. 1993).

Idaho law provides that a criminal defendant, charged by complaint with a felony, shall be entitled to a preliminary hearing in which the magistrate shall determine whether a public offense has been committed and, if so, whether probable cause exists to believe that the defendant committed it. *State v. Pole*, 139 Idaho 370, 372, 79 P.3d 729, 731 (Ct. App. 2003); *see also* I.C. § 19-804; I.C.R. 5.1; *State v. Holcomb*, 128 Idaho 296, 299, 912 P.2d 664, 667 (Ct. App. 1995). The purpose of the preliminary hearing is quite limited. *State v. Williams*, 103 Idaho 635, 644-45, 651 P.2d 569, 578-79 (Ct. App. 1982), *overruled on other grounds by State v. Pierce*, 107 Idaho 96, 685 P.2d 837 (Ct. App. 1984). Based on the magistrate's determination of probable cause, the defendant will either be held to answer to the public offense in the district court or will be discharged and the complaint dismissed. *See* I.C. §§ 19-814, -815; I.C.R. 5.1. The finding of probable cause must be based upon substantial evidence on every material element of the offense charged, and this test may be satisfied through circumstantial evidence and reasonable inferences to be drawn therefrom. *State v. Reyes*, 139 Idaho 502, 504, 80 P.3d 1103, 1105 (Ct. App. 2003); *State v. Munhall*, 118 Idaho 602, 606, 798 P.2d 61, 65 (Ct. App. 1990). The state is not required to produce all of its evidence at a preliminary examination, *Carey v. State*, 91 Idaho 706, 709, 429 P.2d 836, 839 (1967); rather, the state need only show that a crime was committed and that there is probable cause to believe the accused committed it, *Pole*, 139 Idaho at 372, 79 P.3d at 731.

The parties did not address, in their initial briefs to this Court, *State v. Ruiz*, 106 Idaho 336, 678 P.2d 1109 (1984), where our Supreme Court held that a dismissal following a preliminary hearing is not appealable when the state can merely refile the case and go before a

different magistrate. Therefore, this Court ordered supplemental briefing by the parties to provide them the opportunity to address this issue. The parties, in those supplemental briefs, argue that this Court should not consider the *Ruiz* holding because it addresses an issue not raised by the parties. This Court believes, however, that rendering an opinion which implicitly disregards the Supreme Court's ruling that the issue presented is not appealable is unacceptable in light of the potential impact on the administration of justice. To do so would produce inconsistent appellate Court positions on this threshold issue. We therefore apply *Ruiz* to the instant case.

The magistrate here considered evidence of self-defense at the preliminary hearing and dismissed the complaint, ruling that the state had failed to show probable cause to believe that Loomis was guilty because the burden was on the prosecution to prove that the assault was not justifiable. The state appealed to the district court pursuant to Idaho Criminal Rule (I.C.R.) 54.1(c) and (f). Idaho Criminal Rule 54 governs appeals from the magistrate division to the district court. Subsection (f) allows an appeal to the district court from a magistrate's "order made after judgment affecting the substantial rights of the defendant or the state." I.C.R. 54.1(f). This section is not applicable because an order dismissing a complaint at the preliminary hearing is not an order after a judgment. The state also invoked I.C.R. 54.1(c) which states in pertinent part that an appeal may be taken to the district court from the magistrate court's "order granting a motion to dismiss a complaint." This is a similar posture to the path taken in *Ruiz*, 106 Idaho 336, 678 P.2d 1109, where the Supreme Court addressed an appeal from the dismissal of murder, battery, and assault charges at the preliminary hearing stage. In *Ruiz*, the state invoked I.C.R. 54(a)(3) as the basis for the appeal, which has since been renumbered as I.C.R. 54.1(c). The Supreme Court declined to address whether a dismissal at a preliminary hearing for failure to show probable cause constituted an order granting a motion to dismiss, holding instead that the state was not permitted under Rule 54 to appeal from an order dismissing the complaint after a preliminary hearing when the remedy of refileing was available. *Ruiz*, 106 Idaho at 337-38, 678 P.2d at 1110-11. As a basis for its holding, the Court referenced I.C.R. 2(a) which defines the purpose of the rules, which is "to provide for the just determination of every criminal proceeding." The rules are to be "construed to secure simplicity in procedure, fairness in administration and elimination of unjustifiable expense and delay." I.C.R. 2(a).

The Court further elaborated that an appeal from a decision at the preliminary hearing stage would be detrimental to both sides by causing unnecessary delay hindering the availability and recall of witnesses. *Ruiz*, 106 Idaho at 337, 678 P.2d at 1110. Such appeals would also interfere with judicial efficiency by increasing the appellate caseload of district courts. *Id.* The Court determined that the simpler solution would be for the state to refile the complaint before a new magistrate for resolution of the issues in a new preliminary hearing. *Id.* Refiling and going before a different magistrate would insure the public's right to the speedy administration of justice, and create a speedy determination of the defendant's rights, all while avoiding the inconvenience, delay and expense of the appellate process. *Id.*

The Court emphasized that the only limitation in Idaho on the state's ability to refile a felony complaint is that it cannot be done without good cause or in bad faith. *Id.* at 338, 678 P.2d at 1111. The Court rejected any concerns as to double jeopardy, since jeopardy does not attach at a preliminary hearing. It also rejected any concern raised regarding the statute of limitations and the Sixth amendment right to a speedy trial. *Id.* The Court noted an exception to the general rule disallowing appeals from a dismissal at the preliminary hearing stage exists, if the dismissal defeats or prevents successful prosecutive action against the defendant.¹ *Id.* Otherwise there is no need for appellate review of probable cause determinations at the magistrate level. *Id.*

Justice Bakes dissented in *Ruiz*, concerned that the majority opinion would encourage judge-shopping. *Ruiz* at 339, 678 P.2d at 1112 (Bakes, J., dissenting). Although agreeing that there are situations in which refiling the complaint would be the appropriate action for the state, Justice Bakes pointed out that there are also situations where judicial efficiency can only be served by an appeal. *Id.* at 338-39, 678 P.2d at 1111-12. For instance, when there are conflicting magistrate practices within a district, or even state-wide, a uniform ruling as a matter of law would enhance judicial economy and the fair application of justice. *Id.* at 339, 678 P.2d at 1112. Justice Bakes proposed two options for the state when a complaint is dismissed at the preliminary hearing stage: (1) if the complaint is dismissed for sheer lack of evidence to support

¹ Although this exception was later applied by the Idaho Supreme Court in *State v. Diaz*, 117 Idaho 392, 788 P.2d 207 (1990), it is not applicable in this case as the state freely admitted that it could refile before a new magistrate by disqualifying Judge Boomer, the only magistrate in Valley County. Therefore the magistrate's dismissal does not prevent successful prosecutive action if the state refiles.

probable cause, and the state has more evidence it can present, then the case should be refiled; (2) if the dismissal was the result of an incorrect interpretation or application of the law, then the state should be allowed to appeal. *Id.*

The parties in this case agree with the analysis of Justice Bakes' dissent, and present additional arguments as to why *Ruiz* should not apply here. The parties assert that magistrates are in need of guidance on the issue of raising affirmative defenses during a preliminary hearing and whether or how the magistrate should consider that evidence. We note that while stating his conclusions on the record, Judge Boomer acknowledged that "a different judge might have come to a different finding" with regard to the applicability of self-defense evidence during the preliminary hearing. It is further argued that a ruling on the merits would conserve judicial resources because it would eliminate the need for the state to refile cases if a magistrate incorrectly considers an affirmative defense. Also, it is argued that the *Ruiz* solution of simply refiling the complaint undermines magistrate authority and provides no educational opportunity for the magistrates to keep pace with the changing nature of the law. Moreover, refiling the case may cause significant hardships to the defendant from being arrested a second time and required to post successive bonds or await further proceedings from jail. Another consequence of requiring refiling is that the uncertainty and repetitive nature of such a solution would also increase attorney costs for both sides. Finally, the parties posit that in thirty-two of Idaho's forty-four counties, the process of refiling is not as simple as it may appear because those counties only have one magistrate. In order to file the complaint before a new magistrate, the state must first disqualify the county's magistrate under I.C.R. 25(a)(1). Although this is permitted in preliminary hearings, it requires extra time and procedures on the part of the state to bring in an out-of-county magistrate to hear the new preliminary hearing.

Despite the legitimate arguments presented against applying *Ruiz*, we are constrained to follow its precedent. The state freely admits that it has the option to refile this case before a new magistrate by disqualifying Judge Boomer. The delay created by this appeal, which *Ruiz* sought to avoid, is already evident here--the preliminary hearing was held on August 16, 2005, nearly two and one-half years ago; witness memory has likely begun to fade while Loomis awaits a determination of his rights which could have been quickly resolved by immediately refiling.

III.

CONCLUSION

The state's appeal from the magistrate's dismissal of the complaint following a preliminary hearing was not authorized under I.C.R. 54.1(c). Therefore, the state's appeal to the district court should have been dismissed. The district court's order remanding this case for a determination of whether the state has shown probable cause on each element of aggravated assault is vacated. The state may pursue its remedy of refileing.

Judge LANSING and Judge PERRY **CONCUR.**