

evidence

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

NICOLE RENEE CROSBY,

~~Defendant-Appellant~~

Order Dismissing Appeal

Supreme Court Docket No. 49151-2021

Gooding County Magistrate Court No.
CR24-20-01418

An Order Conditionally Dismissing Appeal was issued by this Court on October 21, 2021, as it appeared the Notice of Appeal was not filed within forty-two (42) days from the date of entry of the Memorandum Decision on Appeal filed on July 19, 2021. The appeal was suspended for twenty-one (21) days for Appellant to file a Response as to why this appeal should not be dismissed.

WHEREAS, there having been no Response filed with this Court pursuant to this Court's Order Conditionally Dismissing Appeal dated October 21, 2021; therefore,

IT IS HEREBY ORDERED that the above entitled appeal be, and is hereby, DISMISSED.

Dated 12/03/2021.

For the Supreme Court

Melanie Gagnepain

Melanie Gagnepain
Clerk of the Courts

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

NICOLE RENEE CROSBY,

Defendant-Appellant.

**Order Conditionally
Dismissing Appeal**

Supreme Court Docket No. 49151-2021

Gooding County Magistrate Court No.
CR24-20-01418

Notice(s) of Appeal were filed in the District Court on September 13, 2021. A Memorandum Decision on Appeal was entered by District Judge Rosemary Emory and filed on July 19, 2021. Idaho Appellate Rule 14 requires that an appeal be filed within forty-two (42) days from the date evidenced by the filing stamp of the clerk of the court on any judgment or order of the district court appealable as a matter of right in any civil or criminal action. It appears that the Notice(s) of Appeal were not filed in the District Court within forty-two (42) days from the date of entry of the Memorandum Decision on Appeal filed on July 19, 2021; therefore,

IT IS HEREBY ORDERED that this appeal is conditionally dismissed as the Notice(s) of Appeal were not timely filed from the Memorandum Decision on Appeal filed in the District Court on July 19, 2021. Appellant may file a Response with this Court on or before twenty-one (21) days from the date of this Order as to why this appeal should not be dismissed.

IT IS FURTHER ORDERED that proceedings in this appeal shall remain suspended pending an Order of this Court.

DATED this 21st day of October, 2021.

For the Supreme Court


Melanie Gagnepain, Clerk

cc: Nicole Renee Crosby
3320 South 2000 East
Wendell, ID 83355

to proceed in. On May 28, 2021 the State filed a *Respondent's Brief*. On June 14, 2021 Appellant filed a document titled *Requesting Answer*. Neither party requested oral argument and the matter was deemed fully submitted as of June 28, 2021.

2. ISSUE ON APPEAL

Appellant does not succinctly state her issue(s) on appeal, however, she states "court had no jurisdiction to find me guilty," *Motion to Appeal Being Found Guilty After Trial* p.2, and states "this criminal allegation should of and has to be dismissed legally for a crime of trespass I would have had to be aware I was committing a trespass..." *Id.*, p. 3.

The state presents the issue as: "Was Nicole Crosby's properly convicted based on the testimony, photos, and her own admissions?" *Respondent's Brief*, p. 3.

The Court frames the issue as:

Has the Appellant demonstrated that the magistrate judge made a reversible error in finding Appellant committed the offense of trespass?

3. STANDARD OF REVIEW

In an appeal from the magistrate division of the district court, the district judge hearing the appeal should evaluate the record as an appellate court, i.e., to determine the factual sufficiency of the record to sustain the judgment. I.C. § 1-2213(2); Civil Appellate Rules, rule 15. *Matter of Matthews*, 97 Idaho 99, 540 P.2d 284 (1975); *In re Stibor's Estate*, 96 Idaho 162, 525 P.2d 357 (1974). A district judge considers an appeal from a magistrate judge as an appellate proceeding, rather than a trial de novo. *State v. Kenner*, 121 Idaho 594, 596, 826 P.2d 1306, 1308 (1992).



4. ANALYSIS

Appellant alleges that the magistrate court erred in concluding that she was guilty of trespassing. A person appealing a conviction made by a trial court bears the burden of showing where the error was made, an appellate court “will not consider an issue not ‘supported by argument and authority in the opening brief.’” *State v. McDay*, 164 Idaho 526, 528, 432 P.3d 643, 645 (2018); see *Jorgensen v. Coppedge*, 145 Idaho 524, 528, 181 P.3d 450, 454 (2008); see also Idaho App. R. 35(a)(6). When an appellant fails to state with particularity and assert the errors made clearly, supporting their position with cited authority, the court cannot grant the requested relief. *Id.* In *McDay*, the Idaho Supreme Court stated, “A general attack on the findings and conclusions of the [trial] court, without specific reference to evidentiary or legal errors, is insufficient to preserve an issue.” *Id.* see *Michael v. Zehm*, 74 Idaho 442, 445, 263 P.2d 990, 993 (1953).

Here, a court trial was conducted on February 17, 2021. At the trial Appellant’s father, David Crosby, testified that Nicole did not own the property located at 3318 South 2000 East Wendell, Idaho but rather he was the proper owner and Nicole held no interest in that location. He further testified, Nicole had been trespassed from the property in May of the prior year and she had acknowledged the notice of trespass. The trial court also heard testimony from the Sheriff’s deputy who issued the citation. He testified of his familiarity with the ongoing trespass issues, that on December 27, 2020, he was provided with the notice of trespass, and that he spoke with Nicole Crosby. She acknowledged that she had been on the property and prior to that date she had received the notice of trespass. Nicole Crosby also testified at the court trial, asserting that she owned “title and deed in stone” for the property and that, she had entered the property to check on her father.

After hearing the testimony and receiving evidence, the trial court concluded that the State had proved its case beyond a reasonable doubt and entered a judgment accordingly.



This Court's review of the sufficiency of the evidence is limited to ascertaining whether there is substantial evidence upon which the trial court could have found that the prosecution met its burden of proving the essential elements of the infraction beyond a reasonable doubt. *State v. Bettwieser*, 143 Idaho 582, 588, 149 P.3d 857, 863 (Ct.App.2006); *State v. Thompson*, 130 Idaho 819, 821, 948 P.2d 174, 176 (Ct.App.1997); *State v. Reyes*, 121 Idaho 570, 572, 826 P.2d 919, 921 (Ct.App.1992).

In her appeal, Nicole Crosby failed to provide the district court with argument supported by authority and she failed to point to any specific alleged errors made by the trial court. The appellant failed to assert more than a general attack on the decision made by the trial court. After reviewing the audio recording from the court trial, the exhibits presented at the trial, the briefs of the parties, and the record before it, the court finds that there was substantial, competent evidence to support the magistrate court's findings and therefore, the judgment will not be disturbed on appeal.

5. CONCLUSION

Based on the foregoing, the Judgment finding Nicole Crosby to have committed the offense of trespass is **AFFIRMED**.

7/19/2021 08:38 AM

IT IS SO ORDERED.



ROSEMARY EMORY
District Judge



CERTIFICATE OF SERVICE

I certify that on this date I served a copy of the attached to:

Prosecuting Attorney

Ira Dillman
inbox_pros@co.gooding.id.us

☒ By E-mail

Defendant/Appellant-Pro Se

Nicole Crosby
3320 S. 2000 E.
Wendell, ID 83355

☒ By Mail

DENISE GILL

Clerk of the District Court

Dated: 7/19/2021 10:05:36 AM

By: *A Cooke*
Deputy Clerk



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from this filing is
available in the
Clerk's Office.**