

**BOISE, THURSDAY, APRIL 17, 2025, AT 10:30 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 51302**

**STATE OF IDAHO,** )  
 )  
 **Plaintiff-Respondent,** )  
 )  
 **v.** )  
 )  
 **TONY RAPLEY CROMBIE,** )  
 )  
 **Defendant-Appellant.** )  
 \_\_\_\_\_ )

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Javier L. Gabiola, District Judge.

Erik R. Lehtinen, State Appellate Public Defender; Andrea W. Reynolds, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Raúl R. Labrador, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Tony Rapley Crombie appeals from his judgment of conviction for domestic battery with traumatic injury and a persistent violator sentencing enhancement. Crombie was charged with attempted strangulation after an altercation with his ex-girlfriend. At trial, the jury was instructed that they could find Crombie guilty of domestic battery with a traumatic injury as a lesser included offense of attempted strangulation. The jury found Crombie guilty of domestic battery with traumatic injury and of being a persistent violator.

Crombie argues domestic battery with traumatic injury is not a lesser included offense of attempted strangulation under the statutory and pleading theory. Crombie alternatively argues the district court committed fundamental error by instructing the jury on domestic battery with traumatic injury because he was never charged with that offense. Finally, Crombie argues the persistent violator enhancement is inapplicable because one of his previous felony convictions had been discharged pursuant to Idaho Code § 19-2604(1) and therefore could not be considered as a prior conviction for purposes of an enhanced sentence.

The State argues Crombie failed to preserve his argument of instructional error because the objection made at trial was limited to an evidentiary objection, i.e., whether there was a sufficient factual basis for the instruction, not whether domestic battery with traumatic injury was a lesser included offense under either the statutory or pleading theory. The State argues the district court did not commit fundamental error because Crombie failed to establish two of the three elements necessary for a finding of fundamental error. Finally, the State argues the district court correctly

considered both of Crombie's prior convictions for purposes of the persistent violator sentencing enhancement.