

SUMMARY STATEMENT
State v. Cox, Docket No. 46916

Kevin Cox was charged with attempted strangulation and intentional destruction of a telecommunication instrument. Because Cox had three prior felony convictions, the State also alleged Cox was subject to sentencing under Idaho Code section 19–2514, which provides that persistent violators shall be sentenced to not less than five years, and may be sentenced to life imprisonment. During jury selection for Cox’s trial, Cox’s counsel requested ten peremptory challenges, citing Idaho Criminal Rule 24, which provides: “If the offense charged is punishable by death, or life imprisonment, each party, regardless of the number of defendants, is entitled to 10 peremptory challenges. In all other felony cases each party, regardless of the number of defendants, is entitled to six peremptory challenges” However, the trial court denied the request and allowed Cox only six peremptory challenges. The trial court reasoned that neither substantive offense of which Cox was accused carried a possibility of a life sentence, and therefore Cox was only entitled to six peremptory challenges. Following trial, Cox was convicted and sentenced under the persistent violator statute. Cox timely appealed from his judgment of conviction, alleging the trial court erred by allowing him only six peremptory challenges.

The Idaho Supreme Court vacated Cox’s judgment of conviction and remanded for a new trial. The Court held that the number of peremptory challenges available to both sides in a criminal case is determined by reference to the enhanced sentence a defendant could receive, not by the sentence prescribed for the underlying offense. Further, the Court rejected the standard for establishing reversible error from the denial of a peremptory challenge as set forth in *Nightengale v. Timmel*, 151 Idaho 347, 354, 256 P.3d 755, 762 (2011) and adopted a new standard.

*****This summary constitutes no part of the Court’s opinion. It has been prepared by court staff for the convenience of the public.*****