

SUMMARY STATEMENT
State of Idaho v. Susan Kaye Lang
Docket No. 51084

Susan Kaye Lang appealed from her judgment of conviction under Idaho Code § 18-6409(1) for disturbing the peace. Lang was charged with disturbing the peace after protesting in front of Ada County Commissioner Diana Lachiondo's home. Lachiondo was attending a Central District Health (CDH) meeting virtually from the county courthouse to discuss various public protocols concerning COVID and so was not at home. Around 5:00 p.m., Lang and two other protesters went to Lachiondo's personal residence and began protesting at approximately 5:15 p.m. Lang recorded a video of the protest which showed all three protesters on the sidewalk making noise by banging on buckets, sounding air horns and a megaphone siren, playing clips of loud noise and a recording from the movie "Scarface" through a speaker, and shouting: "Down with Lachiondo," and "Why don't you come out?" On the sidewalk in front of the home, the words "no lockdown" were written in chalk. None of the protesters trespassed onto Lachiondo's property.

Lachiondo's children were in the home, became frightened, and called Lachiondo. The noise lasted for about fifteen to twenty minutes and witnesses testified that they saw Lang and two other men making the noises in front of Lachiondo's home. By the time law enforcement arrived, the protesters had left the area. The State charged Lang with maliciously and willfully disturbing the peace by loud or unusual noise and/or tumultuous conduct, pursuant to I.C. § 18-6409.

Before trial, Lang filed a motion to dismiss, arguing the use of car horns and air horns is protected speech and that the disturbing the peace statute was overbroad as applied to Lang's conduct. The magistrate court denied the motion. At trial, Lang renewed her motion to dismiss, which was also denied. The jury found Lang guilty as charged. Lang appealed to the district court, arguing that the magistrate court erred in denying her renewed motion to dismiss. The district court affirmed the denial, finding there were insufficient communicative elements to Lang's conduct to invoke First Amendment protections and that the statute was a content-neutral restriction which was not overbroad as applied to Lang's conduct. Lang appealed.

The Court of Appeals affirmed the district court, holding that, under the circumstances, Lang's conduct of making noise was not protected speech under the First Amendment and that the disturbing the peace statute was not overbroad as applied to Lang's conduct. The Court held that the First Amendment does not grant one a license to breach the peace of a neighborhood simply

because the intended recipient is a public official. Further, the Court found that regardless of any particular message Lang may have intended, the noise generated by Lang was the basis for the State's prosecution against her. The statute's prohibition against "loud or unusual noise" bans nonverbal conduct and is unrelated to any expressive element of such conduct. The Court also found that the disturbing the peace statute does not preclude constitutionally protected conduct as applied to Lang's case. Therefore, the Court affirmed the district court's order affirming the magistrate court's denial of Lang's renewed motion to dismiss.

This summary constitutes no part of the opinion of the Court but has been prepared by court staff for the convenience of the public.