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State v. Walsh Respondent's Brief Dckt. 39135

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 39135
)	
vs.)	
)	
LUKE ALAN WALSH,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

HONORABLE JOHN K. BUTLER
District Judge

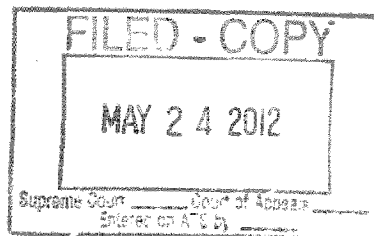
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STATEMENT OF THE CASE

Nature of the Case

Luke Alan Walsh appeals from the judgment entered upon his guilty plea to conspiracy to violate the Uniform Controlled Substances Act. He argues that the district court abused its discretion by denying his motion to withdraw his guilty plea and that the court lacked subject matter jurisdiction to accept the plea.

Statement of Facts and Course of Proceedings

Gooding County law enforcement officers stopped Jordan Dunn's vehicle after Dunn failed to meet with his probation officer. (PSI, p.2.) In a search of the vehicle, officers recovered Dunn's cell phone, which contained a text message from "LAW" asking "What you got[?]" (Id.) Deputy Alex Boyer used Dunn's phone to respond to the text message and make arrangements to sell .5 grams of cocaine to "LAW" for \$40, in the parking lot of a church in Wendell, Idaho. (Id.)

Officers maintained communication with "LAW" and then conducted a traffic stop on a truck that passed the church and turned around. (PSI, p.2.) The passenger of the truck was identified as Luke Walsh. (Id.) Deputy Boyer removed Walsh from the truck and observed him place a cell phone down. (Id.) Deputy Boyer retrieved the phone, which he identified as the source of the "LAW" text messages. (Id.) Officers arrested Walsh and found \$40 on his person. (Id.) Walsh admitted that he had David Thompson, the driver of the truck, take him to Wendell so that he could purchase cocaine from Dunn. (Id.)

The state charged Walsh with conspiracy to violate the Uniform Controlled Substances Act.¹ (R., pp.11-13.) Pursuant to plea agreement, Walsh pled guilty to the charge, and the state agreed to recommend that Walsh be referred to drug court. (Tr., p.5, L.22 – p.20, L.16.) The district court accepted Walsh's plea and directed the clerk to fax the referral to the drug court coordinator. (Tr., p.20, Ls.12-24.) Less than a month later, Walsh was terminated from drug court for absconding before he completed the program's entrance requirements. (R., pp.16-18.) Walsh turned himself in after a warrant was issued for his arrest. (PSI, p.4.)

Before he could be sentenced, Walsh filed a motion to withdraw his guilty plea pursuant to I.C.R. 33(c). (R., pp.20-21.) Walsh argued that the district court should allow him to withdraw his plea because a communication between a private citizen and an undercover law enforcement officer could not constitute criminal conspiracy as a matter of law. (Tr., p.23, L.22 – p.43, L.24.) At the hearing on the motion, Walsh acknowledged that both he and his counsel were

¹ The information and judgment of conviction reference I.C. § 18-1701, the general Idaho conspiracy statute, rather than I.C. § 37-2732(f), the conspiracy statute specific to the Uniform Controlled Substances Act. (R., pp.12, 34.) The judgment of conviction also references I.C. § 37-2732(a)(1)(B), the subsection of the Uniform Controlled Substances Act that prohibits the manufacture, delivery, or possession with intent to manufacture or deliver, a nonnarcotic schedule I or II controlled substance, a crime which carries a maximum sentence of five years. (R., p.34.) This may be a clerical error. In light of the facts of the case, and the district court's references to a 7-year maximum sentence in the judgment of conviction and during the entry of plea hearing (R., p.34; Tr., p.4, Ls.17-23), Walsh may have been convicted of conspiracy to violate I.C. § 37-2732(c)(1), the subsection that prohibits possession of a schedule I or II controlled substance without a prescription, a crime which carries a maximum sentence of seven years.

aware at the time of his guilty plea that it was Deputy Boyer who arranged the cocaine transaction with Walsh. (Tr., p.23, L.22 – p.24, L10.) Walsh and his counsel also indicated that while they were aware of potential defenses to the charge before he entered his plea, Walsh chose to plead guilty to take advantage of the offer of drug court. (R., p.23; Tr., p.23, L.22 – p.24, L.10.)

The district court denied Walsh's motion to withdraw his guilty plea. (Tr., p.43, L.25 – p.50, L.9.) The court first recognized that Walsh's plea was knowing, voluntary, and intelligent. (Id.) The court then found that Walsh's desire to assert a legal defense after he pled guilty to the crime, and after he was terminated from drug court, did not constitute "just cause" to withdraw his guilty plea, particularly considering that Walsh was aware of the pertinent facts of the case, and potential defenses to the charge, prior to his plea. (Id.) The district court imposed a unified four-year sentence with one year fixed, but retained jurisdiction. (R., pp.33-39.) Walsh timely appealed. (R., pp.40-43.)

ISSUES

Walsh states the issue on appeal as:

Did the district court abuse its discretion by denying Mr. Walsh's motion to withdraw his guilty plea as he presented a "just reason" and the State conceded that it would not have been prejudiced if Mr. Walsh had been allowed to withdraw his guilty plea?

(Appellant's brief, p.6.)

The state rephrases the issues on appeal as:

1. Has Walsh failed to show the district court abused its discretion by denying his motion to withdraw his guilty plea?
2. Has Walsh failed to show the district court lacked subject matter jurisdiction to accept his guilty plea?

ARGUMENT

I.

Walsh Has Failed To Show The District Court Abused Its Discretion By Denying His Motion To Withdraw His Guilty Plea

A. Introduction

Walsh contends the district court abused its discretion by denying his pre-sentencing motion to withdraw his guilty plea. (Appellant's brief, pp.7-14.) Specifically, he argues that the district court erred in denying his motion because the facts asserted by the state and admitted by Walsh do not constitute criminal conspiracy as a matter of law. (Id.) However, a review of the record and the applicable law supports the district court's determination that Walsh failed to carry his burden of establishing either that his plea was involuntary, or that there existed any other just reason entitling him to withdraw his plea. Walsh has thus failed to establish an abuse of discretion.

B. Standard Of Review

"Appellate review of the denial of a motion to withdraw a plea is limited to whether the district court exercised sound judicial discretion as distinguished from arbitrary action." State v. Hanslovan, 147 Idaho 530, 535-536, 211 P.3d 775, 780-781 (Ct. App. 2008) (citing State v. McFarland, 130 Idaho 358, 362, 941 P.2d 330, 334 (Ct. App. 1997)). An appellate court will defer to the trial court's factual findings if they are supported by substantial competent evidence. State v. Holland, 135 Idaho 159, 15 P.3d 1167 (2000); Gabourie v. State, 125 Idaho 254, 869 P.2d 571 (Ct. App. 1994).

C. The District Court Acted Within Its Discretion In Denying Walsh's Motion To Withdraw His Guilty Plea

A motion to withdraw a guilty plea may be made before sentence is imposed. I.C.R. 33(c). The presentence withdrawal of a guilty plea is not an automatic right, however. State v. Carrasco, 117 Idaho 295, 298, 787 P.2d 281, 284 (1990); Hanslovan, 147 Idaho at 535, 211 P.3d at 780. The defendant bears the burden of proving, in the district court, that the plea should be withdrawn. Id.; Griffith v. State, 121 Idaho 371, 374-75, 825 P.2d 94, 97-98 (Ct. App. 1992).

In ruling on a motion to withdraw a guilty plea, the district court must determine, as a threshold matter, whether the plea was entered knowingly, intelligently and voluntarily. State v. Mauro, 121 Idaho 178, 180, 824 P.2d 109, 111 (1991); Hanslovan, 121 Idaho at 536, 211 P.3d at 781; State v. Rodriguez, 118 Idaho 957, 959, 801 P.2d 1308, 1310 (Ct. App. 1990). If the plea was voluntary, in the constitutional sense, then the court must determine whether other reasons exist to allow the defendant to withdraw the plea. Hanslovan, 121 Idaho at 536, 211 P.3d at 781. The decision to grant or deny a motion to withdraw a guilty plea lies in the discretion of the district court. Id. at 535, 211 P.3d at 780.

Where the defendant moves to withdraw his guilty plea before the imposition of sentence "but after [he] has read his presentence report or received other information about his probable sentence, the court is to exercise broad discretion, but may temper its liberality by weighing the defendant's apparent motive." State v. Johnson, 120 Idaho 408, 411, 816 P.2d 364, 366 (Ct. App.

1991) (citation omitted). “[T]he good faith, credibility, and weight of the defendant’s assertions in support of his motion to withdraw his plea are matters for the trial court to decide.” Hansolvan, 147 Idaho at 537, 211 P.3d at 782.

In this case, the district court denied Walsh’s motion to withdraw his guilty plea after first properly concluding that Walsh’s plea was knowing, voluntary, and intelligent.² (Tr., p.43, L.25 – p.50, L.9.) At Walsh’s change of plea hearing, the district court engaged Walsh in an extensive and careful plea colloquy, at which Walsh acknowledged, among other things, that he understood the elements of the crime of conspiracy to violate the Uniform Controlled Substances Act, that he understood he was waiving his right to a jury trial, and that he had reviewed all of the state-provided discovery with his attorney. (Tr., p.7, L.9 – p.20, L.11.) Prior to the entry of his guilty plea, Walsh and his counsel also indicated that they were specifically aware that it was Deputy Boyer who used Jordan Dunn’s cell phone to arrange a cocaine sale with Walsh:

COURT: And why is it you say you’re guilty?

² On appeal, Walsh does not dispute that his plea was voluntary, except “[t]o the extent to which Mr. Walsh was charged with conspiring to violate the Uniform Controlled Substances Act with Mr. Thompson” (the individual who drove Walsh to Wendell to purchase the cocaine), instead of with Deputy Boyer. (Appellant’s brief, pp.12-14.) At the hearing on Walsh’s motion to withdraw his guilty plea, the district court raised the possibility that Walsh may have committed conspiracy not only with Deputy Boyer, but with Thompson as well. (Tr., p.26, Ls.3-4.) The state then also discussed this possibility. (Tr., p.27, L.16 – p.30, L.11.) These post-plea discussions have no bearing on the validity of Walsh’s plea at the time he made it. Had Walsh challenged the charging document or pursued a defense to the charge prior to entering his guilty plea, the state may have chosen to amend the information to specifically allege that Walsh conspired with Thompson, or with Dunn. Walsh avoided this possibility by pleading guilty.

WALSH: I tried to purchase cocaine through my phone text messages.

COURT: Okay.

WALSH: It's all there.

COURT: And did you also make arrangements with Mr. Dunn to meet him at the LDS Church to complete the transaction?

WALSH: That's – I thought it was him.

COUNSEL: Your Honor, this was done by a police officer's texting on the other end so technically it wasn't Mr. Dunn.

(Tr., p.19, L.15 – p.20, L.3.)

At the hearing on Walsh's motion to withdraw his guilty plea, Walsh then argued that "just cause" existed for the district court to withdraw his plea because, as a matter of law, a defendant may not be convicted of conspiring with an undercover law enforcement officer. (Tr., p.24, L.17 – p.25, L.10; Appellant's brief, pp.7-14); see United States v. Escobar de Bright, 742 F.2d 1196 (9th Cir. 1984) (holding that the trial court erred in failing to instruct the jury that if it determined that the defendant only "conspired" with an undercover government agent, it could not find the defendant guilty of violating the federal conspiracy statute).

Whether, under the facts of this case, Walsh could be convicted of conspiring with an undercover police officer under the Idaho conspiracy statute is

a potential defense to the charge.³ The nature of the defense, essentially, is that Walsh's actions did not constitute criminal conspiracy under Idaho law. Walsh could have asserted this defense either through a motion to dismiss the charge, or by requiring the state to prove that he committed the crime of conspiracy to violate the Uniform Controlled Substances Act at a trial. Instead, as the district court correctly recognized (Tr., p.43, L.25 – p.50, L.9), Walsh knowingly waived all factual and legal defenses by pleading guilty. See State v. Coffin, 104 Idaho 543, 546, 661 P.3d 328, 331 (1983).

The district court then properly considered Walsh's asserted "just cause" to withdraw his guilty plea in the context of Walsh's apparent motives in pleading guilty to the charge and later seeking to withdraw the guilty plea. (Tr., p.43, L.25 – p.50, L.9); see State v. Mayer, 139 Idaho 643, 647, 84 P.3d 579, 583 (Ct. App. 2004); Johnson, 120 Idaho at 411, 816 P.2d at 366 (a district court "may temper its liberality" in considering a motion to withdraw a guilty plea where the defendant makes the motion after receiving information about his probable sentence.) Walsh was aware of potential defenses to the charge prior to entering his plea, and his attorney even "doubted that a crime had taken place," but Walsh

³ It would not necessarily be a successful defense, however, as the present case is distinguishable from Escobar de Bright. In support of its holding in that case, the Ninth Circuit Court of Appeals reasoned that, "[a]llowing a government agent to form a conspiracy with only one other party would create the potential for law enforcement officers to 'manufacture' conspiracies when none would exist absent the government's presence." Escobar de Bright, 742 F.2d at 1200. In the present case, Deputy Boyer did not create or manufacture a conspiracy, she covertly assumed the identity of an individual who may have already been engaged in a conspiracy with Walsh. The state was relieved from proving as much when Walsh pled guilty to the charge.

still elected to plead guilty because “he wanted the drug court.” (R., p.23; Tr., p.23, L.22 – p.24, L.10.) It was only after Walsh absconded from drug court, was terminated from that program, and thus “receiv[ed] information about his probable sentence” (i.e. that he would not be able to participate in drug court), that Walsh attempted to assert a defense he previously waived by pleading guilty to the charge. The district court acted well within its discretion in denying Walsh's motion under these circumstances.

The record supports the district court's determination that Walsh failed to carry his burden of establishing either that his plea was involuntary or that there existed any other just cause for withdrawal of the plea. Walsh has thus failed to show an abuse of discretion by the trial court in denying his motion to withdraw his guilty plea.

II.

Walsh Has Failed To Show The District Court Lacked Jurisdiction To Accept His Guilty Plea

A. Introduction

Walsh contends that the information charging him with conspiracy to violate the Uniform Controlled Substances Act failed to confer subject matter jurisdiction on the district court, and that the district court erred when it accepted Walsh's guilty plea to the crime. (Appellant's brief, pp.9-12.) However, a review of the record reveals that the charging information properly conferred subject matter jurisdiction on the court.

B. Standard Of Review

Whether a charging document conforms to the requirements of the law is a question over which the appellate court exercises free review. State v. Jones, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004); State v. Robran, 119 Idaho 285, 287, 805 P.2d 491, 493 (Ct. App. 1991).

C. The District Court Had Jurisdiction To Accept Walsh's Guilty Plea

"The information, indictment, or complaint alleging an offense was committed within the state of Idaho confers subject matter jurisdiction upon the court." State v. Rogers, 140 Idaho 223, 228, 91 P.3d 1127, 1133 (2004) (citing State v. Slater, 71 Idaho 335, 338, 231 P.2d 424, 425 (1951)). When, as in this case, an objection to the information was not timely raised before trial or the entry of a guilty plea, the sufficiency of the charging document will "be upheld unless it is so defective that it does not, by any fair or reasonable construction, charge an offense for which the defendant is convicted." Jones, 140 Idaho at 759, 101 at 703. A reviewing court has considerable leeway "to imply the necessary allegations from the language of the information." Robran, 119 Idaho at 287, 805 P.2d at 493. Specifically, an information will confer jurisdiction if it "contains a statement of the territorial jurisdiction of the court and a citation to the applicable section of the Idaho Code." State v. Quintero, 141 Idaho 619, 622, 115 P.3d 710, 713 (2005). Other challenges to an information, such as that it failed to include adequate factual specificity, are waived by a defendant's failure to raise these matters before his guilty plea or the entry of judgment. Jones, 140

Idaho at 758-7599, 101 at 702-703; I.C.R. 12(b)(2). Application of these legal principles to the facts of this case shows that the information conferred jurisdiction on the district court.

The information cited the statutes applicable to conspiracy (R., p.12 (citing I.C. § 18-1701)), and the Uniform Controlled Substances Act. (R., p.12 (citing I.C. § 37-2732)), and also alleged that the offense was committed in Gooding County, Idaho (R., p.12.) The information additionally alleged that Walsh “did willfully and knowingly combine, conspire, confederate, and agree with another person to possess a controlled substance, to-wit: Cocaine, a Schedule II controlled substance.” (Id.) Finally, the information alleged two overt acts Walsh committed in furtherance of the conspiracy – texting Jordan Dunn’s cell phone to make arrangements to purchase cocaine, and traveling to the prearranged location to purchase the cocaine. (Id.)

On appeal, Walsh asserts that the information failed to confer subject matter jurisdiction because it “fail[ed] to charge an offense” in light of the legal principle discussed in Escobar de Bright that a defendant does not commit federal criminal conspiracy by “conspiring” with an undercover law enforcement officer. (Appellant’s brief, pp.9-12.) However, as discussed above, Escobar de Bright and similar cases merely present the possibility of a legal defense to the Idaho conspiracy charge. Whether Walsh had a defense is irrelevant to whether the charging document was adequate to confer subject matter jurisdiction on the court.


In addition, Walsh's jurisdictional challenge fails because he relies on facts not expressly alleged in the information, specifically, the identity of the co-conspirator. (See R., pp.11-13.) Walsh has not argued that the information is, on its face, jurisdictionally defective, and he has waived all non-jurisdictional defects by pleading guilty to the charge. Jones, 140 Idaho at 758-7599, 101 at 702-703; I.C.R. 12(b)(2).

Because the information alleged that Walsh committed a criminal offense in the state of Idaho, the information alleged all the facts necessary to establish jurisdiction under the rules applicable to informations and indictments. Quintero, 141 Idaho at 622, 115 P.3d at 713; Jones, 140 Idaho at 757-758, 101 P.3d at 701-702. This Court should thus affirm Walsh's conviction.

CONCLUSION

The state respectfully requests this Court to affirm the district court's denial of Walsh's motion to withdraw his guilty plea, and his conviction for conspiracy to violate the Uniform Controlled Substances Act.

DATED this 24th day of May 2012.



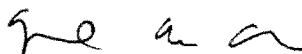
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of May 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ERIC D. FREDERICKSEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



MARK W. OLSON
Deputy Attorney General

MWO/pm