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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
Plaintiff-Respondent,) NO. 39803
)
vs.)
)
REX F. RAMMELL,)
)
Defendant-Appellant.)

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OCT 15 2012
Supreme Court ___ Court of Appeals ___
Entered on ATS by ___

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

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District Judge

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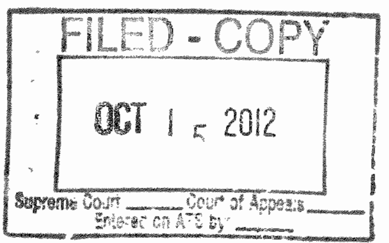

PRO SE
DEFENDANT-APPELLANT

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STATEMENT OF THE CASE

Nature of the Case

Rex F. Rammell appeals from the district court's intermediate appellate decision affirming his conviction for possessing unlawfully taken game.

Statement of Facts and Course of Proceedings

In August 2010, the Idaho Department of Fish and Game issued Rammell a tag to hunt elk in Idaho's Middle Fork elk management zone during the 2010 elk hunting season. (State's Exhibits 1 and 2.) The tag stated on its face that it was a "Res Middle Fork Elk A" tag and was "Valid In Unit(s): 20A-26-27." (State's Exhibit 2 (capitalization altered).)

The hunting season for "Elk A" tag holders in the Middle Fork Zone closed on October 31, 2010. (Tr., p.5, L.22 – p.6, L.2.) Nearly one month later, on November 30, 2010, Rammell killed a cow elk in Unit 69 of the Tex Creek Zone – an elk management zone that is between 150 to 200 miles away from the Middle Fork Zone in which Rammell's tag had been valid. (Tr., p.3, Ls.21-24, p.7, Ls.4-20, p.8, Ls.6-20, p.14, Ls.9-10, p.90, Ls.8-13, p.100, Ls.15-24, p.103, L.23 – p.104, L.3, p.105, Ls.11-18; see also State's Exhibit 1.) Fish and Game Officer Dan Kelsey encountered Rammell as he was leaving the Tex Creek Zone with the elk. (Tr., p.7, L.4 – p.8, L.5.) Rammell told the officer that he had killed the elk "over by the hay sheds near the corrals," an area the officer recognized to be in the Tex Creek Zone and not "anywhere near the Middle Fork Zone." (Tr., p.8, Ls.8-20, p.11, Ls.5-12.) At Officer Kelsey's request, Rammell produced both his hunting license and his elk tag. (Tr., p.11, L.13 – p.12, L.16, p.14, Ls.11-15,

p.47, Ls.20-22.) Upon inspecting the tag, Officer Kelsey noted that it was only valid in the Middle Fork Zone, and he advised Rammell of that fact. (Tr., p.13, Ls.6-16, p.47, L.23 – p.48, L.1.) Rammell told the officer "he had been to the Middle Fork, but there were no elk there." (Tr., p.14, Ls.16-20; see also Tr., p.95, Ls.15-25 (Rammell told a second Fish and Game officer in a subsequent conversation that he "had to come over [to the Tex Creek Zone] to hunt, [because] there's nothing in the Middle Fork except for wolves.").) Officer Kelsey told Rammell he was going to seize the elk and a series of heated discussions ensued, culminating in Rammell telling the officer, "I might have to shoot you if you try and take this elk." (Tr., p.55, L.4 – p.57, L.3, p.57, L.22 – p.58, L.25, p.62, L.24 – p.70, L.2, p.82, L.22 – p.83, L.5.)

Later in the day, a second Fish and Game officer seized the elk from Rammell's residence. (Tr., p.87, Ls.12-18, p.88, L.18 – p.92, L.7.) DNA comparisons of tissue from both the elk and a "gut pile" located near the hay sheds and corral to which Rammell had referred confirmed that Rammell killed the elk in Tex Creek Zone. (Tr., p.10, L.15 – p.11, L.4, p.15, L.21 – p.16, L.25, p.17, L.24 – p.18, L.23, p.100, Ls.15-24, p.103, L.23 – p.105, L.18.)

The state charged Rammell with possessing unlawfully taken game, in violation of I.C. § 36-502(b). (R., Vol. 1, pp.11-12, 57-59.) Before trial, the state moved in limine to prohibit Rammell from introducing any evidence concerning his intent or lack thereof to violate the law. (R., Vol. 1, pp.36-40.) The magistrate granted the motion, reasoning that, because possession of unlawfully taken wildlife is a general intent crime, any evidence tending to establish that

Rammell did not know the elk he possessed was taken illegally was not relevant. (R., Vol. 1, pp.43-44, 63-64, 163-70.) For the same reason, the magistrate denied Rammell's request to instruct the jury on the defense of misfortune or mistake of fact. (R., Vol. 1, pp.122-33, 163-70; see also R., Vol. 1, pp.172-91 (final jury instructions).) The court also declined Rammell's requests to instruct the jury that the "IDAHO BIG GAME SEASONS AND RULES 2010" brochure, published by the Idaho Department of Fish and Game, constituted the law governing the taking of wildlife in Idaho. (R., Vol. 1, pp.68-71, 74-76, 126-29, 166-69; see also R., pp.172-91 (final jury instructions).)

Following a trial, a jury found Rammell guilty of possessing unlawfully taken game. (R., Vol. 1, p.192.) The magistrate entered judgment (R., Vol. 1, p.193) and Rammell appealed to the district court (R., Vol. 1, pp.194-95), which affirmed (R., Vol. 2, pp.251-63). Rammell again appeals. (R., Vol. 2, pp.264-68.)

ISSUES

Rammell's issue statement is set forth at pages 8-10 of his Appellant's brief and, due to its length, is not repeated here. The state rephrases the issues on appeal as:

1. Has Rammell failed to establish that the trial court abused its discretion by prohibiting Rammell from introducing irrelevant evidence?

2. Has Rammell failed to show error in the jury instructions?

3. Has Rammell failed to show that the trial court lacked either subject matter or personal jurisdiction?

ARGUMENT

I.

Rammell Has Failed To Show That The Trial Court Abused Its Discretion By Prohibiting Him From Presenting Irrelevant Evidence

A. Introduction

Before trial, Rammell advised the court that he was proceeding on the theory that he lacked the criminal intent or criminal negligence necessary to sustain a conviction for possession of unlawfully taken game. (R., Vol. 1, p.123.) To support this defense, Rammell sought to admit into evidence a copy of the "IDAHO BIG GAME SEASONS AND RULES 2010" brochure published by the Idaho Department of Fish and Game (hereinafter "2010 Big Game Rules"). (R., Vol. 1, p.126; Tr., p.42, Ls.17-21; see also Defendant's Exhibit A.[1]) The trial court declined to admit the 2010 Big Game Rules, ruling that, because possession of unlawfully taken game is a general intent crime, any evidence proffered by Rammell to show that he lacked a specific intent to commit the crime was irrelevant. (R., Vol. 1, pp.43-44, 63-64, 163-70; Tr., p.43, Ls.14-21.)

Rammell challenges the trial court's ruling, arguing as he did below that a conviction under the possession of unlawfully taken game statute requires proof of a specific criminal intent. (Appellant's brief, pp.11-21, 24-29.) Rammell's

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[1] Defendant's Exhibit A is a copy of the 2010 Big Game Rules. The exhibit was marked for identification purposes, but the trial court ultimately declined to admit it into evidence. (Tr., p.21, Ls.3-23, p.42, L.17 – p.43, L.21.) To the extent the reporter's transcript indicates the exhibit was admitted, such is an obvious error. (Compare Tr., p.4 (exhibit list indicating Defendant's Exhibit A was admitted) and p.22, Ls.8-9 (same) with p.23, Ls.13-15 (court instructing witness not to show Defendant's Exhibit A to jury because "[i]t's not introduced into evidence) and p.42, L.17 – p.43, L.21 (court denying Rammell's motion to admit Defendant's Exhibit A).)

argument is without merit. Both the trial court and the district court on appeal correctly determined that possession of unlawfully taken game is a general intent crime and, as such, evidence that Rammell did not intend to violate the law was irrelevant and therefore inadmissible. Rammell has failed to establish an abuse of discretion.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008) (citing Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)). The appellate court "examine[s] the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." Id. "If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, [the appellate court] affirm[s] the district court's decision as a matter of procedure." Id. (citing Losser, 145 Idaho 670, 183 P.3d 758; Nicholls v. Blaser, 102 Idaho 559, 633 P.2d 1137 (1981)).

The trial court has broad discretion in the admission of evidence, and its judgment will be reversed only when there has been an abuse of that discretion. State v. Zimmerman, 121 Idaho 971, 974, 829 P.2d 861, 864 (1992).

C. The Trial Court Properly Exercised Its Discretion In Declining To Admit The 2010 Big Game Rules For The Proffered Purpose Of Negating Rammell's Intent

Rammell shot and killed an elk in an elk management zone other than that for which he had a valid tag. The state charged him with possessing unlawfully taken game in violation of I.C. § 36-502(b), which provides:

> Unlawful Possession. No person shall have in his possession any wildlife or parts thereof protected by the provisions of this title and the taking or killing of which is unlawful.

Pursuant to IDAPA 13.01.08.255.01, an "Elk Zone A Tag is valid for specified A Tag elk seasons within a specified zone only."

Rammell concedes on appeal that his 2010 Middle Fork Elk A tag (see State's Exhibit 2) was not valid in the Tex Creek Zone (Appellant's brief, p.17). He argues, however, that to be guilty of violating I.C. § 36-502(b), he must have had the specific intent to violate the law – *i.e.,* he must have known that the elk he possessed was taken illegally. (Appellant's brief, pp.11-21.) Rammell argues that the 2010 Big Game Rules upon which he purportedly relied to ascertain the law relative to his hunting rights do not clearly state that an elk tag is valid in only one zone and, as such, were relevant and admissible to show that he lacked any criminal intent. (Appellant's brief, pp.12, 19, 24-29.) Rammell is incorrect. "Evidence that is not relevant is not admissible." State v. Fox, 124 Idaho 924, 926, 866 P.2d 181, 183 (1993) (citing I.R.E. 402). Even assuming the 2010 Big Game Rules support Rammell's claim that he lacked knowledge that the elk he

possessed was taken illegally,[2] the rules were not relevant in Rammell's prosecution because a conviction for possession of unlawfully taken game under I.C. § 36-502(b) does not require proof of any specific criminal intent.

It is well settled that "[t]he mental state that is required for the commission of a particular offense is determined by the language of the statute defining that offense." State v. Dolsby, 143 Idaho 352, 354, 145 P.3d 917, 919 (Ct. App. 2006) (citing State v. Broadhead, 139 Idaho 663, 666, 84 P.3d 599, 602 (Ct. App. 2004)); see also Fox, 124 Idaho at 925, 866 P.2d at 182 (quoting State v. Sterrett, 35 Idaho 580, 583, 201 P. 1071, 1072 (1922)) ("'[W]hether a criminal intent is a necessary element of a statutory offense is a matter of construction, to be determined from the language of the statute in view of its manifest purpose and design.'"). "'[W]here such intent is not made an ingredient of the offense, the intention with which the act is done, or the lack of any criminal intent in the premises, is immaterial.'" Fox, 124 Idaho at 925-26, 866 P.2d at 182-83 (quoting Sterrett, 35 Idaho at 583, 201 P. at 1072); accord State v. Prather, 135 Idaho 770, 774, 25 P.3d 83, 87 (2001); Dolsby, 143 Idaho at 354, 145 P.3d at 919; State v. Simpson, 137 Idaho 813, 816, 54 P.3d 456, 459 (Ct. App. 2002). "'Error cannot be predicated upon the action of the court in excluding evidence tending to show the defendant's good intentions and good faith, where a criminal intent is

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[2] The state does not concede that the 2010 Big Game Rules support Rammell's claim that he lacked knowledge that his Middle Fork tag was valid only in the Middle Fork Zone. Indeed, as set forth in greater detail in Section II.C., *infra*, the 2010 Big Game Rules (and the tag itself) provided Rammell ample notice of the requirements of the law.

not a necessary element of the offense charged.'" Simpson, 137 Idaho at 816, 54 P.3d at 469 (quoting Sterrett, 35 Idaho at 582-83, 207 P. at 1072).

In Simpson, the Idaho Court of Appeals specifically considered whether possession of unlawfully taken wildlife in violation of I.C. § 36-502(b) requires proof a criminal intent and concluded that it does not, explaining: "The statute is violated by the act of possession. It does not require that the perpetrator have knowledge that the wildlife was taken unlawfully." 137 Idaho at 817, 54 P.3d at 460. See also State v. Wimer, 118 Idaho 732, 800 P.2d 128 (Ct. App. 1990) (offense of taking an elk without a valid license, in violation of I.C. § 36-502, does not require proof of criminal intent). Thus, as with other regulatory offenses, "'the burden is placed upon the actor to ascertain at his peril whether his deed is within the prohibition of the statute.'" Simpson, 137 Idaho at 817, 54 P.3d at 460 (quoting Sterrett, 35 Idaho at 583, 207 P. at 1072 (intentional transportation of intoxicating liquor without legal authority unlawful notwithstanding any lack of criminal intent)).

Rammell acknowledges the holdings of Simpson and Wimer but argues the cases were incorrectly decided in light of Idaho Code §§ 18-114, 18-115 and 18-201 which, he contends, require the state in every criminal prosecution to prove beyond a reasonable doubt that the defendant entertained a specific criminal intent. (Appellant's brief, pp.10-13, 21.) Rammell's argument is without merit. Idaho Code § 18-114 provides that "[i]n every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence." As explained by the Idaho Supreme Court in Fox, however, "the

intent required by I.C. § 18-114 is not the intent to commit a crime, but is merely the intent to knowingly perform the interdicted act, or by criminal negligence the failure to perform the required act." Fox, 124 Idaho at 926, 866 P.2d at 183 (citations and internal quotations omitted). Because the statute under which Rammell was charged does not expressly set forth a mental state element, and because "I.C. § 18-114 only requires a general intent" (*i.e.*, "a showing that the defendant knowingly performed the proscribed acts"), Fox, 124 Idaho at 926, 866 P.2d at 183 (citations omitted), the state was not required to prove that Rammell entertained any specific criminal intent, only that he knowingly possessed an elk, the taking of which was unlawful.

Idaho Code §§ 18-115 and 18-201 do not mandate a different result. Idaho Code § 18-115 states: "Intent or intention is manifested by the commission of the acts and surrounding circumstances connected with the offense." This statute merely clarifies that the intent required for any particular crime, be it specific or general, is manifested by the defendant's acts. See, e.g., Ex parte Seyfried, 74 Idaho 467, 470, 264 P.2d 685, 687 (1953) ("One's intent may be proved by his acts and conduct, and such is the usual and customary mode of proving intent."). It does not, as suggested by Rammell, impose upon the state the burden of proving a specific criminal intent when no such intent is required by the statute defining the offense.

Rammell's argument that proof of a specific criminal intent is required for a conviction for possessing unlawfully taken wildlife likewise finds no support in I.C. § 18-201. As noted by the Idaho Supreme Court in Fox, "Idaho Code § 18-

201 provides a defense for '[p]ersons who committed the act or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent.'" Fox, 124 Idaho at 926, 866 P.2d at 183 (quoting I.C. § 18-201). This statute merely provides a defense to crimes that require proof of a specific criminal intent. See, e.g., State v. Stiffler, 117 Idaho 405, 406, 788 P.2d 220, 221 (1990); Simpson, 137 Idaho 816-17, 54 P.3d at 459-60. It does not require the state to prove criminal intent when the statute defining the offense contains no such element. Nor does the defense apply where, as here, the offense charged is a general intent crime.[3] E.g., Simpson, 137 Idaho at 817, 54 P.3d at 460 (mistake of fact defense unavailable to defendant charged with possessing unlawfully taken elk because claimed mistake of fact, even if true, did not negate a mental element of the crime).

As an alternative to his statutory-based arguments, Rammell appears to argue that the United States Supreme Court's opinion in Staples v. United States, 511 U.S. 600 (1994), requires that in every crime there be an element of criminal intent or criminal negligence. (Appellant's brief, p.10, 18-19.) Rammell's reliance on Staples for this proposition is wholly misguided.

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[3] Rammell argues that "'mistake of fact' is a defense" to a misdemeanor prosecution for possession of unlawfully taken wildlife and that, as such, he should have been permitted to present evidence relevant to and have the jury instructed on that defense. (Appellant's brief, p.16.) Rammell's argument fails because "mistake of fact" is not a defense to a general intent crime, see Simpson, 137 Idaho at 817, 54 P.3d at 460, and, as set forth in more detail in Section II.C., *infra*, the only evidence Rammell proffered in an attempt to support a "mistake of fact" defense established only that Rammell was ignorant of the law, not that he committed the acts charged through mistake, misfortune or accident, as contemplated by I.C. § 18-201.

Staples addressed whether a federal statute criminalizing the possession of an unregistered machinegun required proof that the defendant knew the weapon "had the characteristics that brought it within the statutory definition of a machinegun." Id. at 602. The Court concluded, as a matter of statutory interpretation, that it did, but it specifically noted that Congress "remains free to amend [the statute] by explicitly eliminating a *mens rea* requirement." Id. at 615 n.11. Moreover, the Court found that the *mens rea* required under the statute was only that the defendant knew of the factual characteristics that brought the weapon within the statutory definition. Id. at 619. Expounding on this holding, Justice Ginsburg noted in her concurring opinion that the presumption that a *mens rea* attaches to the elements of an offense "requires knowledge only of the facts that make the defendant's conduct illegal, lest it conflict with the related presumption, deeply rooted in the American legal system, that, ordinarily, ignorance of the law or a mistake of law is no defense to criminal prosecution." Id. at 622 n.3 (Ginsburg J., concurring) (citations and internal quotations omitted). In other words, the *mens rea* required is only general intent "requir[ing] a defendant to know the facts that make what he does illegal." United States v. Flores-Villar, 536 F.3d 990, 999 (9th Cir. 2008) (interpreting Staples). Rammell's argument that Staples mandates in every criminal case an element of specific criminal intent is without merit.

The trial court, and district court on appeal, correctly concluded that a conviction for possession of unlawfully taken game in violation of I.C. § 36-502(b) requires a showing of only general, not criminal, intent. E.g., Simpson, 173

Idaho at 817, 54 P.3d at 460. Because criminal intent was not an element of the crime, the 2010 Big Game Rules, proffered by Rammell for the purpose of showing his lack of knowledge that the elk he possessed was taken unlawfully, were irrelevant. Id.; Fox, 124 Idaho at 926, 866 P.3d at 183. Rammell has therefore failed to establish that the trial court abused its discretion in refusing to admit the 2010 Big Game Rules into evidence.

II.
Rammell Has Failed To Show Error In The Jury Instructions

A. Introduction

Rammell contends that the trial court erred by declining to give his requested jury instruction on "mistake of fact." (Appellant's brief, pp.13-20.) He also contends that the court erred by instructing the jury on the statutory and IDAPA definitions of the crime without also instructing them on the rules set forth in the 2010 Big Game Rules. (Appellant's brief, pp.22-24.) Rammell's claims of instructional error are without merit. Rammell was not entitled to a "mistake of fact" instruction because "mistake of fact" is not a defense to a general intent crime and, in any event, the evidence Rammell proffered in an attempt to support a "mistake of fact" defense established only that Rammell was ignorant of the law, not that he committed the acts charged through mistake, misfortune or accident, as contemplated by I.C. § 18-201. Rammell was likewise not entitled to have the jury instructed on the 2010 Big Game Rules because the rules therein were adequately covered by other instructions given by the court.

B. Standard Of Review

The standard of review applicable to a decision rendered by a district court in its intermediate appellate capacity is set forth in Section I.B., *supra*, and is incorporated herein by reference.

Whether the jury instructions, when considered as a whole, fairly and adequately present the issues and state the applicable law is a question of law over which the appellate court exercises free review. State v. Bush, 131 Idaho 22, 32, 951 P.2d 1249, 1259 (1997); State v. Zichko, 129 Idaho 259, 923 P.2d 966, 971 (1996).

C. Rammell Has Failed To Show That The Trial Court Erred By Refusing His "Mistake Of Fact" Instruction

Refusal of a defendant's requested instructions dealing with the defense theory is not error where the proposed statement is an erroneous statement of the law. State v. Varie, 135 Idaho 848, 855, 26 P.3d 31, 38 (2001); State v. Dambrell, 120 Idaho 532, 817 P.2d 646 (1991); State v. Johns, 112 Idaho 873, 736 P.2d 1327 (1987). As set forth in Section I.C., *supra*, "mistake of fact" is not a defense to general intent crimes. State v. Stiffler, 117 Idaho 405, 406, 788 P.2d 220, 221 (1990); State v. Simpson, 137 Idaho 813, 816-17, 54 P.3d 456, 459-60 (Ct. App. 2002). Because, for the reasons set forth in Section I.C., *supra*, possession of unlawfully taken game in violation of I.C. § 36-502(b) is a general intent crime, any instruction regarding "mistake of fact" would have been an erroneous statement of the law. Therefore, the requested instruction was properly refused by the trial court.

In addition to being an improper statement of law, Rammell's requested "mistake of fact" instruction was not supported by the evidence. Rammell requested that the court instruct the jury, consistent with I.C. § 18-201, that persons who committed the act or made the omission charged through ignorance or mistake of fact, without being conscious thereof, or through misfortune or by accident are exempt from criminal liability. (See R., Vol. 1, pp.129-30.) The "mistake of fact" defense was not available to Rammell, however, because the evidence Rammell proffered in support of his requested instruction did not establish mistake of fact or misfortune or accident, but only Rammell's ignorance of the law.

Rammell has always acknowledged that he possessed an elk that he shot and killed in the Tex Creek Zone while having a Middle Fork tag. He also acknowledges that his Middle Fork tag was invalid in the Tex Creek Zone. His claim of entitlement to a "mistake of fact" instruction rests entirely on his assertion that he was misled by the 2010 Big Game Rules into believing that his Middle Fork tag was valid in more than one elk management zone. In other words, Rammell claims only to have lacked the knowledge that the taking of an elk in the Tex Creek Zone with a Middle Fork tag was *illegal*. Rammell's defense is thus actually a defense of ignorance of the law, not a "mistake of fact" defense contemplated by I.C. § 18-201. Unfortunately for Rammell, ignorance or mistake of law, even in good faith, is not a defense. State v. Fox, 124 Idaho 924, 926, 866 P.2d 181, 183 (1993); State v. Dolsby, 143 Idaho 352, 355, 145 P.3d 917,

920 (Ct. App. 2006); Wilson v. State, 133 Idaho 874, 880, 993 P.2d 1205, 1211 (Ct. App. 2000).

In Fox, the Idaho Supreme Court rejected an argument similar to that made by Rammell in this case. Fox was charged with possession of ephedrine. Fox, 124 Idaho at 925, 866 P.2d at 182. At trial, he attempted to present evidence showing that "he did not know or reasonably could not have known that ephedrine was a controlled substance." Id. at 926, 866 P.2d at 183. The district court sustained the state's objection to the evidence, ruling that it was "not relevant because knowledge that possession of ephedrine was illegal was not an element of the offense." Id. at 925, 866 P.2d at 182. The Idaho Supreme Court affirmed, holding that because possession of a controlled substance "only requires a general intent, that is, the knowledge that one is in possession of the substance. . . . any evidence tending to establish Fox's lack of knowledge that ephedrine was illegal is irrelevant." Id. at 926, 866 P.2d at 183. The court also rejected Fox's argument that a good faith mistake of law excused his possession of ephedrine, explaining:

> Ignorance of the law is not a defense. *See e.g., Hale v. Morgan*, 22 Cal.3d 388, 149 Cal.Rptr. 375, 380, 584 P.2d 512, 517 (1978) ("[I]n the absence of specific language to the contrary, ignorance of a law is not a defense to a charge of its violation."); *State v. Einhorn*, 213 Kan. 271, 515 P.2d 1036, 1039 (1973) ("the general rule is that ignorance of the law does not disprove criminal intent.") There is no indication in the record, nor is any argument made, that the defendant could not have discovered what substances were listed in the schedules of controlled substances. Ephedrine had in fact been added to the list in 1988, several years prior to Fox's possession of the substance in 1991.
>
> This is simply a case where Fox possessed a substance, knowing full well what the substance was, but claiming now that he

> did not know it was listed in the statutes as a controlled substance. There is nothing in that argument which would rise to the level of a viable defense.

Fox, 124 Idaho at 926, 866 P.2d at 183. See also Dolsby, 143 Idaho at 355, 145 P.3d at 920 (defendant's belief that muzzle loader was not legally considered a firearm constituted only ignorance of the law and was not a valid defense to crime of unlawfully possessing a firearm).

As in Fox, there is no indication in the record that Rammell could not have discovered that the elk he possessed was unlawfully taken. Although Rammell claimed that he was misled by the 2010 Big Game Rules as to the legality of taking an elk in a zone other than that specified on his tag, he does not dispute, nor can he, that the tag he possessed was, in actuality, only valid only in the Middle Fork Zone, not the Tex Creek Zone where he took the elk. See IDAPA 13.01.08.255.01. Moreover, a review of the 2010 Big Game Rules, and the tag itself, actually belies Rammell's claimed lack of notice as to the requirements of the law.

The 2010 Big Game Rules brochure is organized in sections according to species. On the second page of the section entitled "Elk" (page 29 of the brochure), the first paragraph states: "Elk hunting in Idaho is managed in 29 elk zones. In addition, Fish and Game has established a 2-tag system as an effort to offer elk hunters the most general season choices. **Hunters may select 1 zone and choose either an "A tag" or a "B tag" in most elk zones**." (Defendant's Exhibit A, p.29 (emphasis added).) Page 28 of the brochure is a detailed map of Idaho's 29 elk management zones, and pages 30-39 contain a

chart listing each of the 29 zones, the units the make up the zones, and the rules for hunting in each zone. (Defendant's Exhibit A, pp.28, 30-39.) The brochure further specifies that, if a hunter wishes to hunt for elk in a zone other than that for which he or she has obtained a tag, the hunter "may exchange general season elk tags for use in another zone" by paying a fee and accomplishing the exchange "before the first opening hunt date for the tag being exchanged." (Defendant's Exhibit A, p.77.) Construed individually or together, these provisions – together with Rammell's tag that specifically stated it was a "Res Middle Fork Elk A" tag, "Valid In Unit(s): 20A-26-27" (State's Exhibit 2) – clearly provided Rammell notice that his elk tag was limited to only one zone. Finally, page 7 of the 2010 Big Game Rules specifically provides that "[i]t is the responsibility of the hunter to become familiar with the rules that affect the hunt in which he or she is participating," that the brochure provides only "a summary of rules that govern big game hunting in Idaho," and that "details about the rules" should be obtained by referring to websites (provided) that link the hunter directly to applicable provisions of the Idaho Administrative Procedures Act and the Idaho Code. (Defendant's Exhibit A, p.7.) Clearly, Rammell had notice or, at the very least, could have discovered that his act of taking an elk in the Tex Creek Zone while possessing only a Middle Fork tag was illegal.

Like the possession of a controlled substance statute at issue in Fox, the statute proscribing the possession of unlawfully taken game does not expressly require any mental state element and, as such, requires only a general intent – that is, the knowledge that one is in possession of the thing proscribed. I.C. §

18-114; Simpson, 137 Idaho at 816-17, 54 P.3d at 459-60. Rammell concedes he knowingly possessed an elk taken in the Tex Creek Zone without a valid tag. His claim now that he did not know that it was illegal to take the elk in the Tex Creek Zone while having only a Middle Fork tag is simply a claim of ignorance of the law and does not establish a viable "mistake of fact" defense. Rammell has failed to show error in the denial of his requested "mistake of fact" instruction.

D. Rammell Has Failed To Show Error In The Trial Court's Refusal To Instruct The Jury On the 2010 Big Game Rules

Rammell asked the trial court to instruct the jury that "In order for an animal to be unlawfully taken" it must have been "taken or killed in a manner in violation of the regulation or laws of the State of Idaho *as detailed in the 'IDAHO BIG GAME Seasons and Rules 2010' brochure.*" (R., Vol.1, p.127 (emphasis original).) He also requested an instruction containing the following language from the 2010 Big Game Rules: "Elk Hunting in Idaho is managed in 29 elk zones. In addition, Fish and Game has established a 2-tag system as an effort to offer elk hunters the most general season choices. Hunters may select 1 zone and choose either an 'A tag' or a 'B tag' in most elk zones." (R., Vol. 1, pp.128-29; compare with Defendant's Exhibit A, p.29.) The trial court refused Rammell's proposed instructions, reasoning in a pretrial order that there is "little difference between the IDAPA regulations and that described in the publication. The IDAPA regulations being the actual regulations it is that which should be given to the jury." (R., Vol. 1, p.71.) Contrary to Rammell's assertions on

appeal, the trial court properly refused Rammell's proposed instructions because the rule he cited was adequately covered by other instructions given to the jury.

Although a defendant is entitled to have his legal theory of the case submitted to the jury under proper instructions, the trial court does not err in refusing a proposed instruction where it is adequately covered by other instructions given by the court. State v. Tiffany, 139 Idaho 909, 920, 88 P.3d 728, 739 (2004). The court's instructions in this case informed the jury that (1) in order for Rammell to be guilty of possessing unlawfully taken wildlife, he must have "Possessed wildlife, to-wit a cow elk," "which was unlawfully taken" (R., Vol. 1, p.182); (2) to prove the animal was unlawfully taken, the state was required to prove that "the animal was protected under the laws of the State of Idaho," "the animal was taken or killed in a manner in violation of the regulation or laws of the State of Idaho," and "in this case the animal was taken or killed by an individual who did not possess a proper permit to take or kill the animal" (R., Vol. 1, p.183); and (3) "In order for an elk to be lawfully taken the following must be complied with: ... The Elk Zone A Tag is valid for specified A Tag elk seasons within a specified zone only" (R., Vol. 1, p.184). These instructions are consistent with the statutes and regulations governing the taking of wildlife, see I.C. §§ 36-409(c) and 36-502(b); IDAPA 13.01.08.255.01, and also adequately covered Rammell's proposed instruction that cited the zone selection language from the 2010 Big Game Rules.

Rammell argues that he was entitled to have his proposed jury instructions submitted to the jury because the 2010 Big Game Rules are the

official proclamation of the Fish and Game Commission and have full force and effect as law. (Appellant's brief, pp.25-29.) The state agrees that the rules set forth in the 2010 Big Game Rules brochure carry the weight of the law. I.C. § 36-105(2) and (3). Contrary to Rammell's assertions, however, that does not mean that the rules were not adequately covered by the court's other instructions. The 2010 Big Game Rules brochure expressly states that it is merely a "**summary** of rules that govern big game hunting in Idaho." (Defendant's Exhibit A, p.7 (emphasis added).) The actual laws and regulations upon which that summary is based are contained in Title 36 of the Idaho Code and Section 13.01.08 of the Idaho Administrative Procedures Act (IDAPA). (See id.) As found by the magistrate, the 2010 Big Game Rules do not substantively differ from the actual statutes and regulations; both require the hunter to limit his or her elk hunting activities to the zone specified on his or her elk tag. Compare I.C. § 36-409 and IDAPA 13.01.08.255.01-.02 with Defendant's Exhibit A, pp.28-40, 77; see also Section II.C, *supra* (discussing notice provided by 2010 Big Game Rules). Because there is no substantive difference between the 2010 Big Game Rules and the Idaho statutes and regulations that govern the hunting of big game in Idaho, and because the trial court instructed the jury on the relevant statutes and regulations, the trial court did not err by declining Rammell's proposed instructions based on the 2010 Big Game Rules that would only have been duplicative of the court's instructions. Rammell has failed to show error.

III.
Rammell Has Failed To Show That The Trial Court Lacked Either Subject Matter Or Personal Jurisdiction

A. Introduction

Rammell moved to dismiss the complaint charging him with possessing unlawfully taken game, claiming the trial court lacked both personal and subject matter jurisdiction. (R., Vol. 1, pp.101-07.) The magistrate denied Rammell's motion and the district court affirmed, ruling that Rammell's jurisdictional claims were without merit. (R., Vol. 1, pp.117-18; R., Vol. 2, pp.255-56.) On appeal, Rammell reasserts the arguments he advanced to the magistrate and district courts (compare R., Vol. 1, pp.101-07 and R., Vol. 2, pp.201-03 with Appellant's brief, pp.29-31), but he has failed to carry his appellate burden of showing error in the lower courts' rulings.

B. Standard Of Review

The standard of review applicable to review of a decision rendered by a district court in its intermediate appellate capacity is set forth in Section I.B., *supra*, and is incorporated herein by reference. Whether a court has jurisdiction is a question of law, given free review. State v. Kavajecz, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003).

C. Rammell's Jurisdictional Arguments Are Without Merit

Before a defendant can be held to answer in a criminal case, the court in which the proceeding is commenced must have both personal and subject matter jurisdiction. State v. Rogers, 140 Idaho 223, 228, 91 P.3d 1127, 1132

(2004). Personal jurisdiction refers, generally, "to the court's authority to adjudicate the claim as to the person." Id. at 227, 91 P.3d at 1131 (quoting Matter of Hanson, 121 Idaho 507, 509, 826 P.2d 468, 470 (1992)). Subject matter jurisdiction, on the other hand, refers to the court's authority to adjudicate the case. Id.

As he did below, Rammell claims that the magistrate lacked personal and subject matter jurisdiction to adjudicate the prosecution against him because the Complaint identified him as "Rex F. Rammell" instead of "Rex Floyd Rammell." (Appellant's brief, pp.29-31.) According to Rammell, "Rex F. Rammell" is "a false designation of an individual who does not exist as a person in the state of Idaho" and, as such, "the real party of interest, Rex Floyd Rammell is not answerable to the charges against such other individual." (Appellant's brief, pp.30-31.) Rammell has cited no authority, and the state is aware of any, that stands for the proposition that an individual can defeat a court's jurisdiction merely because the charging document identifies the individual using his middle initial instead of his full middle name,[4] nor can he; correct application of the law to the facts shows that the magistrate had both personal and subject matter jurisdiction to adjudicate the criminal case in which Rammell personally appeared.

"In a criminal case, the court properly acquires personal jurisdiction over the defendant when the defendant appears at the initial court setting on a complaint or arraignment on the indictment." Rogers, 140 Idaho at 228, 91 P.3d

[4] Notably, while Rammell claims that "Rex F. Rammell" is a "person who does not exist" (Appellant's brief, p.31), Rammell actually identifies *himself* as "Rex F. Rammell ... *Pro se for Appellant*" on the cover of his Appellant's brief.

at 1132 (citing I.C.R. 4, 10; State v. Cronin, 923 P.2d 694, 697 (Wash. 1996)); see also State v. Jones, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004) ("Idaho courts obtain personal jurisdiction over a criminal defendant when the defendant initially appears in court."). In this case, the magistrate acquired personal jurisdiction over Rammell when he appeared and was arraigned on the complaint charging him with possessing unlawfully taken game, in violation of I.C. § 36-502(b). (See R., Vol. 1, pp.11-12 (complaint), 13 (minutes of arraignment at which Rammell appeared).) It does not matter that Rammell subsequently objected to the court's jurisdiction over him. "Idaho Code § 18-202 establishes the court's personal jurisdiction over all individuals who commit a crime in this state." Rogers, 140 Idaho at 228, 91 P.3d at 1132 (emphasis added). The mere unwillingness of a criminal defendant to assent to the court's authority does not defeat the court's lawful exercise of personal jurisdiction once the defendant personally appears in court. See State v. Simmons, 115 Idaho 877, 878, 771 P.2d 541, 542 (Ct. App. 1989) (citations omitted) (rejecting defendant's claim that personal jurisdiction could not exist without a contract or his agreement thereto, stating, "[w]e have consistently and unequivocally rejected the notion that a state must contract with a citizen either to obtain personal jurisdiction or to subject the citizen to its laws").

The magistrate also had subject matter jurisdiction. "Subject matter jurisdiction in a criminal case is conferred by the filing of an 'information, indictment, or complaint alleging an offense was committed within the State of Idaho.'" Jones, 140 Idaho at 757-58, 101 P.3d at 701-02 (citing Rogers, 140

Idaho at 227, 91 P.3d at 1131). In this case, the state filed a criminal complaint, citing I.C. § 36-502, and alleging that Rammell, "in the County of Bonneville, State of Idaho, possessed wildlife or parts thereof (a cow elk) protected by the provisions of Title 36, Idaho Code and the taking or killing of which was unlawful because defendant did not possess the appropriate tag." (R.,Vol. 1, pp.11-12, 57-58.) Because the charging document alleged an offense committed in the State of Idaho, it conferred on the magistrate subject matter jurisdiction to hear and determine the case. Jones, 140 Idaho at 757-58, 101 P.3d at 701-02; Rogers, 140 Idaho at 228, 91 P.3d at 1132. Rammell's arguments to the contrary are without merit.

CONCLUSION

The state respectfully requests that this Court affirm the district court's intermediate appellate decision that affirmed Rammell's conviction for possessing unlawfully taken game.

DATED this 15th day of October 2012.

LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of October 2012, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

REX F. RAMMELL
151 PARK AVE.
TORRINGTON, WY 82240

LORI A. FLEMING
Deputy Attorney General

LAF/pm