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## State v. Peterson Respondent's Brief Dckt. 40550

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**IN THE SUPREME COURT, OF THE STATE OF IDAHO**

**STATE OF IDAHO,**

**Plaintiff-Appellant,**

**v.**

**CADEE JO PETERSON,**

**Defendant-Respondent.**

**Supreme Court Case No. 40550**

**District Court Case No. CRFE11-15481**

**RESPONDENT'S BRIEF**

**BRIEF OF RESPONDENT**

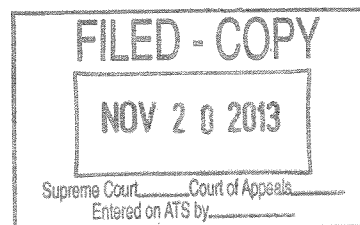
**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

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## STATEMENT OF CASE

### Nature of the Case

Cadee Jo Peterson (“Cadee”) was convicted of conspiracy to manufacture, deliver or possess with intent to deliver a controlled substance. Following jury trial, Cadee filed a Motion for a New Trial and Motion for Judgment of Acquittal. The district court denied Cadee’s Motion for Judgment of Acquittal, but granted her Motion for a New Trial, finding that the jury should have been instructed that Jury Instruction No. 27, the mistake of law instruction, did not apply to the conspiracy counts as “[e]vidence was introduced at trial from which a jury could have concluded that the defendant lacked the necessary intent to violate the law so as to be guilty of conspiracy even though the acts he agreed to perform constituted the underlying crime.” The district court then concluded that the “jury should have been instructed that a good faith belief that the object crime is not illegal is a defense to conspiracy.” The State appeals from the district court’s grant of Cadee’s Motion for a New Trial.

### Statement of the Facts and Course Proceedings

In September of 2011, twenty-two year old Cadee Peterson was an employee of Quinn’s Restaurant and Lounge. (Tr., p.1797, Ls.18-23; p.1802, Ls.13-17.) Cadee had been an employee at Quinn’s for approximately two years. (Tr., p.1802, Ls.13-17.) Looking for another job to help make ends meet, Cadee inquired of Tashina Alley if her husband, Morgan Alley had any open jobs. (Tr., p.770, Ls.7-17.) Eventually, Morgan offered Cadee a job to work in his warehouse. (Tr., p.624, Ls.3-8.) Morgan was using the warehouse to make Twizted Potpourri. (Tr., p.1107, Ls.19-22.) He believed that the substance AM-2201 had not been made illegal by Idaho law and he applied this chemical to plant material at the warehouse, which would

eventually be sold at the Red Eye Hut. (Tr., p.1174, L.2 – p.1175, L.4.) Morgan had a lab report that stated that AM-2201 was legal in Idaho. (Tr., p.1175, Ls.5-14.) He testified that he applied AM-2201 to plant material to make the potpourri; he did not testify to using any other chemical. (Tr., p.1212, L.16 – p.1223, L.11.)

Cadee was initially advised that her job was to be working with potpourri and did not know exactly what she was to be doing. (Tr., p.624, Ls.8-11.) On her first day of employment, Cadee was driven to the warehouse by Morgan and advised she was to “weigh the Potpourri material at one gram, place the one gram of material into the container, and affix the appropriate lid, then place the fully assembled container of Twizted Potpourri into an identifying box.” (Tr., p.624, L.25 – p.625, L.6.) Cadee was to receive \$9 per hour and generally worked between three and five hours a day. (Tr., p.626, Ls.7-9.) In total, Cadee worked for Morgan for approximately nine days. (Tr., p.626, Ls.6-7.) While employed for Morgan, Cadee never assisted in “manufacturing,” did any work on the business accounts, shipped or mailed anything with regard to the company, and did not hand out any fliers for the business. (Tr., p.1281, L.5 – p.1284, L.12.) In fact, Morgan assured Cadee that the business was legal. (Tr., p.1284, Ls.13-18; Tr., p.752, Ls.1-6. (Detective Andreoli relaying that Morgan told Cadee that the substances they were selling were legal), p.1172, L.17 – p.1174, L.10 (Morgan Alley testifying that he told his employees that “everything we were doing was completely legal . . .”).)

On September 29, 2011, law enforcement executed search warrants on the Alley residence, the warehouse, and Red Eye Hut. (Tr., p.582, L.25 – p.589, L.23.) While the search warrant was being served on the Alley residence, Cadee arrived and was subsequently taken into custody. (Tr., p.599, L.15 – p.600, L.17.) Law enforcement searched Cadee’s backpack uncovering a container of Twizted Potpourri and glass pipe. (Tr., p.845, Ls.5-22.)

In October of 2011, Cadee was charged by Indictment with conspiracy to manufacture, deliver or possess with intent to deliver a controlled substance. (R., pp.25-28.) Prior to trial, Cadee sought to dismiss the charged offense under the guise that the State did not have any evidence to prove that Cadee agreed to “commit a crime, do something illegal.” (R., pp.154-155.) The district court denied Cadee’s motion to dismiss. (Tr., p.122, L.9 – p.123, L.24.)

At the close of the State’s evidence, Cadee moved for a judgment of acquittal pursuant to *Idaho Criminal Rule 29*. (Tr., p.1692, L.1 – p.1746, L.20.) The district court denied Cadee’s motion for judgment of acquittal, despite her reliance upon Morgan Alley’s “mistaken belief that what he was doing was legal, but I don’t think that’s a defense.” (Tr., p.1746, L.21 – p.1747, L.21.) At the close of evidence, Cadee was convicted of conspiracy to manufacture, deliver or possess with intent to deliver a controlled substance. (R., p.288.)

Thereafter, Cadee filed a Motion for Judgment of Acquittal and a Motion for a New Trial. (R., pp.289-292.) The Court denied the Motion for Judgment of Acquittal. (R., pp.362-368.) The district court did grant Cadee’s Motion for a New Trial, finding that the jury should have been instructed that Jury Instruction No. 27, the mistake of law instruction, did not apply to the conspiracy counts as “[e]vidence was introduced at trial from which a jury could have concluded that the defendant lacked the necessary intent to violate the law so as to be guilty of conspiracy even though the acts he agreed to perform constituted the underlying crime.” (R., pp.369-372.) The district court found that the “jury should have been instructed that a good faith belief that the object crime is not illegal is a defense to conspiracy.” (R., pp.369-372.) The State timely appealed. (R., pp.377-380.)

ISSUE

Did the district court correctly determine that it erroneously instructed the jury on the mistake of law defense?



## ARGUMENT

### The District Court Correctly Determined That It Erred By Failing To Instruct The Jury That A Good Faith Belief That The Agreed Upon Act Is Not Illegal Is A Defense To Conspiracy

#### A. Introduction

The district court correctly determined that it erred by instructing the jury on the mistake of law defense as it applies to a conspiracy. An element of conspiracy is an agreement between two or more persons to accomplish an illegal objective. Individuals who believe their actions are legal do not have an agreement to accomplish an illegal objective. Thus, the district court erred when, over an objection by counsel, it instructed the jury that a mistake of law is no defense.

#### B. Standard Of Review

The question of whether the jury has been properly instructed is a question of law over which this Court exercises free review. *State v. Gleason*, 123 Idaho 62, 65 (1992). When reviewing jury instructions, this Court determines whether the instructions as a whole, and not individually, fairly and accurately reflect applicable law. *State v. Bowman*, 124 Idaho 936, 942 (Ct. App. 1993). Where, as here, there is an objection at trial, once the appellant establishes error, the burden is on the State to demonstrate that the error is harmless beyond a reasonable doubt. *See State v. Perry*, 150 Idaho 209, 222 (2010).

#### C. The District Court Correctly Determined That It Erred By Failing To Instruct The Jury That A Good Faith Belief That The Agreed Upon Act Is Not Illegal Is A Defense To Conspiracy

Cadee was charged under both the general conspiracy statute, I.C. § 18-1701, and the conspiracy provision of the Uniform Controlled Substances Act, I.C. § 37-2732(f). (R., pp.25-28.) Pursuant to I.C. § 18-1701, a general criminal conspiracy is defined as follows:

If two (2) or more persons combine or conspire to commit any crime or offense prescribed by the laws of the state of Idaho, and one (1) or more of such persons

does any act to effect the object of the combination or conspiracy, each shall be punishable upon conviction in the same manner and to the same extent as is provided under the laws of the state of Idaho for the punishment of the crime or offenses that each combined to commit.

The conspiracy provision of the Uniform Controlled Substances Act similarly provides:

If two (2) or more persons conspire to commit any offense defined in [the Uniform Controlled Substances] act, said persons shall be punishable by a fine or imprisonment, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.

I.C. § 37-2732(f).

Idaho appellate courts have stated that a conspiracy consists of 1) an agreement between two or more persons to accomplish an illegal objective, 2) coupled with one or more overt acts in furtherance of that objective, and 3) the intent necessary to commit the underlying substantive crime. *State v. Rolon*, 146 Idaho 684, 690 (Ct. App. 2008) (citing *State v. Lopez*, 140 Idaho 197, 199 (Ct. App. 2004) and *State v. Munhall*, 118 Idaho 602, 606 (Ct. App. 1990)). Conspiracy is thus a specific intent crime that requires the intent to agree to the conspiracy, and the intent to commit the offense which of the object of the conspiracy. *See id.*

Cadee acknowledges that as a general rule, ignorance or a mistake of the law is not a defense. However, conspiracy is different, because the first element an agreement to accomplish an illegal objective. *See Rolon*, 146 Idaho at 690. If the defendants in a conspiracy truly believe that what they are doing is legal, they do not have the intent to accomplish an *illegal* objective. It does not appear that Idaho appellate courts have resolved this specific issue but case law from other jurisdictions is persuasive.

In a case involving a conspiracy to violate state security laws, the Arizona Supreme Court has stated,

Conspiracy is a crime that requires a *mens rea*, or specific intent, even if the crime the conspirators are agreeing to commit does not in itself require such intent.

We agree with the California court that:

“ . . . even though a conspiracy has as its object the commission of an offense which can be committed without any specific intent, **there is no criminal conspiracy absent a specific intent to violate the law.** That is, to uphold a conviction for conspiracy to commit a ‘public welfare offense’ there must be a showing that the accused knew of the law and intended to violate it.” *People v. Marsh*, 58 Cal.2d 732, 743, 376 P.2d 300, 307, 26 Cal.Rptr. 300, 307 (1962). *Accord, United States v. Ehrlichman*, 546 F.2d 910 (D.C.Cir.1976), cert. den. 429 U.S. 1120, 97 S.Ct. 1155, 51 L.Ed.2d 570 (1977); *Commonwealth v. Benesch*, 290 Mass. 125, 194 N.E. 905 (1935); *People v. Harris*, 294 N.Y. 424, 63 N.E.2d 17 (1945); *People v. Powell*, 63 N.Y. 88 (1875).

**Because the trial court in the present case specifically ruled that no intent to violate a known law need be shown** for the State to prove a conspiracy charge, and because evidence of good faith was rejected, **Gunnison's conspiracy conviction must fall.**

*State v. Gunnison*, 618 P.2d 604, 608 (Ariz. 1980) (emphasis added). Further:

The crime of conspiracy has been widely regarded as involving a consciously criminal agreement and is for that reason blameworthy and punishable in itself: “conspiracy imports a **corrupt agreement** between not less than two with **guilty knowledge** on the part of each.”

*Id.* at 607 (citing *Morrison v. California*, 291 U.S. 82, 92 (1934) (emphasis added)). The Court of Appeals of California has more recently stated, “[the] Defendant’s good faith mistake of law, while not a defense to the crime of selling marijuana, was a defense to the conspiracy to commit that crime.” *People v. Urziceanu*, 132 Cal. App. 4<sup>th</sup> 747, 775 (2005). “To commit the crime of conspiracy, defendant must have had the specific intent to violate the marijuana laws (i.e., he must have known what he was doing was illegal and he must have intended to violate the law) before he can properly be convicted of conspiracy to violate those laws. Because conspiracy

requires a specific intent, a good faith mistake of law would provide defendant with a defense.”  
*Id.* at 776.

This reasoning is especially persuasive considering that California defines a conspiracy much the same way Idaho does: “The elements of the crime of conspiracy are generally described as follows: ‘A criminal conspiracy exists where it is established that there was an unlawful agreement to commit a crime between two or more people, and an overt act in furtherance of the agreement.’” *Id.* at 776 (citations omitted). *See also State v. Edmonson*, 113 Idaho 230, 244 (1987) (recognizing that “a great deal of our Idaho law, inclusive of more than the criminal code, came to us from California.”)


Conspiracy is different than other crimes. It is the criminal agreement itself that is blameworthy and punishable regardless of whether the underlying crime occurs. *See Gunnison*, 618 P.2d at 607. The agreement must therefore be consciously criminal in order to be punishable. *See id.* A mistake of law does, therefore, negate the specific intent element of conspiracy because, with a mistake of law, there is no agreement between two or more persons to accomplish an illegal objective. *See Rolon*, 146 Idaho at 690. Thus, the district court erred by instructing the jury that mistake of law was not a defense to the conspiracy charges.

#### CONCLUSION

Accordingly, Cadee asks that this Court affirm the district court’s order granting her Motion for a New trial.

DATED this 20<sup>th</sup> day of November, 2013.

BRADY LAW, CHARTERED


  
\_\_\_\_\_  
Eric D. Fredericksen  
Attorneys for Defendant-Respondent

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of November, 2013, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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