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State v. Howell Respondent's Brief Dckt. 41417

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 41417
Plaintiff-Respondent,)	
)	City of Boise
vs.)	Ada Co. Case No.
)	CR-MD-2012-11330
TYLER ANTHONY HOWELL,)	
)	
Defendant-Appellant.)	
)	

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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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Tyler Anthony Howell appeals from the district court's appellate decision affirming Howell's conviction for carrying a concealed weapon in a sterile area of an airport.

Statement Of The Facts And Course Of The Proceedings

The state charged Howell with carrying a concealed weapon in a sterile area after he entered the Boise Airport and attempted to proceed through security screening with a loaded gun in his backpack. (R., pp.5, 48-49; Tr., p.46, L.7 – p.47, L.4, p.49, L.24 – p.50, L.1.) The case proceeded to jury trial. (R., p.21-22.)

Throughout the trial, Howell questioned whether the Boise Airport held a federal certificate for operation as well as the "knowing" nature of Howell's action of carrying a dangerous weapon into the airport, both of which were elements of the offense the state needed to prove. (See R., p.40 (Jury Instruction No. 13).) TSA supervisor Jose Valero was asked on direct examination if he knew if the Boise Airport was a federally certified building. (Tr., p.20, Ls.12-13.) Howell objected as to "foundation, hearsay and best evidence." (Tr., p.20, L.15.) The trial court overruled the objection as "premature." (Tr., p.20, L.16.) Valero was then again asked "[d]o you know if it's a federally certified facility?" (Tr., p.20, Ls.17-18.) Valero responded: "[a]s far as I'm concerned – that I know, yes." (Tr., p.20, L.19.)

Later in the state's case, the state asked Officer Lock on direct examination: "do you know if the Boise Airport is federally certified?" (Tr., p.39, Ls.1-2.) Without objection, Lock responded "Yeah, it's a category – I believe it's a category three." (Tr., p.39, Ls.3-4.) Officer Lock also testified that Howell told him he had placed his gun in his backpack, although Howell "didn't even realize it was in there" when he was stopped by TSA during screening. (Tr., p.46, L.9 – p.47, L.4.)

Upon the close of the state's evidence, Howell moved for a judgment of acquittal asserting the state had not presented sufficient evidence that the Boise Airport was federally certified. (Tr., p.60, L.1 – p.61, L.4.) The trial court denied the Rule 29 motion, finding the state had provided sufficient evidence through the testimony of Officer Lock. (Tr., p.65, Ls.6-25.) Finally, Howell took the stand and testified that bringing his gun into the airport was unintentional. (See generally, Tr., p.67, L.10 – p.76, L.15.)

At the conclusion of the trial the jury convicted Howell of carrying concealed weapons in a sterile area of the airport. (R., p.46.) Howell filed another motion for judgment of acquittal which the trial court "denied without hearing for the same reasons articulated by the court upon Rule 29 motion [at] trial." (R., p.5.) Howell filed a timely appeal to the district court. (R., p.56 (judgment), 57-60 (notice of appeal).) The district court affirmed the judgment. (R., pp.125-136.) Howell appealed to this Court. (R., pp.137-140.)

ISSUES

Howell states the issues on appeal as:

- I. Did the trial court err in admitting hearsay statements into evidence over defendant's objections?
- II. Did the trial court err by failing to grant a Rule 29 motion where the State did not present evidence as to whether the Boise Airport is a holder of a certificate issued by the federal government or the State of Idaho, one of the elements of the crime?
- III. Was there sufficient evidence to prove beyond a reasonable doubt that Mr. Howell attempted to knowingly take a weapon into a sterile area of an airport?

(Appellant's brief, p.4.)

The state rephrases the issues as:

1. Has Howell failed to establish the trial court made any erroneous evidentiary rulings?
2. Has Howell failed to show the trial court erred in its denial of his motion for judgment of acquittal at the close of the state's evidence?
3. Has Howell failed to show that the jury's verdict is not supported by the evidence?

ARGUMENT

I.

Howell Has Failed To Show Error In The District Court's Evidentiary Rulings Regarding The Testimony Of Jose Valero

A. Introduction

Howell asserts the trial court erred in relation to certain evidentiary rulings. (Appellant's brief, pp.5-8.) More specifically, Howell contends the court erroneously admitted hearsay testimony of Jose Valero over objection. (Id.) Application of the correct legal standards shows Howell has failed to show error in the trial court's evidentiary rulings.

B. Standard Of Review

The trial court has broad discretion in the admission of evidence, and its judgment will be reversed only when there has been a clear abuse of discretion. State v. Perry, 150 Idaho 209, 218, 245 P.3d 961, 970 (2010) (citations omitted). When reviewing discretionary decisions, this Court considers whether the trial court correctly perceived the issue as one of discretion, whether it acted within the boundaries of its discretion and consistent with any applicable legal standards, and whether the trial court reached its decision by an exercise of reason. State v. Rossignol, 147 Idaho 818, 824, 215 P.3d 538, 544 (Ct. App. 2009) (citing State v. Hedger, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989)).

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 to determine whether it correctly decided the issues presented to it on appeal." Borley v. Smith, 149 Idaho 171, 176, 233 P.3d 102, 107 (2010) (citing

Idaho Dept. of Health and Welfare v. Doe, 148 Idaho 124, 126, 219 P.3d 448, 450 (2009); see also Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)).

C. The Objected-To Testimony In Question Was Not Hearsay

Howell claims on appeal the trial court erred in allowing Valero to testify “on whether the Boise Airport is federally certified” because his testimony was hearsay. (Appellant’s brief, p.7.) Review of the applicable law and the record show Howell’s argument is without merit.

Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” I.R.E. 801(c). Hearsay evidence is generally inadmissible. I.R.E. 802. The question that drew the hearsay objection was, “Do you know if it’s a federally certified building?” (Tr., p.20, Ls. 12-13.) The potential answers to this question were either yes or no. Howell objected to the question on the bases of “foundation, hearsay and best evidence.” (Tr., p.20, L.15.) The trial court overruled the objection as “premature.” (Tr., p.20, L.16.) The question called for the witness’s knowledge of a fact. The question was posed to the declarant witness in court. Howell has failed to show that the testimony he objected to on hearsay grounds was actually hearsay, much less inadmissible.

Following the court’s ruling, the state once again asked the witness: “Do you know if it’s a federally certified facility?” (Tr., p.20, Ls.17-18.) The witness answered: “As far as I’m concerned – that I know, yes.” (Tr., p.20, L.19.) The witness’s answer in the affirmative was not hearsay. Even if Valero’s answer was deemed to be that he believed the facility was certified, as did the district

court, the district court was correct in concluding the answer itself was not hearsay. Howell claims on appeal

the out of court statement which was being objected to [was] the [federal] certificate itself, the testimony which was being proffered by the State [was] that the airport was in fact federally certified or the holder of a certificate issued by the federal government or the state of Idaho; that is the out of court statement which was being offered for the truth of the matter asserted which Mr. Howell objected to[.]

(Appellant's brief, pp.7-8). This argument fails because federal certification was not an out of court statement admitted to prove the truth of the matter asserted. Federal certification of the airport was the element to be proven. Howell's argument that the certification is hearsay evidence of itself is not well taken, and the state was able to prove certification by the testimony of person's with knowledge of the certification. See State v. Gomez, 126 Idaho 700, 704-705, 889 P.2d 729, 733 – 739 (Ct. App. 1994) (where statements have significance beyond the truth of the matter asserted they are "verbal acts" not within the scope of the hearsay rule); State v. Glass, 146 Idaho 77, 81 n.1, 190 P.3d 896, 900 n.1 (Ct. App. 2008) (statements in transcript of online enticement of a minor were evidence of "verbal acts"). As stated by the district court, the statement by Valero "was merely his belief, made by him while testifying at the trial, the Boise airport was federally certified" (R., p.128).

Because Howell has failed to show the trial court allowed inadmissible hearsay evidence over objection, his argument fails.

II.

Howell Has Failed To Establish The Trial Court Erred In Denying His Rule 29 Motion For Judgment Of Acquittal At The Close Of The State's Evidence

A. Introduction

Howell asserts on appeal the trial court erred in denying his Rule 29 motion for judgment of acquittal at the close of the state's evidence for the alleged failure of the state to provide sufficient evidence to establish the Boise Airport was federally certified. Because there was substantial evidence presented at trial from which a jury could reasonable conclude the Boise Airport was federally certified, Howell's argument fails.

B. Standard Of Review

An appellate court will not set aside a judgment of conviction entered upon a jury verdict if there is substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Sheahan, 139 Idaho 267, 285-86, 77 P.3d 956, 974-75 (2003); State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992). The appellate court will not substitute its view for that of the jury as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence. State v. Hoyle, 140 Idaho 679, 683-84, 99 P.3d 1069, 1073-74 (2004) (plurality); State v. Knutson, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct. App. 1991); State v. Decker, 108 Idaho 683, 684, 701 P.2d 303, 304 (Ct. App. 1985).

In determining if the evidence is substantial and competent, it will be considered in the light most favorable to the prosecution. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. App. 1997); Knutson, 121 Idaho at 104, 822 P.2d at 1001. Substantial evidence is present when a “reasonable mind” could conclude that guilt was proved beyond a reasonable doubt. Hoyle, 140 Idaho at 683-684, 99 P.3d at 1073-1074.

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 to determine whether it correctly decided the issues presented to it on appeal.” Borley v. Smith, 149 Idaho 171, 176, 233 P.3d 102, 107 (2010) (citing Idaho Dept. of Health and Welfare v. Doe, 148 Idaho 124, 126, 219 P.3d 448, 450 (2009); see also Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)).

C. There Was Sufficient Evidence Presented For The Jury To Reasonably Conclude The Boise Airport Was Federally Certified

To be prove Howell had attempted to take a dangerous weapon on an airplane, the state had to prove:

1. On or about July 28, 2012,
2. in the state of Idaho,
3. the defendant, Anthony Tyler Howell, did enter or attempt to enter a sterile area of an airport,
4. which was a holder of a certificate issued by the Federal Government or the State of Idaho,
5. while knowingly carrying, in a bag, case or other container,
6. a deadly weapon, either concealed or unconcealed.

(R., p.40; see also I.C. § 18-7503 (1).) Howell contends the state failed to prove the Boise Airport was federally certified because it did not introduce into evidence an actual document purporting to be a federal certificate. (Appellant's brief, p.10-17.) Because the record supports the conclusion that there was sufficient evidence upon which a jury could reasonably conclude the Boise Airport was federally certified, Howell's argument fails.

At trial, two separate witnesses testified they worked at the Boise Airport as transportation security officers for Transportation Security Administration (TSA) and were subject to federal rules and regulations as part of their employment. (Tr., p.7, L.18 – p.9, L.21, p.14, Ls. 11-21, p.19, L.21 – p.20, L.7.) Additionally, two separate witnesses testified that the airport was a federally certified facility. (Tr., p.20, Ls.17-19, p.39, L.1 – p.40, L.1.)

At the close of the state's evidence, Howell moved for a judgment of acquittal asserting there had been insufficient evidence presented upon whether the airport was federally certified." (Tr., p.60, Ls.1-22.) In denying the motion and declining to follow Howell's reasoning that the best evidence rule required the production of an actual document to prove certification, the trial court held:

The question is how does the State have to [prove certification]? They can do that by getting a certificate that proves that it is a certified airport federally or through the State of Idaho. But they don't have to prove it that way if they are able to prove it a different way.

I don't believe that the best evidence rule applies. The best evidence rule says that if you provide a document and there is any dispute as to the authenticity of that document, we need to have the original document.

The preference is for the original document. But if you don't have the original and there's no dispute about a copy, that's fine. That's not what's happening here.

The State has provided evidence through the testimony of Officer Lock. And I wrote down what Officer Lock said because, Counsel, I was looking for it. I knew that the State was going to be required to prove it. I knew that they hadn't proven it through the two witnesses that they had initially submitted to the Court, Mr. Trotter and Mr. Valero.

So when the State called its third witness, Mr. Lock, I was looking for it. And Mr. Lock indicated in his testimony, "Boise Airport is federally certified as, I believe, a category three."

That may not be the category that they are currently certified because things have changed and it may be a different category. But the officer's testimony, which is uncontroverted in the record was specific as to the regard – as to regarding that issue whether or not Boise Airport was federally certified.

That question was asked pointedly by the prosecutor. It was responded to with an affirmative yes, it is a federally certified facility.

(Tr., p.64, L.17 – p.65, L.25.)

In affirming this decision, the district court concluded the trial court did not err in denying Howell's Rule 29 motion because the "jury was entitled to provide the testimony [of Valero and Lock] the weight they afforded it." (R., p.130.) The only evidence before the jury on the issue of federal certification was that such certification existed. The district court noted:

The jury obviously gave this testimony, and the inferences noted by the magistrate sufficient weight to support its finding that Mr. Howell was guilty of committing the offense, and correspondingly, that the Boise airport was a federally certified facility.

(R., p.130.)

As the trial court properly concluded, the testimony presented at trial provided substantial evidence whereby a jury could have reasonably concluded the Boise Airport was federally certified. Consequently, there is no basis for Howell's contention that there was insufficient evidence to convict him of this charge on the basis this element was not proven.

III.

Howell Has Failed To Show That The Guilty Verdict Is Not Supported By Sufficient Evidence As To The Knowledge Element Of The Crime

A. Introduction

Howell asserts that, because he did not mean to enter the airport with a gun in his backpack, the evidence was insufficient to show he "knowingly attempted to carry a weapon into a sterile are of an airport." (Appellant's brief, p.17 (emphasis original).) Because the evidence presented reasonably allowed the jury to draw the inference that by placing his loaded gun into his backpack and later carrying the same backpack into the airport to board a flight he knowingly entered the airport with a dangerous weapon, Howell has failed to show error by the jury.

B. Standard Of Review

An appellate court will not set aside a judgment of conviction entered upon a jury verdict if there is substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. App. 1997); State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992); State v. Hart, 112 Idaho 759, 761, 735 P.2d 1070, 1072 (Ct. App. 1987). In conducting this review

the appellate court will not substitute its view for that of the jury as to the credibility of witnesses, the weight to be given to the testimony, or the reasonable inferences to be drawn from the evidence. Miller, 131 Idaho at 292, 955 P.2d at 607; State v. Knutson, 121 Idaho 101, 822 P.2d 998 (Ct. App. 1991); Hart, 112 Idaho at 761, 735 P.2d at 1072. Moreover, the facts, and inferences to be drawn from those facts, are construed in favor of upholding the jury's verdict. Miller, 131 Idaho at 292, 955 P.2d at 607; Hart, 112 Idaho at 761, 735 P.2d at 1072.

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 to determine whether it correctly decided the issues presented to it on appeal." Borley v. Smith, 149 Idaho 171, 176, 233 P.3d 102, 107 (2010).

C. The Evidence Supports The Reasonable Inference That Howell Knowingly Attempted To Take a Dangerous Weapon Into An Airport

The statute at issue here provides it is against the law to

enter or attempt to enter any sterile area of an airport, which is a holder of a certificate issued by the federal government or the state of Idaho, while knowingly carrying on or about his person, or in a bag, case, pouch or other container, a deadly or dangerous weapon, either concealed or unconcealed.

I.C. § 18-7503(1) and (2). Howell contends on appeal the state offered "no or limited evidence regarding whether Mr. Howell knowingly attempted to carry a weapon into a sterile area of an airport." (Appellant's brief, p. 17 (emphasis original).)

TSA Agent Valero testified after advising Howell they found a gun in his backpack Howell told him he had taken the gun from his motorcycle and placed it

in his backpack earlier in the day. (Tr., p.28, Ls.14-21.) Officer Lock testified concerning his conversation with Howell:

Q [State] -- and at that point were you asking Mr. Howell about the gun?

A [Lock] Yeah, I just asked him why he had the gun.

Q What did he say to you?

A Well, he just told me that he had come out to the airport earlier, he told me that he was an airport – a Delta Airlines employee. He had attempted to go out on a flight earlier and wasn't able to make it. He had a stand-by ticket from Delta to, I believe, Minneapolis. I think it was a 10:20 flight. Well, this one was. I don't know what his earlier one was.

But – so, anyway, he said he went back out to his motorcycle where he had the gun in a bag on his motorcycle. He said he took that gun out of that bag and put it into the backpack he had and he went home and waited for the time for the later flight.

He said that he came back and forgot to take the gun out when he was at the house, and he didn't even realize it was there until after we asked him about it when he went through the machine and got stopped.

Q But he did tell you that he – he put the gun into that bag?

A That's correct.

(Tr., p.46, L.7 – p.47, L.4.)

Howell testified that on the date in question he was employed at the airport (Tr., p.68, Ls.18-20) and was aware of the informational notices throughout the airport instructing of the prohibition against carrying firearms onto a plane (Tr., p.81, Ls.5-19). Howell testified he had taken his gun from his motorcycle already parked at the airport and put it in his backpack when he left the airport in between scheduled flights he had stand-by tickets for. (Tr., p.69,

L.2 – p.71, L.3.) Although he testified he did not mean to carry his gun into the airport in his backpack, Howell said once the TSA officer took longer than normal scanning his backpack he “immediately realized that [he] had forgotten [his] pistol in the backpack.” (Tr., p.76, Ls.2-20.) Contrary to this testimony, Valero testified that when Howell was first identified as the owner of the backpack containing the gun, he responded “no” when asked “if there was anything sharp, dangerous or fragile” in the backpack. (Tr., p.27, Ls.12-15.)

In finding sufficient evidence upon which the jury could reasonably have found that Howell acted knowingly, the district court noted:

Mr. Howell admitted that he took the handgun from where it was stored on his motorcycle and put it in his backpack, which he then took in to the airport, where it was discovered by airport security officers, in a “sterile area.”

Assuming that Mr. Howell’s assertion that he “forgot” about the handgun in his backpack is a valid defense to the charge, the jury reasonably could have found that his contention was not credible, given the proximity in time of his placement of the gun in his backpack and his return trip to the airport, not to mention the significance of having a gun at an airport, which Mr. Howell acknowledged, he was well aware was not permissible. The jury also could have relied on Supervisor Valero’s statement that Mr. Howell did not tell him that there was anything dangerous in his pack, when he initially questioned him about its contents, contradicting Mr. Howell’s assertion that he first realized that he had forgotten to remove the gun from his backpack, when he noticed TSA examining his bag for a lengthier period of time.

(R., pp.134-135 (footnote omitted).)

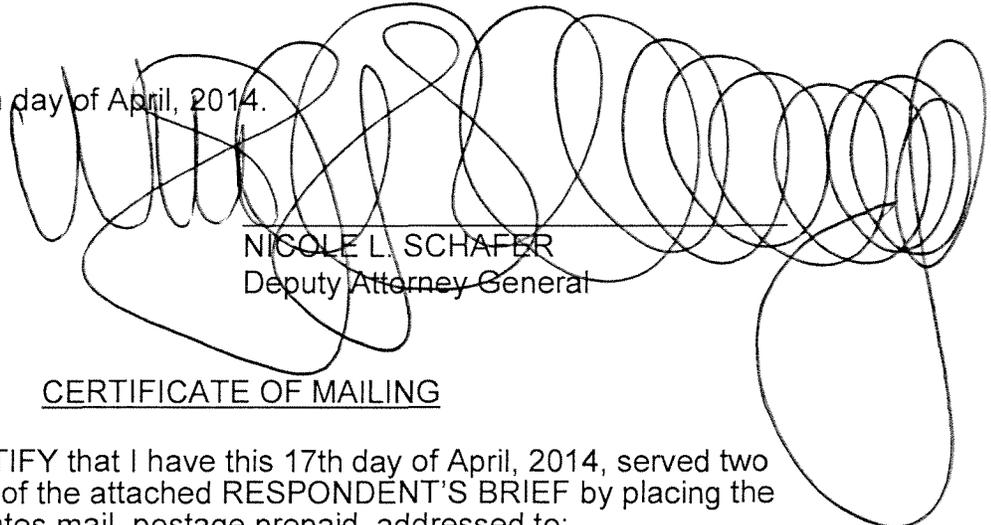
The evidence supports the reasonable inference that Howell knew his backpack contained his loaded gun and entered the airport anyway. His claim that direct evidence does not support the verdict is without merit (Appellant’s

brief, p.19), because the circumstantial evidence proves his guilt. He has therefore failed to show that the verdict is unsupported by the evidence.

CONCLUSION

The state respectfully requests this Court to affirm the district court's decision affirming the judgment for carrying a concealed weapon in a sterile area of an airport.

DATED this 17th day of April, 2014.

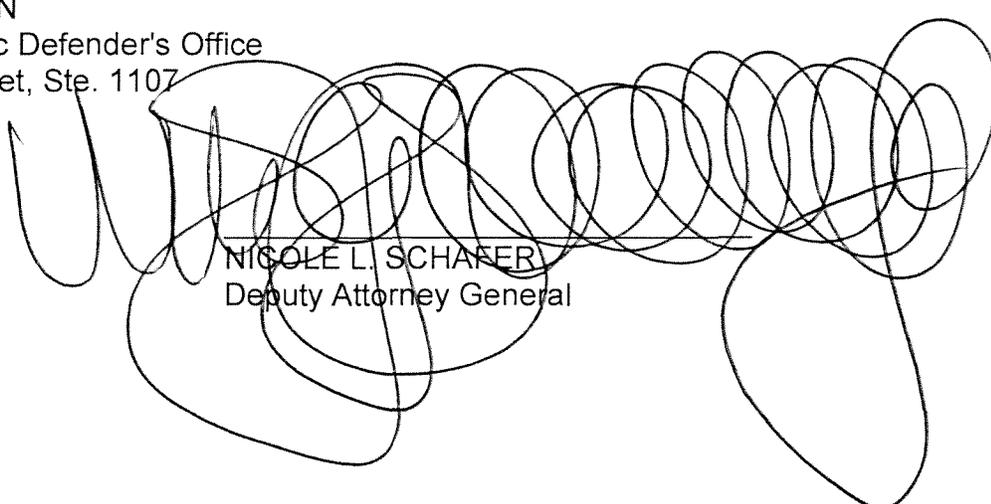


NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 17th day of April, 2014, served two true and correct copies of the attached RESPONDENT'S BRIEF by placing the copies in the United States mail, postage prepaid, addressed to:

HEIDI M. TOLMAN
Ada County Public Defender's Office
200 W. Front Street, Ste. 1107
Boise, ID 83702



NICOLE L. SCHAFER
Deputy Attorney General

NLS/pm