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# State v. Cordingley Respondent's Brief Dckt. 39518

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 39518
	)	
vs.	)	
	)	
LEVON FRED CORDINGLEY,	)	
	)	
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

HONORABLE KATHRYN A. STICKLEN  
District Judge

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

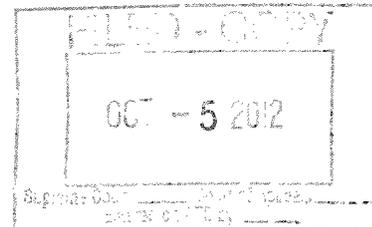
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## STATEMENT OF THE CASE

### Nature of the Case

Levon Fred Cordingley appeals from the district court's order affirming the magistrate court's denial of his motion to dismiss.

### Statement of Facts and Course of the Proceedings

The facts and course of proceedings relating to this appeal are as set forth by the district court in its memorandum decision and order affirming the magistrate's denial of Cordingley's motion to dismiss:

On February 23, 2008, Boise City Police Officer Stace arrested Cordingley after finding him in possession of marijuana and marijuana paraphernalia. Cordingley was cited for violating I.C. §§ 37-2732(c) (3) and 37-2734A.

Cordingley later filed a motion to dismiss the charges on August 28, 2008 arguing that his actions are protected by I.C. § 73-402 because he was freely exercising his religious beliefs by possessing marijuana and drug paraphernalia. During a hearing on the motion, Cordingley admitted that he was in possession of marijuana but claimed that he was carrying it as a sacrament for the Church of Cognitive Therapy. This church, which Cordingley created, is "designed specifically for the use of entheogenic sacraments to help us get in touch with our spiritual self, in order to obtain enlightenment." The sacrament that is vital and mandatory to the practices of this church is cannabis, otherwise known as marijuana. Cannabis is used as a spiritual enhancer and for the purpose of becoming a better person inside, comforting the sick and afflicted, and changing negatives into positives. People of all different religions join this church because it is a companion to religion to help people get in contact with themselves, others, and the universe in a spiritual way. The church is multi-denominational, as it recognizes all faiths; and it does not require a belief in God thought it does encourage the use of cannabis as a sacrament to get closer to the creator or the universe.

The magistrate issued an order denying the motion on October 29, 2008 for the reason that Cordingley failed to meet his burden of establishing that he was engaged in any religious

practice protected by I.C. § 73-402 at the time of his arrest. Then in a memorandum opinion issued on January 29, 2009, the magistrate further explained that to seek the protection of I.C. § 73-402, Cordingley must establish that the contested government action substantially burdens a religious belief which is sincerely held by Cordingley. After examining the evidence presented, the magistrate acknowledged that Cordingley's beliefs are sincerely held and substantially burdened but found that the beliefs are not religious beliefs which are protected by law.

Cordingley then entered a conditional guilty plea. He filed a timely appeal of the magistrate's order and his sentence was stayed pending the appeal.

(R., pp.146-148 (footnote omitted).)

The district court, in affirming the magistrate's ruling, concluded the evidence failed to establish that Cordingley's Church of Cognitive Therapy is a religion as envisioned by I.C. § 73-402:

Cordingley acknowledged that the Church of Cognitive Therapy is not so much a religion as it is a companion to a religion. In reality, this church presents an ideology or philosophical belief as to how people can become spiritual or enlightened, but it does not have a comprehensive believe system with the trappings of a religion. There is no evidence that the church provides a belief system with answers to the problems and concerns that confront human beings or that it provides answers to questions about life, purpose, or death. The church does not promote a moral code or rely on any one set of teachings. Instead, the church provides a sacrament that is to be used as an accompaniment to other religious beliefs.

(R., pp.151-152.)

The district court originally filed its memorandum decision and order May 5, 2012 (R., pp.146-156) and Cordingley filed a notice of appeal on June 17, 2012 (R., pp.154-156.) The court then re-entered its order affirming the magistrate court's denial of Cordingley's motion to dismiss December 2, 2011. (R., pp.182-183.) Cordingley timely appeals from that order. (R., pp.184-187.)

## ISSUE

Cordingley states the issue on appeal as:

Did The District Court Err When the Court Affirmed the Magistrate's Decision Denying Mr. Cordingly's [sic] Motion To Dismiss Based Upon Idaho Code § 73-402 (FERPA)?

(Appellant's brief, p.9.)

The state rephrases the issue on appeal as:

Has Cordingley failed to show that the district court erred in affirming the magistrate's order denying his motion to dismiss?

## ARGUMENT

### Cordingley Has Failed To Establish That The District Court Erred In Affirming The Magistrate's Denial Of His Motion To Dismiss

#### A. Introduction

Cordingley asserts on appeal the magistrate and district courts were “greatly confused by the difference between the church [which Cordingley is a member of] and a religion.” (Appellant’s brief, p.23.) Cordingley’s smoking marijuana, he claims, cannot be separated from his religious beliefs. (Appellant’s brief, p.24.) Cordingley argues the denial of his motion to dismiss was in error because there was “no support in the record for the finding that [he] was not engaged in the free exercise of his religion” and such a denial of his ability to smoke marijuana is a denial of his “free exercise of his religious belief.” (Appellant’s brief, p.24.)

Cordingley’s arguments are without merit.

#### 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)).

C. The District Court Correctly Affirmed The Magistrate Court's Order Denying Cordingley's Motion To Dismiss

Cordingley is not entitled to the protection of I.C. § 73-402(3) as he claims because his use of marijuana does not constitute the "exercise of religion." The applicable portion of the FERPA, I.C. §§ 73-401, et. seq., is as follows:

73-402. Free exercise of religion protected.

(1) Free exercise of religion is a fundamental right that applies in this state, even if laws, rules or other government actions are facially neutral.

(2) Except as provided in subsection (3) of this section, government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability.

(3) Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is both:

(a) Essential to further a compelling government interest;

(b) The least restrictive means of furthering that compelling governmental interest.

...

(5) In this section, the term "substantially burden" is intended solely to ensure that this chapter is not triggered by trivial, technical, or de minimis infractions.

The FERPA offers guidance in the form of definitions in § 73-401:

(1) “Demonstrates” means meet the burdens of going forward with evidence, and persuasion under the standard of clear and convincing evidence.

(2) “Exercise of religion” means the ability to act or refusal to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.

...

(5) “Substantially burden” means to inhibit or curtail religiously motivated practices.

The Idaho Court of Appeals was recently presented with the question of an individual’s right to the free exercise of religion through the possession of marijuana in State v. White, 152 Idaho 361, 271 P.3d 1217 (Ct. App. 2011). When claiming a violation of FERPA, an individual “must carry the burden of showing that Idaho’s controlled substance statutes substantially burden his exercise of religion.” White, 152 Idaho at \_\_\_\_, 271 P.3d at 1221. The Court’s inquiry on appeal is as follows:

Thus, while the issue of whether a belief motivating a particular practice is “religious” is a question of law, the question of what compromises a substantial motivation behind a defendant’s conduct, *i.e.*, whether the defendant is motivated by religious (as encompassed by the FERPA) or secular purposes, is a question of fact—to which we defer to the lower court unless its finding is clearly erroneous.

White, 152 Idaho at \_\_\_\_, 271 P.3d at 1221 (citations omitted). The proper test in this inquiry is the religious motivation test, which requires a claimant to “demonstrate that religion principally motivated the activity in question.” White, 152 Idaho at \_\_\_\_, 271 P.3d at 1221, n.3 (citations omitted). Courts must determine if an individual is sincere in their “religious objection to a government

policy,” and are not “forced to accept the individual’s assertion [of motivation] without further inquiry.” Id.

On appeal, Cordingley asserts that “[b]ecause [his] membership is with a legally-recognized church [the Church of Cognitive Therapy], his right to utilize the sacrament [by smoking marijuana] is protected as a fundamental part of his exercise of his religious freedom.” (Appellant’s brief, p.22.) Additionally, he claims that because his religion, Rastafarianism, has been recognized by the Ninth Circuit as using marijuana as sacrament, “his free exercise of the right to use the sacrament cannot be seriously challenged in this case.” (Id.) As the Court of Appeals in White pointed out, however, just because an individual “has claimed that his impetus for smoking marijuana is religious, does not make it so for the purposes of the FERPA.” 152 Idaho at \_\_\_\_, 271 P.3d at 1225. “To establish a free exercise defense, a defendant must show first that his religion is bona fide, **and**, by extension, that his conduct is actually motivated by statutorily-recognized religious beliefs.” White, 152 Idaho at \_\_\_\_, 271 P.3d at 1225 (citations omitted) (emphasis added).

Here, although Cordingley claims to have been “ordained in 1997 in Taos, New Mexico, by a Rastafarian Youth Group” (Tr., p.9, L.25 – p.10, L.2), he identifies himself as “a Christian” (Tr., p.23, Ls.16). He also claims to be the founding father of his own ministry: the COTC Ministry or the Church of Cognitive Therapy, “which is taking negatives and changing them into positives with the use of entheogenic sacraments.” (Tr., p.10, Ls.4-8.) As is his practice as a minister in the COTC, Cordingley routinely carries marijuana and

paraphernalia for ingesting marijuana because he uses it “to help heal people with certain mental, physical, and spiritual needs.” (Tr., p.9, Ls.12-15.) Although generally always prepared to offer marijuana in the form of a “sacrament” to homeless, angry, or confused people in the form of “comfort” (Tr., p.45, Ls.2-11), Cordingley concedes that he generally does not offer marijuana to such individuals on the street or sidewalk but does so in private to avoid arrest (Tr., pp.25-28). Cordingley equates the COCT with a spirituality that enhances his belief of the Christian religion and the religious or non-religious beliefs of others through smoking marijuana in the form of a sacrament. (Tr., p.29, L.4 – p.30, L.24.) The COCT is “a spiritual community where many different people belong to and different people that use cannabis as a religion.” (Tr., p.30, L.25 – p.31, L.3.) Cordingley seems to have started the Church of Cognitive Therapy strictly as a means to smoke marijuana while avoiding legal repercussion:

Q: And has your use of the sacrament evolved over time or has it been – was it a stated practice and use prior to your coming into this?

A: It evolved over time. There was a point when I did use it like most people – recreational. I probably – we don’t promote abuse, but we promote use.

There was a point in time when I did abuse it, and I had a spiritual experience which changed my life. But at that point, I no longer abused it and I began to use it in a spiritual and religious way.

(Tr., p.50, Ls.1-10.) Cordingley developed what he terms a ministry in order to smoke marijuana in the name of spirituality.

The magistrate court denied Cordingley’s motion to dismiss finding the COCT “is a community within with an emphasis on spirituality, rather than an

emphasis on any particular religious beliefs.” (R., p.67.) The goal is enlightenment and “can be had by Catholics, Jews, and even atheists.” (Id.) Ultimately, the only “connecting fiber among the various members is their use of marijuana” to help in the pursuit of enlightenment. (Id.) In affirming the magistrate’s denial of Cordingley’s motion to dismiss, the district court concluded:

Based on the language of the statute, the magistrate did not err in concluding that Cordingley bears the burden of establishing that he was exercising religious beliefs protected by I.C. § 73-402 before the burden shifts to the State. Additionally, the magistrate did not err in obtaining guidance from the Tenth Circuit Court of Appeals as to what the court should consider in determining whether the defendant has met that burden. Although it may be true that the courts should not be put in the position of deciding whether a belief amounts to a religious belief, that is the position Idaho courts are put in by the statute, and the Tenth Circuit case is a well-reasoned decision that provides guidance in an area where Idaho case law is silent.

Not only did the magistrate correctly determine the law, but the magistrate based this decision to deny Cordingley’s motion on substantial evidence. Cordingley acknowledged that the Church of Cognitive Therapy is not so much a religion as it is a companion to religion. In reality, this church presents an ideology or philosophical belief as to how people can become spiritual or enlightened, but it does not have a comprehensive belief system with the trappings of a religion. There is no evidence that the church provides a belief system with answers to the problems and concerns that confront human beings or that it provides answers to questions about life, purpose, or death. The church does not promote a moral code or rely on any one set of teachings. Instead, the church provides a sacrament that is to be used as an accompaniment to other religious beliefs.

(R., pp.151-152.)

The record contains substantial and competent evidence to support the magistrate’s conclusion that Cordingley’s use of marijuana is not substantially

motivated by a religious belief. The denial of Cordingley's claim should be upheld on the basis that he failed to demonstrate that his use of marijuana was part of the free exercise of religion -- therefore, his marijuana use is not entitled to the protections of I.C. § 73-402(3).

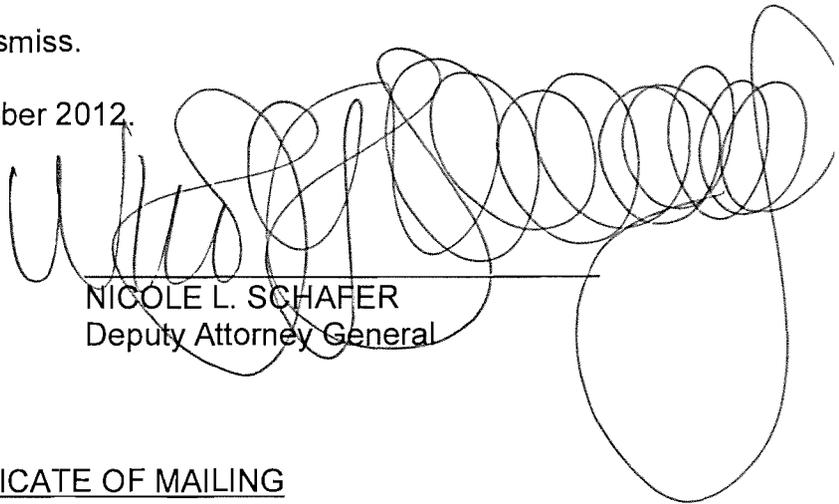
Even assuming Cordingley's use of marijuana constitutes the free exercise of religion which has been substantially burdened, the magistrate court decision should be upheld because, under I.C. § 73-402(3), the state has a compelling governmental interest in prohibiting such conduct, I.C. § 73-402(3)(a), and has adopted the least restrictive means of furthering that interest, I.C. § 73-402(3)(b). Cordingley has conceded that "one could surmise that cannabis is dangerous or that it leads to drinking alcohol, criminal behavior, drug use, or other well established dangerous activities[.]" (Appellant's brief, p.25.) The courts below did not reach the issue of whether the state used the least restrictive means to further its compelling interest of regulating the use of marijuana. However, a conclusion that the state did use the least restrictive means is justified. Although Cordingley asserted that his use of marijuana was religious, he did not provide specific locations, time frames, or any other limitation for such alleged religious practice to take place, other than to provide comfort for people in need. Moreover, it would be more than problematic to try to monitor marijuana used by Cordingley where he has no set time, place or manner in which he uses or administers it. It is difficult to conceive how a less restrictive law could have been tailored to reasonably fit any supposed religious use of marijuana by Cordingley. Therefore, nothing but a law totally prohibiting

the possession of marijuana or paraphernalia is appropriate or adequate to further the state's interest in regulating the use of marijuana. Cordingley has failed to demonstrate error in the denial of his motion to dismiss based on FERPA.

CONCLUSION

The state respectfully requests that this Court affirm the magistrate court's denial of Cordingley's motion to dismiss.

DATED this 5th day of October 2012.

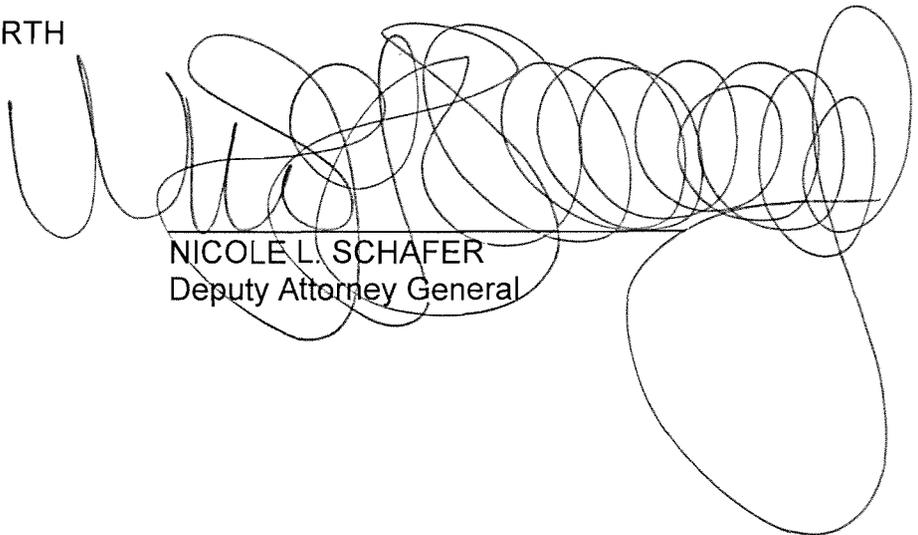


NICOLE L. SCHAFER  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th 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:

JOSEPH L. ELLSWORTH  
1031 E. Park Blvd.  
Boise, ID 83712



NICOLE L. SCHAFER  
Deputy Attorney General

NLS/pm