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### State v. Holt Respondent's Brief Dckt. 45079

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

STATE OF IDAHO, )  
 ) No. 45079  
 Plaintiff-Respondent, )  
 ) Kootenai County Case No.  
 v. ) CR-2016-8347  
 )  
 MICHELLE ALEXANDRIA HOLT, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF KOOTENAI**

\_\_\_\_\_  
**HONORABLE JOHN T. MITCHELL**  
District Judge  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Michelle Alexandria Holt appeals from her conviction and sentence for possession of methamphetamine.

### Statement Of The Facts And Course Of The Proceedings

The state charged Holt with possession of methamphetamine, a controlled substance. (R., pp. 39-40.) The case proceeded to jury trial. (R., pp. 71-84.) The state presented two witnesses: Officer Speer testified that he found a “clear plastic baggie with a white crystalline substance in it” in Holt’s jacket pocket. (Tr., p. 26, L. 9 – p. 47, L. 17.<sup>1</sup>) David Sincerbeaux, a “forensic scientist for the Idaho State Police Forensic Lab” testified that the white substance found by Officer Speer “contained methamphetamine.” (Tr., p. 71, L. 9 – p. 74, L. 2.) Holt testified in her own defense. (Tr., p. 77, L. 5 – p. 86, L. 21.) The essence of Holt’s testimony was that in her haste to get to the store to buy feminine hygiene products that morning she grabbed clothing she had never worn before out of a bag of clothing that was a “friend’s through friends,” which bag her brother “that I barely spoke with” provided to her with intent it ultimately be donated to Goodwill. (Tr., p. 77, L. 8 – p. 79, L. 14.) The jury convicted Holt as charged. (R., p. 111.)

At sentencing the parties addressed the fact Holt had recently been charged with possession with intent to distribute while she was absconded in this case and jointly recommended that the court retain jurisdiction, with the state recommending a sentence of four years with two fixed. (Tr., p. 146, L. 8 – p. 147, L. 18.) The district court accepted

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<sup>1</sup> All citations to the “Tr.” are to the transcript containing the trial and sentencing proceedings.

the joint recommendation and retained jurisdiction, imposing an underlying sentence of seven years with three years determinate. (Tr., p. 161, L. 20 – p. 162, L. 10.) The court stated that the underlying sentence, “even though this is [Holt’s] first felony, is driven by [her] utter disregard for multiple judges’ orders while these events have been pending, and a new very serious potential life sentence felony possession with intent to deliver, so that’s why three years fixed, four years indeterminate.” (Tr., p. 163, Ls. 6-11.)

Holt filed a notice of appeal timely from the entry of judgment. (R., pp. 124-26, 131-33.)

## ISSUES

Holt states the issues on appeal as:

- I. Did the State commit prosecutorial misconduct in closing arguments?
- II. Did the district court's questioning of Ms. Holt at her sentencing hearing impermissibly infringe upon her constitutional rights to appeal, to maintain her innocence, and to due process?

(Appellant's brief, p. 4.)

The state rephrases the issues as:

1. Has Holt failed to show fundamental error in the prosecutor's argument?
2. Has Holt failed to show fundamental error in the district court's colloquy with Holt at sentencing?

## ARGUMENT

### I.

#### Holt Has Failed To Show Fundamental Error In The Prosecutor's Argument

##### A. Introduction

In closing, the prosecutor argued the case was “pretty straightforward” without “a lot of facts” the jury would “have to sift through to figure out what happened.” (Tr., p. 101, Ls. 2-6.) Using the elements instruction as a “road map” the prosecutor argued there was “not any dispute” about the date; that the jury did not “really have to worry” about the crime occurring in Idaho because all relevant events happened at an intersection in Coeur d’Alene; that, based on the evidence, Holt’s identity was “not an issue”; and that the testimony of David Sincerbeaux, the forensic scientist, rendered the question of whether the substance was methamphetamine also “not really an issue” because there was “no real doubt as to that element.” (Tr., p. 101, L. 7 – p. 102, L. 12.) Therefore, the issues they were “going to have to focus on and deliberate about” were the elements of possession and knowledge, but there was “plenty of evidence on both of those aspects, both that she knew that this was in her pocket and that she knew it was methamphetamine or a controlled substance.” (Tr., p. 102, Ls. 12-24.)

For the first time on appeal, Holt asserts that the prosecutor’s argument somehow “misrepresented the State’s burden of proof and bolstered a State’s witness’s testimony.” (Appellant’s brief, p. 5.) Far from showing fundamental error, Holt’s appellate argument is frivolous.

B. Standard Of Review

“When prosecutorial misconduct is not objected to at trial, Idaho appellate courts may only order a reversal when the defendant demonstrates that the violation in question qualifies as fundamental error.” State v. Perry, 150 Idaho 209, 227, 245 P.3d 961, 979 (2010). To prevail on a claim of fundamental error a defendant must demonstrate (1) violation of an unwaived constitutional right; (2) that the error is clear or obvious and lack of objection was not tactical; and (3) prejudice. Id. at 226, 245 P.3d at 978.

C. The Prosecutor’s Argument That There Was “No Real Doubt” That The Substance Was Methamphetamine Was Entirely Proper

A prosecutor has considerable latitude in closing argument. State v. Severson, 147 Idaho 694, 720, 215 P.3d 414, 440 (2009); State v. Porter, 130 Idaho 772, 786, 948 P.2d 127, 141 (1997); State v. Priest, 128 Idaho 6, 14, 909 P.2d 624, 632 (Ct. App. 1995). He or she is entitled to argue all reasonable inferences from the evidence in the record. Severson, 147 Idaho at 720, 215 P.3d at 440; Porter, 130 Idaho at 786, 948 P.2d at 141 (citing State v. Garcia, 100 Idaho 108, 110, 594 P.2d 146, 148 (1979)). Prosecutorial misconduct occurs where the prosecutor “so infect[s] the trial with unfairness as to make the resulting conviction a denial of due process.” State v. Sanchez, 142 Idaho 309, 318, 127 P.3d 212, 221 (Ct. App. 2005).

The Idaho Supreme Court has reiterated the importance of reviewing closing arguments in light of their improvisational nature, noting that “in reviewing allegations of prosecutorial misconduct [the appellate court] must keep in mind the realities of trial.” State v. Field, 144 Idaho 559, 571, 165 P.3d 273, 285 (2007) (quoting State v. Estes, 111 Idaho 423, 427-428, 725 P.2d 128, 132-133 (1986)). Furthermore, “[t]he right to due

process does not guarantee a defendant an error-free trial but a fair one,” and the function of appellate review is “not to discipline the prosecutor for misconduct, but to ensure that any such misconduct did not interfere with the defendant’s right to a fair trial.” State v. Reynolds, 120 Idaho 445, 451, 816 P.2d 1002, 1008 (Ct. App. 1991).

The prosecutor in this case went through the elements instruction and argued that there were several issues not really contested in the case. (Tr., p. 101, L. 7 – p. 102, L. 12.) One of those was whether the substance was methamphetamine, which was “not really an issue” because an experienced forensic scientist “tested this substance” and found it was methamphetamine. (Tr., p. 102, Ls. 4-14.) This was consistent with the evidence. David Sincerbeaux testified he was a forensic scientist with the state lab and had been an “analytical chemist since 1985.” (Tr., p. 71, Ls. 9-20.) Testing suspected controlled substances was a regular part of his job and he employed methods generally accepted in his field to be reliable. (Tr., p. 71, L. 21 – p. 72, L. 21.) Sincerbeaux testified that he had tested the substance in question and determined it contained methamphetamine. (Tr., p. 72, L. 22 – p. 74, L. 2.) The only cross-examination conducted by the defense confirmed that Sincerbeaux had tested only a random sample of the substance and had not tested all of the substance. (Tr., p. 74, Ls. 7-23.) The prosecutor’s argument there was “no real doubt” the substance was methamphetamine was entirely proper. See State v. Hodges, 105 Idaho 588, 591, 671 P.2d 1051, 1054 (1983) (argument that lab analyst’s testimony the substance was cocaine was “uncontradicted” was proper argument on weight of evidence).

On appeal Holt argues fundamental error because “the prosecutor’s directives to the jury eliminated the State’s burden to prove the identity of the substance, thereby lowering the State’s burden” and “improperly bolstered the testimony of its witness, which

appealed to the passions and prejudices of the jury and violated Ms. Holt's right to due process and a fair trial." (Appellant's brief, pp. 8-9.) This argument is facially frivolous. As shown above, rather than fundamental error, the argument that the evidence was so overwhelming as to show no doubt and create no issue that the substance was methamphetamine was entirely proper.

## II.

### Holt Has Failed To Show Fundamental Error In The District Court's Colloquy With Holt At Sentencing

#### A. Introduction

At sentencing the district judge engaged Holt in a lengthy colloquy. (Tr., p. 148, L. 19 – p. 161, L. 18.) The subjects included that the judge was not bound by the parties' recommendation for a retained jurisdiction (Tr., p. 148, Ls. 19-22); that she would get the "worst outcome of the two judges" handling her different cases in the sense that if one ordered an executed sentence she would serve time (Tr., p. 148, L. 23 – p. 149, L. 16); that she understood there were different judges on the cases because she had exercised her right to disqualify him on the other case (Tr., p. 149, L. 17 – p. 150, L. 10); Holt's decision to abscond after trial (Tr., p. 152, L. 2 – p. 153, L. 1); Holt's failure to provide urine samples for drug testing as ordered (Tr., p. 153, L. 2 – p. 154, L. 10); her other failures to appear in the case (Tr., p. 154, L. 11 – p. 155, L. 12); whether she had a drug problem and whether her evaluation and PSI indicated she did not have a drug problem because she lied in those evaluations (Tr., p. 155, L. 13 – p. 160, L. 8); and whether her trial testimony about putting on clothes destined for Goodwill was true (Tr., p. 160, Ls. 9-25). Holt did not object to any of the judge's questions. (Tr., p. 148, L. 19 – p. 160, L. 25.)

For the first time on appeal, Holt “asserts that her rights to appeal, to due process, and to maintain her innocence ... were violated when the district court, at the sentencing hearing, asked her repeatedly [sic] whether she was going to ‘stick by her story’ that she testified to at trial.” (Appellant’s brief, p. 13.) Review of the record in light of applicable legal standards shows this argument is without merit. First, Holt did not object to the questions, and therefore did not preserve any claims of error in asking them and does not claim, much less demonstrate, fundamental error. Second, even if Holt were not required to show fundamental error she has shown no error.

B. Standard Of Review

To prevail on a claim of fundamental error a defendant must demonstrate (1) violation of an unwaived constitutional right; (2) that the error is clear or obvious and lack of objection was not tactical; and (3) prejudice. Perry, 150 Idaho at 226, 245 P.3d at 978.

C. Holt Has Shown No Error, Much Less Fundamental Error

In Idaho “the sentencing judge is entitled to consider a wide range of relevant evidence when he evaluates what the appropriate sentence for each particular defendant he sentences must be.” Sivak v. State, 112 Idaho 197, 214, 731 P.2d 192, 209 (1986). “The duty of the trial court to provide an individualized sentence requires that the court have access to the broadest possible range of information about the defendant.” State v. Howry, 127 Idaho 94, 95, 896 P.2d 1002, 1003 (Ct. App. 1995). Although “it is impermissible for a trial court to attempt to coerce a defendant into acknowledging guilt through threats of harsher punishment,” a court may “properly consider a defendant’s refusal to acknowledge guilt when evaluating the defendant’s rehabilitation potential because acknowledgment of

guilt is a critical first step toward rehabilitation.” State v. Kellis, 148 Idaho 812, 815, 229 P.3d 1174, 1177 (Ct. App. 2010). Relevant to this case, a “defendant’s truthfulness or mendacity while testifying on his own behalf, almost without exception, has been deemed probative of his attitudes toward society and prospects for rehabilitation and hence relevant to sentencing.” United States v. Grayson, 438 U.S. 41, 50 (1978). Nor does considering whether the defendant lied when testifying at trial improperly infringe or interfere with the exercise of other rights. Id. at 54-55; United States v. Dunnigan, 507 U.S. 87, 96-98 (1993).

As part of his colloquy with Holt the judge asked if the version of events she testified to at trial was true, and Holt maintained it was even though, the judge noted, it had been rejected unanimously by the jury. (Tr., p. 160, Ls. 9-18.) The judge stated he found the story “preposterous” and asked if Holt wanted to “stick by that story” and Holt answered that she did. (Tr., p. 160, Ls. 19-24.) Because a sentencing court can consider whether the defendant offered false testimony in her trial, and the district court here concluded that Holt had in fact done so, giving Holt the opportunity to address the court’s concerns was not error. Dunnigan, 507 U.S. at 96-98; Grayson, 438 U.S. at 50.

Holt argues that by asking about her version of events as told at trial the district court “sought to elicit a confession from Ms. Holt that she did not truthfully testify at trial—essentially asking her to admit that she had perjured herself when testifying at her trial.” (Appellant’s brief, p. 17.) Although the state believes that the court had already concluded that Holt had testified falsely and was merely giving her the opportunity to address that finding, the more important point here is that the district court did not act improperly by exploring this issue generally at sentencing. Rather, as shown above, the district court was

well within its discretion to consider whether Holt had testified truthfully or mendaciously in the trial.

Even if Holt could show error, such error was not prejudicial.<sup>2</sup> Holt contends that it “appears” her underlying sentence was affected by the claimed error because it was higher than that recommended by the prosecution. (Appellant’s brief, p. 17.) However, the district court specifically stated that Holt’s “decision to tell the truth today doesn’t have any effect on my sentence” and that the sentence was “driven” by Holt’s “utter disregard” for orders to appear in court and provide urinalysis and the “new very serious” charge of possession with intent to deliver. (Tr., p. 163, Ls. 4-11.) Holt’s speculation notwithstanding, nothing in the record indicates the district court was “improperly influenced by her continuing denial of guilt.” (Appellant’s brief, p. 17.)

The district court in this case properly considered at sentencing whether Holt had lied in her testimony at trial and properly inquired on that issue in a colloquy with Holt. Holt has failed to show error of any sort, much less fundamental error. In addition, nothing in the record suggests Holt was prejudiced. For any and all of these reasons, Holt has shown no reversible error in her sentence.

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<sup>2</sup> Although the state contends that Holt has the burden of establishing fundamental error, and therefore the burden of showing prejudice, the error is also harmless under the conventional harmless error standard. Errors in sentencing proceedings are not reversible if they were “harmless beyond a reasonable doubt.” State v. Smith, 122 Idaho 164, 168, 832 P.2d 337, 341 (Ct. App. 1992).

CONCLUSION

The state respectfully requests this Court to affirm the judgment of conviction.

DATED this 4th day of January, 2018.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of January, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

SALLY J. COOLEY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd