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State v. Goggin Appellant's Reply Brief Dckt. 40554

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
Plaintiff-Respondent,) NO. 40554
)
v.) Ada Co. CR-FE-2011-15480
)
CHARLYNDA LYNN GOGGIN,)
)
Defendant-Appellant-)
Cross Respondent.)
_____)

APPELLANT'S REPLY BRIEF/
CROSS RESPONDENT'S ANSWERING BRIEF

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

HONORABLE RICHARD D. GREENWOOD
District Judge

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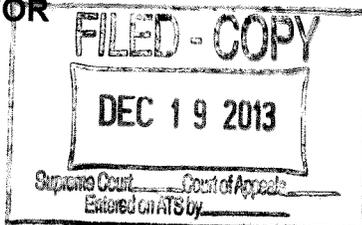


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STATEMENT OF THE CASE

In her opening brief, Appellant Charlynda Goggin (hereinafter Appellant and/or Charlynda) argued that there was insufficient evidence to support any of the verdicts and that judgments of acquittal should have been entered on all four counts, or, in the alternative, that the court should have granted a new trial on the substantive counts as well as the conspiracy counts. Appellant stands on her opening brief for these issues.

In its cross appeal, the state raises for the first time the issue of whether the district court's order granting new trial on the two conspiracy counts should be reversed because intent to violate the law is not an element of conspiracy in Idaho. Appellant asserts that this issue should not be considered because the state did not raise this issue below. In any event, Appellant asserts that the state has failed to show an abuse of discretion in the district court's ruling, and the order granting new trial should be affirmed.

ISSUE

The state characterizes the issue in the cross appeal as follows:

Should the district court's order granting a new trial be reversed because intent to violate the law is not an element of conspiracy in Idaho?

The Appellant rephrases the issue as:

Has the state failed to show that the district court abused its discretion in granting a motion for new trial on the conspiracy counts?

ARGUMENT

THE STATE HAS FAILED TO SHOW THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN GRANTING A MOTION FOR NEW TRIAL ON THE CONSPIRACY COUNTS

A. Standard of review

As explained in *State v. Armstrong*, 142 Idaho 62 (Ct. App. 2005):

Idaho law permits a new trial if the court misdirected the jury on a matter of law. I.C. § 19-2406(5). Idaho Criminal Rule 34 outlines the standard that the trial court applies when considering a motion for a new trial, directing that "the court . . . may grant a new trial to the defendant if required in the interest of justice." Whether the interests of justice require a new trial is a question that is committed to the discretion of the trial court, and its decision will not be disturbed absent a showing of manifest abuse. In this case, the new trial motion turned upon the propriety of a jury instruction, a matter on which this Court exercises free review. If the instructions taken as a whole, and not individually, fairly and adequately present the issues, state the applicable law, and do not mislead the jury or prejudice a party, then there is no reversible error.

Id., p. 64 (emphasis added, internal citations omitted).

The familiar test for abuse of discretion is as described in *Straub v. Smith*,

145 Idaho 65 (2007):

Abuse of discretion is determined by a three part test which asks whether the district court "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reached its decision by an exercise of reason."

Id. p. 71 (internal citations omitted).

B. The state failed to preserve its argument

On appeal, the state argues that the intent to violate the law is not an element of conspiracy in Idaho. However, the state did not argue this below. Rather, in the State's Memorandum In Opposition To Defendants' Motion For A New Trial (hereinafter State's Memorandum) filed in the district court, the state argued that the jury instructions were correct and that it had proven the necessary intent. (R. p. 965-966.)

For example, the state argued:

From the State's perspective, there was no evidence presented that the Defendants' did not **know** that they were involved in the manufacture, distribution and/or possession with intent to deliver, a controlled substance, to wit: a synthetic cannabinoids.

State's Memorandum at p. 4 (emphasis in the original). (R. p. 965.)

It is now well established that the appellate court will not consider errors raised for the first time on appeal unless they constitute fundamental error. *State v. Perry*, 150 Idaho 209, 224-225, 245 P.3d 961, 976-977 (2010). However, the fundamental error exception applies only to a defendant's unwaived constitutional rights, which of course cannot apply here to the state of Idaho in its cross appeal.

Accordingly, since the state failed to preserve the issue it now raises in its cross appeal, this Court should not consider the newly raised issue and should simply affirm the district court's order granting new trial on the conspiracy counts.

C. The district court did not err in granting the motion for new trial

While Charlynda asserts that this Court should not even reach the merits of the new trial issue, in the event that it does, she asserts that this Court should nevertheless affirm the order granting new trial on the conspiracy counts. This is because the district court's ruling was correct and in any event certainly did not constitute a manifest abuse of discretion.

As the state describes in its brief, Charlynda was charged under the general conspiracy statute as well as under the Uniform Controlled Substances Act:

The state charged Goggin 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., p. 490.) 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).

Pursuant to the plain language of these statutes, a person is guilty of conspiracy if he or she conspires with another to commit an illegal act and at least one of the conspirators does some act in furtherance of the illegal objective.

Respondent's brief at p. 12 (footnote omitted).

The state is incorrect in its conclusion. The plain language of the statutes requires a defendant to enter into an agreement with another to commit a crime or offense. The statutes do not provide merely that a defendant agree to commit an act which happens to be illegal, rather, the statutes require that the defendant enter into an agreement to commit an act which he or she knows is illegal. In short, the specific use of the terms offense or crime, rather than act, shows that the statute requires the defendant to understand that the act that is being agreed upon is actually a crime.

The state cites to *State v. Rolon*, 146 Idaho 684 (Ct.App. 2008), a conspiracy to traffic case, to try and make its point, but the full relevant passage is as follows:

Negating the specific intent element amounts to fundamental error. A general criminal intent requirement is satisfied if it is shown that the defendant knowingly performed the proscribed acts, but a specific intent requirement refers to the state of mind which in part defines the crime and is an element thereof. *State v. Fox*, 124 Idaho 924, 926, 866 P.2d 181, 183 (1993). In other words, specific intent requires not only the doing of an act, but the performance of that act with the intent to cause the proscribed result. While an Idaho court has not explicitly held as much, it is generally accepted that conspiracy is a specific intent crime that requires the intent to agree or conspire and the intent to commit the offense which is the object of the conspiracy. See 15A C.J.S. Conspiracy § 112 (June 2008). In contrast, instructions given by the court in this case--defining both "intent" and "willfully"--described general intent (the intent to commit an act, not the intent to commit a crime) which, read in concert with the instructions setting out the elements of

conspiracy, implied that Rolon needed only to have general, rather than specific intent (a higher standard) to be found guilty.

Id. p. 691 (emphasis added, footnote omitted).

In short, while it does not reach our specific question, *Rolon* nevertheless shows that it is the agreement to commit a crime, and not just an agreement to perform an act which may or may not be a crime, which is criminalized by the crime of conspiracy. Since a conspiracy conviction does not require that the substantive offense actually be committed, it makes perfect sense that a higher standard of intent is required to commit the crime. In other words, requiring the defendant to actually agree that a crime should be committed, as opposed to merely agreeing that an act be performed which just so happens to be a crime, prevents the conviction of a person who neither committed a substantive offense nor agreed that the law should be broken.

Requiring the defendant to intend that a crime be committed also makes sense when policy reasons are considered. While there is ample reason to provide safeguards against convicting persons who did not commit a substantive offense nor agreed to commit a crime, there is no valid reason to convict persons who did neither.

The state also cites to *United States v. Feola*, 420 U.S. 671, 95 S.Ct. 1255 (1975), but this case does nothing to change our analysis. There, defendants who had assaulted undercover narcotics agents were convicted of assaulting federal officers and for conspiring to do so. The Supreme Court held that since the statute was designed to protect federal officers and to insure a federal forum for prosecution of attacks upon federal officers, the statute did not require the

assailant be aware that his victim was a federal officer. Thus, in a prosecution for conspiracy to assault a federal officer, the government was not required to show that the defendant was aware that the intended victim was a federal officer and that the assault would violate federal law.

Of course, in an assault case (and conspiracy to assault), the defendant knows that any assault is unlawful and/or that he is agreeing that an unlawful assault take place. Thus, the defendant in that case is not agreeing to something that he does not know is illegal, the assault is obviously illegal, all that is unknown is the proper court that will hear the case and the possible penalty. In other words, the federal nature of the officer is only a jurisdictional requirement, without it the defendant has still conspired to violate state law.

Finally, regardless of this Court's ultimate decision on our question, the state has still failed to prove that the district court abused its discretion. The test is not whether this Court would decide this question of first impression differently from the district court. Rather, the test is whether there was a manifest abuse of discretion by the district court.

Here, the district court clearly understood that the decision to grant or deny a new trial was within its discretion. (R. p. 1009.) The district court also acted within the boundaries of its discretion and consistently with the legal standards. Since this was an issue of first impression in Idaho, the district court analyzed the matter using both Idaho law and the law of other jurisdictions which had considered the issue. (R. p. 1011-1015.) The court reached its decision by

an exercise of reason, granting the motion for new trial on the counts it believed were appropriate (the conspiracy counts) and denying it for the rest.

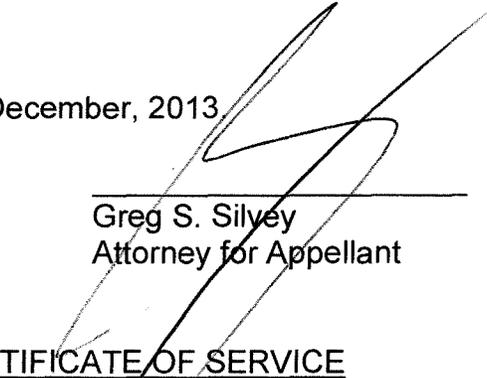
Given all of this, the state has failed to establish an abuse of discretion.

CONCLUSION

As set forth in her opening brief, Charlynda requests this Court reverse the district court's denial of her motion for judgment of acquittal on all counts, or, in the alternative, remand this matter for a new trial on all the counts, including the delivery counts.

Further as to the cross appeal, Charlynda requests that this Court affirm the district court's order granting the motion for new trial and grant the state no relief.

DATED this 19th day of December, 2013.



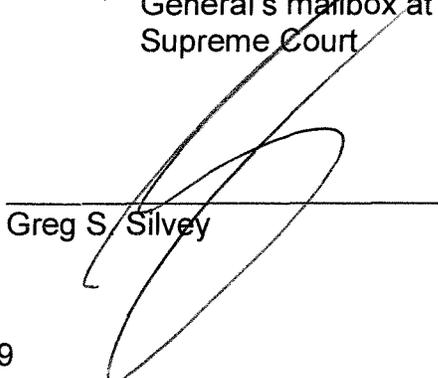
Greg S. Silvey
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of December, 2013, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by the method as indicated below:

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