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State v. Hopkins Appellant's Brief Dckt. 41824

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) No. 41824
)
 v.)
)
 KELSEY HOPKINS,) APPELLANT'S BRIEF
)
 Defendant-Appellant.)
 _____)

BRIEF OF APPELLANT

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

HONORABLE MICHAEL MCLAUGHLIN
District Judge

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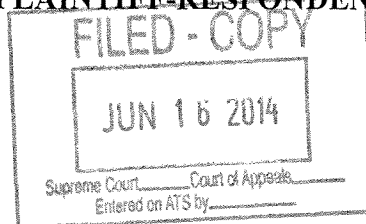


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STATEMENT OF THE CASE

Nature of the Case and Course of Proceedings

This case proceeded to a Jury Trial on April 3, 2013; at which time Ms. Hopkins was convicted of Malicious Injury to Property a violation of Idaho Code § 18-7001. Ms. Hopkins filed her Notice of Appeal on June 13, 2013. The District Court heard argument and took the matter under advisement. The District Court issued its Memorandum Decision and Order affirming the conviction on January 14, 2014, and Ms. Hopkins now timely appeals. On appeal, Ms. Hopkins asserts (1) that the trial court committed error when it failed to properly instruct the jury on the defense of misfortune or accident; and (2) that there was insufficient evidence to prove beyond a reasonable doubt that Ms. Hopkins had the requisite intent to maliciously injure or destroy the property of another.

Statement of the Facts

Kelsey Hopkins is a recently married 21 year-old who lives in Garden City. (4/3/13 Tr. 142, Ls.11-12). Kelsey has a very strong relationship with her brother because they were abandoned by their mother at a very young age and their father died of cancer during their formative years. (4/3/13 Tr. 142, Ls.15 – p. 143 Ls.16). They were basically homeless and Kelsey was responsible for her brother. (4/3/13 Tr. 143, Ls.15-19).

On the date in question, Kelsey was at her brother's court hearing for a juvenile issue. (4/3/13 Tr. 143, L.25). After the sentence, her brother was taken into custody and she quickly and angrily left the courtroom. (4/3/13 Tr. 144, Ls.8-16). Kelsey was trying to hurry and leave the courtroom and get to the car because she was about to cry and she does not like to cry in front of other people. (4/3/13 Tr. 144, Ls.8-16). Kelsey cares a lot about her brother and anything that happens to him hurts her deeply. (4/3/13 Tr. 145, Ls.13-16).

After Kelsey opened the door, a loud knocking sound occurred and a hole in the wall was discovered. (4/3/13 Tr. 98, Ls.11-24). An officer went to see Kelsey later in the day and at that time Kelsey was unaware that there even was a hole in the wall where the door had hit it. (4/3/13 Tr. 147, Ls.1-11). Kelsey did not see the hole nor hear the door hit the wall causing the hole. (4/3/13 Tr. 148, Ls.2-6). She was very upset and was almost running to just try and get to her car. (4/3/13 Tr. 148, Ls.7-10). Once Kelsey was made aware of the damage she apologized and told the officer that she would return to the Courthouse on Monday to talk to them about what she could do. (4/3/13 Tr. 148, Ls.14-18). Kelsey even offered to write a letter to the judge. (4/3/13 Tr. 148, Ls.14-18). Kelsey specifically told the officer that she did not intend to put a hole in the wall. (4/3/13 Tr. 148, Ls.14-18).

ISSUES

- I. Did the trial court err when it failed to instruct the jury on the defense of misfortune or accident?
- II. Was there sufficient evidence to prove beyond a reasonable doubt that Ms. Hopkins had the requisite intent to maliciously injure or destroy the property of another?

ARGUMENT

I.

The Trial Court Erred When It Failed To Instruct The Jury On The Defense Of Misfortune Or Accident.

A. Introduction

Ms. Hopkins asserts that the trial court erred by failing to instruct the jury on the defense of misfortune or accident thereby depriving her of her constitutional rights to due process, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Idaho Constitution and therefore the conviction must be vacated.

B. Standard of Review

The propriety of jury instructions is a question of law over which Idaho appellate courts exercise free review. *State v. Tadlock*, 136 Idaho 413, 414, 34 P.3d 1096, 1097 (Ct. App. 2001). When reviewing jury instructions, the court must first ask whether the instructions as a whole, and not individually, fairly and accurately reflect the applicable law. *Id.* To be reversible error, instructions must have misled the jury or prejudiced the complaining party. *State v. Young*, 138 Idaho 370 (2002).

C. The Trial Court Erred When It Failed To Instruct The Jury On The Defense Of Misfortune Or Accident.

The Fifth Amendment to the United States Constitution states that, “[n]o person shall be ... deprived of life, liberty, or property, without due process of law” U.S. CONST. amend. XIV. The Fifth Amendment’s right to due process of law includes the requirement that the State bear the burden of proving all elements of the offense charged beyond a reasonable doubt. *See Sullivan v. Louisiana*, 508 U.S. 275, 277-78 (1993). Similarly, the Idaho Constitution guarantees that, “[n]o person shall be ... deprived of life, liberty or property without due process of law.”

ID. CONST. art. I, § 13. The Idaho Supreme Court has “applied the United States Supreme Court’s standard for interpreting the due process clause of the United States Constitution to art. 1, Section 13 of the Idaho Constitution.” *Maresh v. State, Dep’t of Health and Welfare ex rel. Caballero*, 132 Idaho 221, 227, 970 P.2d 14 (1998). Thus, the due process requirement that the State bear the burden of proving all elements of the offense charged beyond a reasonable doubt is also a requirement of Article I, section 13 of the Idaho Constitution.

The right to present a defense is a fundamental right of due process of law which includes the defendant’s right to present its version of the facts. *State v. Meister*, 148 Idaho 236, 220, 239 P.3d 1055, 1058 (2009). The Idaho Supreme Court has held that “[a]s a rule, the trial court is required to give pertinent instructions by which the jury may be correctly informed with respect to the nature and elements of the crime charged and any essential legal principles available to the evidence admitted.” *State v. Nunez*, 133 Idaho 13, 20, 981 P.2d 738, 745 (1999) (citations omitted).

Idaho has codified the defense of misfortune or accident but, until recently, Idaho appellate courts have not been presented with the opportunity to interpret the statute. *See State v. Macias*, 142 Idaho 509, 129 P.3d 1258 (Ct.App.2005) (determining misfortune or accident defense jury instruction proper but not required in a battery prosecution where the jury was already instructed on the requisite state of mind element). Idaho Code Section 18–201 states that “[a]ll persons are capable of committing crimes except ... [p]ersons who committed the act or made the omission charged, through misfortune or by accident, when it appears that there was not evil design, intention or culpable negligence.” The Idaho appellate courts have looked to other courts for guidance in interpreting and applying the misfortune or accident defense. The California Court of Appeals has provided the following analysis in regard to this defense:

Black's Law Dictionary has defined misfortune as “[a]n adverse event, calamity, or evil fortune, arising by accident (or without the will or concurrence of him who suffers from it), and not to be foreseen or guarded against by care or prudence.” BLACK'S LAW DICTIONARY 6TH ED. The eighth edition of Black's Law Dictionary has omitted the term “misfortune” altogether. Further, a search of case law reveals that the defense is rarely referred to as one of misfortune and may now simply be the defense of accident. An “accident,” as defined by Black's Law Dictionary, is either “[a]n unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated,” or “[a]n unforeseen and injurious occurrence not attributable to mistake, negligence, neglect, or misconduct.”

Black's Law Dictionary 8th Edition.

When a defense is one that negates proof of an element of the charged offense, the defendant need only raise a reasonable doubt of the existence of that fact. This is so because the defense goes directly to guilt or innocence. The trial court is required to instruct the jury on which party has the burden of proof and on the nature of that burden. The accident defense is a claim that the defendant acted without forming the mental state necessary to commit the crime. *People v. Gonzales*, 74 Cal.App.4th 382, 390, 88 Cal.Rptr.2d 111 (Cal.App.1999) (citations omitted).

Where a special defense of accident or misfortune is provided the burden of production for the defense is commonly on the defendant. The burden of persuasion is nearly always on the state, beyond a reasonable doubt.

PAUL H. ROBINSON, ET. AL., CRIMINAL LAW DEFENSES, 1 CRIM. L. DEF.. § 63 (2005–06). The defendant may present evidence to create a reasonable doubt in the minds of jurors as to whether the defendant acted with criminal intent. Whether a defendant may present evidence of misfortune and whether the defendant is entitled to a jury instruction on this defense depends on whether the defendant proffers evidence of an accident that would relieve him of criminal liability under the defined offense. In our case, the evidence proffered by Dolsby must therefore support a theory of accident or misfortune that would relieve him from liability for possession of a firearm for lack of the requisite mental state.

State v. Dolsby, 143 Idaho 352, 145 P.3d 917 (Ct.App. 2005)

The mental state that is required for the commission of a particular offense is determined by the language of the statute defining that offense. *State v. Broadhead*, 139 Idaho 663, 666, 84 P.3d 599, 602 (Ct.App.2004). Whether criminal intent is a necessary element of a statutory offense is a matter of construction, to be determined from the language of the statute in view of its manifest purpose and design. *State v. Prather*, 135 Idaho 770, 774, 25 P.3d 83, 87 (2001).

The language of Idaho Code § 18-7001 states in relevant part that “except as otherwise provided in subsection (2) of this section, every person who maliciously injures or destroys any real or personal property not his own, ... is guilty of a misdemeanor.” [emphasis added] The specific type of intent the state is required to prove is maliciously. Malicious injury to property is not a general intent crime it is a specific intent crime and the malicious intent is defined as “the desire to annoy or injure another or the intent to do a wrongful act.” ICJI 1302.

A trial court must inform the jury on “all matters of law necessary for their information.” I.C. § 19-2132(a). A requested instruction must be given if: (1) it properly states the governing law; (2) a reasonable view of at least some evidence would support the defendant's legal theory; (3) the subject of the requested instruction is not addressed adequately by other jury instructions; and (4) the requested instruction does not constitute an impermissible comment as to the evidence. Finally, the defendant in a criminal action is entitled to have his legal theory of defense submitted to the jury through an instruction if there is a reasonable view of the evidence that would support the theory. *Tadlock* 136 Idaho at 414.

The Court, in its denial of the request for the misfortune or accident instruction stated as follows:

“Okay. I will tell you that I am not inclined at this point to give that instruction simply because I don't believe evidence up until this point supports that instruction. That may change. I haven't heard all of the evidence at this point.”

(4/3/13 Tr. p.140, Ls.15-20)

“All right. With regards to that issue, I am going to sustain the State’s objection.”

(4/3/13 Tr., p.153, Ls.1-3).

The only instruction given with regard to intent in this case was in the element instruction; Instruction No. 13 which provides the following:

“... the word “maliciously” means the desire to annoy or injure another or the intent to do a wrongful act.”

(R., 45).

In *State v. Macias*, 142 Idaho 509, 129 P.3d 1258 (Ct.App.2005) the Court looked at the jury instructions as a whole, and determined that it was not reversible error for the trial court not to give an instruction on misfortune or accident. *Id.* However, the Court also held that it would have been proper to give the instruction requested but determined that the matter had been sufficiently covered by other instructions. *Id.* at 511, 1260. In *Macias*, the court gave the jury three instructions on the required state of mind: (1) the elements instruction which discussed wilfully and unlawfully uses force or violence upon the person of another, actually, intentionally and unlawfully striking another, or causing bodily harm; (2) wilful instruction which defined a wilful act as something done on purpose; and (3) the act of union and intent instruction. *Id.* When taken together the court decided that the jury had properly been instructed that they could not find Macias guilty if the acts were committed through misfortune or accident. *Id.* The Court went on to further state that it may have even been “preferable” for the court to give the requested instruction, but it was not essential, therefore not reversible error. *Id.*

In this there is simply the definition of “malicious.” There was no instruction given with regards to the required intent and therefore the trial court erred when it failed to give the defendant’s requested jury instruction. In this case the evidence was that Ms. Hopkins did not

intend to put a hole in the wall. In fact she was unaware a hole had even been made until she was contacted by law enforcement later the same day.

At trial, the State offered the testimony of Deputy Jared Meyer, he offered the following testimony regarding Ms. Hopkins' intent:

Q. And Kelsey stated to you that she was sorry for her actions at the courthouse?

A. She did.

Q. And that she had misunderstood the judge's sentence?

A. Yes.

Q. And she also told you at that time that she did not intend to put a hole in the wall?

...

Q. So her -- your understanding of her statements was that she did not intend to put a hole in the wall.

A. Yes.

(4/3/13 Tr. p.135, Ls.16 – p. 137, Ls.4)

Ms. Hopkins also offered testimony at trial and her statements with regard to her intent were as follow:

Q. And when did you learn of or find out that there had been a hole in the wall?

A. I did not know that there was a hole in the wall until after the officer had come to talk to me about it.

Q. And that's when you learned that the hole had been put in the wall?

A. Yes.

Q. And do you know why that is?

A. No.

Q. So, like when you left, you were going quickly?

A. Yes.

Q. And so can you just explain to me, you got up and you walked, but then what – how did you go to out the door, and how did you end up at your car?

A. I'm trying to think. So I went out – I walked quickly outside the door. I turned the doorknob and went like this, but I did not mean to – for it to hit the wall –

Q. Okay.

A. – the way it did.

Q. Did you see it right then? Did you see it hit the wall?

A. No, I kept going. I didn't even see it. I didn't hear it hit the wall.

Q. Okay.

A. I just kept going. Like, I was almost like, running, kind of walking, fast pace.

Q. Because you had been upset?

A. Yeah.

Q. Okay. And so then when the officer had told you that there had been damage, what did you do?

A. I told him that I was – I apologized for it, and said I would go down there Monday and talk to them about what I can do, whether I can write a letter to the judge or the – or the maintenance or whatnot.

Q. So did you intend to put a hole into that wall?

A. No, I did not.

(4/3/13 Tr. p.147, Ls.1 – p. 148, Ls.21)

It is of further interest to note that at the sentencing hearing in this case the Court made

the following statement on the record:

Thank you. Well, Miss Hopkins, what I will tell you is that I don't believe that you purposely put a hole in the wall of the courthouse. You purposely hit the door and perhaps didn't realize how hard you hit it, but after hearing the evidence at the trial I don't believe that that was what you intended to come out of it.

(6/10/13 Sh. p.195, Ls.6-13)

It is clear from the evidence offered at trial and from the statements of the Court that Ms. Hopkins lacked the specific intent of maliciously and the requested instruction should have been given to the jury because it properly stated the governing law, a reasonable view of the evidence would support the defendant's legal theory and more to the point the requested instruction was not addressed adequately by other jury instructions. It is undisputed that Ms. Hopkins opened the door forcefully and that she intended to open the door forcefully. If malicious injury to property was a general intent crime, that would be enough to convict her. However, the evidence is clear that there was no intent to commit the wrongful act, which was to cause the damage. Opening the door in a forceful manner isn't wrongful, it's not a criminal act. The criminal act is the damage to the wall and there was no intent by Ms. Hopkins to cause that damage.

ARGUMENT

II.

There Was Insufficient Evidence To Prove Beyond A Reasonable Doubt That Ms. Hopkins Had The Requisite Intent To Injure Or Destroy The Property Of Another.

A. Introduction

Ms. Hopkins asserts that there was insufficient evidence to convict her of malicious injury to property. Specifically, that she lacked the requisite *intent* to maliciously injure or destroy the property of another. (emphasis added)

B. Standard of Review

On appeal, it is clear the Court is precluded from substituting its judgment for that of the jury as to the credibility of the witnesses, the weight of the testimony and the reasonable inferences to be drawn from the evidence. *State v. Campbell*, 104 Idaho 705, 718-19, 662 P.2d 1149, 1162-63 (Ct.App.1983). The Court must review the evidence, and permissible inferences

that can be drawn reasonably from the evidence, in the light most favorable to the respondent. *State v. Slawson*, 124 Idaho 753, 757, 864 P.2d 199, 203 (Ct.App.1993). Where there was substantial evidence upon which any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, we will not set aside a judgment of conviction entered upon a jury verdict. *Id.*

C. There Was Insufficient Evidence To Prove Beyond A Reasonable Doubt That Ms. Hopkins Had The Requisite Intent To Maliciously Injure Or Destroy The Property Of Another.

In this case, there was insufficient evidence to prove that Ms. Hopkins had the intent to maliciously injure or damage the property of another. Appellate review of the sufficiency of the evidence is limited in scope. A judgment of conviction, entered upon a jury verdict, will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt. *State v. Crawford*, 130 Idaho 592, 594, 944 P.2d 727, 729 (Ct. App. 1997). A reasonable trier of fact could not have found that the prosecution in this case sustained its burden of proving that Ms. Hopkins maliciously injured or destroyed the property of another.

An accused's right to demand proof of the State's case beyond a reasonable doubt is of "surpassing importance." *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000). The right to demand proof beyond all reasonable doubt is a bedrock constitutional principle. *See In re Winship*, 397 U.S. 358 (1970) ("Although virtually unanimous adherence to the reasonable-doubt standard in common-law jurisdictions may not conclusively establish it is as a requirement of due process, such adherence does 'reflect a profound judgment about the way in which law should be enforced and justice administered.'" (quoting *Duncan v. Louisiana*, 391 U.S. 145, 155

(1968)). “Simply stated, the fact that defendant is ‘probably’ guilty does not equate with guilt beyond a reasonable doubt.” *People v. Ehlert*, 811 N.E.2d 620, 631 (Ill. 2004).

In *State v. Crawford*, 130 Idaho 592, 944 P.2d 727 (Ct. App. 1997), it was stated that:

[a]ppellate review of the sufficiency of the evidence is limited in scope. A judgment of conviction, entered upon a jury verdict, will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt . . . [w]e will not substitute our 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 . . . [m]oreover, we will consider the evidence in the light most favorable to the prosecution.

Id. at 594-595, 944 P.2d at 729-730 (citations omitted).

In *State v. Mitchell*, 130 Idaho 134, 937 P.2d 960 (Ct. App. 1997), it was noted that, “[e]vidence is regarded as substantial if a reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact has been proved.” *Id.* at 135, 937 P.2d at 961. “The challenge to the sufficiency of the evidence is not based on a technical or subtle defect. The defense simply says that there was not enough admissible evidence to convict the defendant.” *State v. Faught*, 127 Idaho 873, 877, 908 P.2d 566, 570 (Ct. App. 1995).

The Idaho Court of Appeals has held that the plain language of I.C. § 18-7001 does not imply a legislative intent to create criminal liability under this section where the injury to the property was an unintended consequence of conduct that may have violated some other statute. The Court has concluded that by its plain language, I.C. § 18-7001 creates culpability for ~~malicious injury to property only where the defendant’s conduct causing the injury is~~ accompanied by an intent to injure the property of another. *State v. Nastoff*, 124 Idaho 667, 670, 862 P.2d 1089, 1092 (Ct.App. 1993). Therefore the State is required to prove that Ms. Hopkins harbored the intent to knowingly injure the real or personal property that she did not own. The

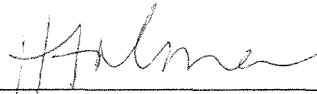
evidence in this case not only fails to support an inference of malicious intent, but it gives rise to a contrary inference of accident or misfortune. The Court was even held the belief that there was no intent to put a hole in the wall of the courthouse. There was no substantial evidence upon which the jury could have found beyond a reasonable doubt that Ms. Hopkins intentionally put a hole in the wall of the courthouse. The State failed to prove the element of malice as required for conviction under I.C. § 18-7001.

The factual argument's which support this issue has been set forth above in Argument I and need not be repeated. Ms. Hopkins hereby incorporates them by reference. The State failed to meet its burden because no evidence was presented at trial that Ms. Hopkins had the requisite intent to maliciously injure or destroy the property of another. It was clear on all accounts that Ms. Hopkins intended to forcefully open the door because she was angry and upset at the sentence that her brother had received. She was upset that he had been remanded and taken into custody. That intent would be enough if this was a general intent crime. However, malicious injury to property requires the mental state of committing the illegal act. The illegal act in this case is not the opening of the door; it is the causing of the damage to the wall which occurred because the door was opened forcefully. There is not substantial and competent evidence to support a verdict of guilty with regard to the specific intent required.

CONCLUSION

Because the proffered evidence yielded facts establishing the defense of misfortune or accident, it was error for the trial court to refuse giving the requested jury instruction, further because there was insufficient evidence to sustain a conviction, Ms. Hopkins respectfully requests that this court vacate her judgment of conviction and enter a judgment of acquittal.

DATED this 16th day of June 2014.



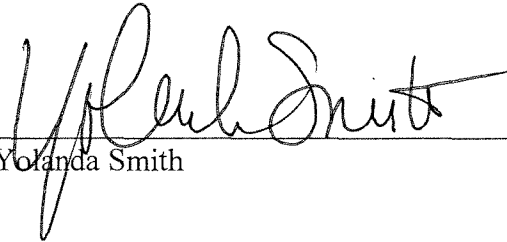
HEIDI TOLMAN
Attorney for Defendant

CERTIFICATE OF MAILING

I **HEREBY CERTIFY**, that on this 16th day of June 2014, I caused to be served a true and correct copy of the foregoing document in the above-captioned matter to:

DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.



Yolanda Smith