4-30-2015

State v. Beeks Appellant's Reply Brief Dckt. 42022

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 42022
	)	
v.	)	CANYON COUNTY NO. RE
	)	
TRISTUM BEEKS,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	
	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

The State charged Mr. Beeks with felony violation of a no contact order based upon the allegation that Mr. Beeks had been convicted twice for prior violations of no contact orders in the past five years. Mr. Beeks was convicted of felony violation of a no contact order following a jury trial.

Mr. Beeks timely appeals from his judgment of conviction and sentence. On appeal, he asserts that the district court erred in instructing the jury. Specifically, he contends that the district court should have instructed the jury as to the union of act and intent requirement, and that acts or omissions committed through misfortune or accident, and with no evil design, intention or culpable negligence, are not criminal. Mr. Beeks also contends that the State engaged in several instances of misconduct during his trial, which occurred during *voir dire* and closing statements. The prosecutor told the jury several times that there was additional information that he was not allowed to tell them, and later told the jury he was not allowed to introduce evidence of Mr. Beeks' prior domestic assault or domestic battery charge. Although the prosecutorial misconduct was not objected to, Mr. Beeks asserts that it amounted to fundamental error and, therefore, can be considered on appeal. The misconduct violated Mr. Beeks' right to a fair trial and due process.

This Reply Brief is necessary to address the State's contention that the district court did not err in instructing the jury.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Beeks' Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUES

1. Did the district court err by failing to instruct the jury on the necessary intent element of the crime, and by refusing to instruct the jury that acts or omissions committed through misfortune or accident, and with no evil design, intention or culpable negligence, are not criminal?

2. Did the State commit prosecutorial misconduct rising to the level of fundamental error when it elicited testimony regarding the existence of two no contact orders, and when it repeatedly told the jury that there was additional information that the prosecutor was not allowed to tell the jury, including that Mr. Beeks had previously been charged with either domestic assault or domestic battery?[1]

[1] Analysis of the prosecutorial misconduct issue was fully addressed in Mr. Beeks' Appellant's Brief and will not be further discussed herein.

ARGUMENT

The District Court Erred By Failing To Instruct The Jury As To The Intent Element Of The Offense, And By Refusing To Instruct The Jury That Acts Or Omissions Committed Through Misfortune Or Accident Are Not Criminal

In Idaho, all crimes require a union of act and intent. In this case the jury was never instructed as to this requirement. Such was error.

The State claims that there was "no reasonable view of the evidence that would require a 'union of act and intent' instruction." (Respondent's Brief, p.10.) The State also represents that *State v. Fox,* 124 Idaho 924 (1993), stands for the proposition that "where the criminal statute does not set forth any mental state as an element of the statute, 'the intention with which the act is done, or the lack of criminal intent in the premises, is immaterial.'" (Respondent's Brief, p.9.) However, the State's representation of the holding in *Fox* is inaccurate. The Idaho Supreme Court actually held in *Fox* that because the statutory definition of possession of a controlled substance does not expressly require any mental element, and I.C. § 18-114 only requires a joint union of act and *general* intent, possession of a controlled substance is a general intent crime, i.e., the knowledge that one is in possession of the substance meets the intent element. *Fox*, 124 Idaho at 926.

In Idaho, conviction for a criminal offense requires the jury to find a requisite state of mind. *State v. Macias*, 142 Idaho 509 (Ct. App. 2005). In *Macias*, the Idaho Court of Appeals held that a misfortune or accident defense jury instruction was proper, but not required, in a battery prosecution because the jury had already been instructed on the requisite state of mind element by way of the jury instructions on: (1) the elements of battery, (2) willful acts, and (3) the requirement of union or joint operation of act and

intent. *Id.* at 511. The Court in *Macias* held that the subject matter of the requested instruction was sufficiently covered by the instructions actually given to the jury. *Id.*

In this case, the jury was never instructed as to the requisite state of mind element. Idaho Code Section 18-114 requires that for every crime, "there must exist a union or joint operation, of act and intent, or criminal negligence." The intent required by I.C. § 18-920 is not the intent to commit a crime but is merely the intent to perform the interdicted act, or by criminal negligence, the failure to perform the required act. *Id.* Therefore, a violation of I.C. § 18-920 requires general intent; namely, that a person with a domestic assault or domestic battery charge or conviction, after having been notified of the existence of a no contact order, intentionally had contact with the person he was prohibited from contacting, not that he or she intended to commit a crime.

Here, the only instruction specific to the offense was the general elements instruction. (R., p.35Q.) Notably, unlike in *Macias*, in Mr. Beeks' case, the requirement of union or joint operation of act and intent instruction was not given, and the elements instruction did not specify what intent was necessary to find Mr. Beeks guilty. (R., p.35Q.) Thus the jury in this case was never instructed as to the *mens rea* of the offense. This was error, particularly where the primary contested issue during the trial was whether Mr. Beeks violated the no contact order by accident, where Ms. Murillo took multiple steps to facilitate the contact and mislead Mr. Beeks about the status of the no contact order. Thus, the jury was not properly instructed.

At trial, one of the facts in dispute was whether Mr. Beeks attended the video visit believing either that he was not going to be speaking to Ms. Murillo, as his visitor was identified as "John Lawrence," or that the no contact order had been dropped. (Trial

Tr., p.16, L.23 – p.17, L.10; State's Trial Exhibit 1.) Where the facts of Mr. Beeks' case seriously call into question whether Mr. Beeks had any intent to participate in a jail visit with Ms. Murillo, it was error for the district court not to instruct the jury on the requirement that there be a union of act and intent.

The district court further erred in refusing to instruct the jury on culpability for acts or omissions committed through misfortune or accident, where the evidence adduced at trial supported giving such an instruction and Mr. Beeks requested such an instruction.

The State disputes Mr. Beeks' claim of error as to the district court's refusal to give his requested instruction on "misfortune or accident." (Respondent's Brief, pp.11-13.) The State claims that it is not a reasonable view of the evidence that Mr. Beeks accidentally spoke with Ms. Murillo. (Respondent's Brief, p.12.) However, this is inaccurate.

Whether a jury was properly instructed is a question of law over which the appellate court exercises free review. *State v. Severson*, 147 Idaho 694, 710 (2009). A trial court must instruct the jury on "all matters of law necessary for their information." I.C. § 19-2132(a). A requested jury 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 adequately addressed by other jury instructions; and (4) the requested instruction does not constitute an impermissible comment on the evidence. *Macias*, 142 Idaho at 510.

First, the State concedes that the requested instruction properly stated the governing law, and since the requested instruction was a pattern jury instruction, Idaho Criminal Jury Instruction 1508, it is presumptively correct. *McKay v. State*, 148 Idaho

567, 571 n.2 (2010). Second, a reasonable view of the evidence supported Mr. Beeks' theory of the case. Evidence was adduced at trial which demonstrated that Mr. Beeks took steps to avoid contact with Ms. Murillo. Specifically, the video presented at trial clearly contains a series of questions from Mr. Beeks to Ms. Murillo regarding whether it was "okay to talk", i.e., whether the no contact order was still in place. (State's Trial Exhibit 1.) Further, it appeared that Mr. Beeks was being cautious and trying to obey the terms of the no contact order and that he appeared ready to leave the room in order to obey the law. (State's Trial Exhibit 1.) Ultimately, he only remained in the video visit room in reliance on Ms. Murillo's representation that it was okay to talk. (State's Trial Exhibit 1.) The evidence presented by the defense was enough for the district court to find that defense counsel could argue (without the requested instruction) that Mr. Beeks' contact with Ms. Murillo was inadvertent or an accident. (Supp. Trial Tr., p.79, L.19 – p.80, L.7, p.80, L.24 – p.82, L.5.) This indicates an understanding by the district court that the facts of the case supported such an argument. Thus, the district court's unwillingness to instruct the jury as to a misfortunate event or accident was error where Mr. Beeks requested the instruction, and the district court implicitly acknowledged that defense counsel could make a feasible argument that the contact was accidental. The evidence adduced at trial demonstrated that Mr. Beeks' contact with Ms. Murillo was either purely accidental or based on a mistaken belief that she had the no contact order lifted. Thus, the giving of such an instruction would not have constituted an impermissible comment on the evidence. Additionally, the subject of the requested jury instruction was not adequately addressed by the other jury instructions.

The facts of this case are somewhat similar to the facts in a recent Idaho Court of Appeals decision, *State v. Hopkins*, __ Idaho __, 345 P.3d 250 (2015), in which the Court held that the trial court erred in denying the defense's requested jury instruction on defense of accident and such error was not harmless. In *Hopkins*, the defendant had slammed a courtroom door hard enough to damage the wall behind it and was subsequently charged with malicious injury to property. *Id.* at 252-53. The defendant testified that she did not intend to damage the wall, and she did not know she had done so until an officer called her at home. *Id.* at 253. Although the defense requested that the jury be instructed as to the defense of accident, the trial court denied the request, and the jury convicted the defendant. *Id.* at 253-54. The Court of Appeals reversed the conviction, finding that a malicious injury to property conviction required the State to prove that the defendant intentionally injured the property. *Hopkins*, 245 P.3d at 256. The instructions given in the case precluded the defense the defendant wished to advance—that her act in damaging the property was an accident, or unintentional. *Id.* Because the other jury instructions did not adequately cover the issue of the requisite mental element, and the requested instruction would have informed the jury of this defense, the trial court erred in refusing to give the accident instruction. *Id.* at 257. The Court of Appeals found the error was not harmless where the defense presented evidence that the defendant did not intend to damage the wall, and noted that the evidence presented was sufficient for the trial court to indicate its belief that the defendant did not intend to damage the wall. *Id.*

As discussed above, the intent necessary for a conviction of violation of a no contact order was not explained by the jury instructions, and an instruction on the

requirement of union or joint operation of act and intent was absent. As such, the absence of the union of act and intent instruction, in addition to the district court's refusal to give the requested accident instruction, left the jury without any guidance as to the *mens rea* of the crime. Where the other jury instructions did not adequately cover the issue of the requisite mental element, and the requested instruction would have informed the jury of this defense, the trial court erred in refusing to give the accident instruction. *See Hopkins,* 345 P.3d at 257.

CONCLUSION

For the foregoing reasons, Mr. Beeks respectfully requests that this Court vacate his judgment of conviction and remand his case for a new trial.

DATED this 30th day of April, 2015.

SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of April, 2015, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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SJC/eas