5-12-2017

State v. Heiner Appellant's Brief Dckt. 44575

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	**NO. 44575**
	)	
Plaintiff-Respondent,	)	
	)	**BANNOCK COUNTY NO.**
v.	)	**CR 2015-7667**
	)	
MELISSA HEINER AKA OLIN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HONORABLE ROBERT C. NAFTZ
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Melissa Heiner contends the district court erred by denying her request for, or alternatively, by denying her motion for a new trial based on the failure to give, a jury instruction in her trial for possession of methamphetamine. Specifically, she requested the district court instruct the jury that a reasonable ignorance or mistake of fact which disproves any criminal intent means a person is not capable of committing the charged offense in accordance with I.C. § 18-201(1).[1] Since that instruction properly stated the law, was supported by some evidence in the case, and was not covered by the other instructions, the district court was required to give it. Therefore, this Court should vacate the verdict and judgment of conviction and remand this case for a new trial.

Statement of the Facts and Course of Proceedings

Ms. Heiner was suffering from a headache while at work, and so, asked her adult son to bring her some aspirin. (Tr., p.260, Ls.3-9.)[2] He did so, but he brought it in a baggie which he had previously used to hold methamphetamine. (Tr., p.236, L.18 - p.238, L.12.) However, he thought he had cleaned the baggie out before taking it to his mother. (Tr., p.238, L.24 - p.239,

[1] I.C. § 18-201(1) provides:

> All persons are capable of committing crimes, except those belonging to the following classes:
>
> 1. Persons who committed the act or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent.

[2] While there are two volumes of transcripts provided in this case, all citations to "Tr." in this brief are to the PDF entitled "TRANSCRIPTS FOR OLIN 44575.pdf." Although the transcript pages therein are consecutively paginated, they are not necessarily provided in consecutive order.

L.1.) He left the baggie with the aspirin in Ms. Heiner's purse. (Tr., p.255, Ls.20-22.) She did not notice anything unusual about the baggie when she took the aspirin. (Tr., p.260, Ls.20-23.)

A few days later, Ms. Heiner and her son were pulled over for an expired registration. (R., p.19.) Her son, who had been driving, was arrested on an outstanding warrant, and a search of his person revealed more methamphetamine. (R., p.20.) During a subsequent search of their truck, the officer searched Ms. Heiner's purse and found two baggies – one black and the other white– each inside a different coin purse.[3] (Tr., p.135, Ls.3-10.) Both baggies had white, powdery residue in them. (Tr., p.135, Ls.3-10.) The officer asked Ms. Heiner about the white baggie, and she said it was the one her son had brought the aspirin in. (Tr., p.137, L.25 - p.138, L.4.) The officer did not ask Ms. Heiner about the black baggie. (Tr., p.138, Ls.5-7.)

The officer believed the residue in both baggies was methamphetamine, but admitted he could not distinguish the residue from other benign substances without testing it.[4] (Tr., p.159, Ls.11-23.) As such, he performed field tests on both baggies. (Tr., p.137, Ls.12-23.) The white baggie came back presumptively negative, but the black baggie indicated presumptively positive for methamphetamine. (Tr., p.137, Ls.12-23.) As the officer went to arrest Ms. Heiner, her son, who believed that the officer had found something of his which he had accidentally dropped, began shouting that any drugs the officer had found belonged to him. (Tr., p.240, Ls.12-15.) At trial, Ms. Heiner was asked about the black baggie, and she said she did not recall it being in her purse, nor could she explain its presence there. (Tr., p.261, Ls.1-6.) However, she denied ever putting any baggies with methamphetamine in her purse. (Tr., p.261, Ls.7-9.)

[3] The coin purse with the white baggie also contained a pill which Ms. Heiner identified as Imodium. (Tr., p.264, Ls.2-7.)

[4] The state lab technician who ultimately tested both baggies confirmed that the residue in the baggies could look like various benign substances. (Tr., p.198, Ls.17-25.)

Based on this evidence, which was all elicited at trial, defense counsel requested the district court instruct the jury in accordance with I.C. § 18-201(1) – that a person who commits an act under an ignorance or mistake of fact which disproves any criminal intent is not capable of committing a crime. (Tr., p.284, Ls.6-25.) The district court denied that request because it felt Instruction 15 (the general elements instruction) adequately addressed the point. (Tr., p.286, Ls.20-21.) Specifically, Instruction 15 informed the jury that one of the elements of possession of a controlled substance was that "the defendant either knew it was methamphetamine or believed it was a controlled substance." (Exhibits, p.24.)[5] The jury found Ms. Heiner guilty of "Possession of a Controlled Substance, Methamphetamine." (R., p.224.)

Based on the fact that the district court had not given the requested instruction, Ms. Heiner filed a motion to set aside that verdict as well as a motion for a new trial timely from the entry of that verdict. (R., p.205-11.) The district court concluded I.C. § 18-201(1) did not apply to possession of a controlled substance since that is a general intent crime. (R., p.230.) It also reaffirmed its decision that the issue was covered by the elements instruction. (R., p.230.) As such, it denied her motions. (R., p.230.)

The district court ultimately imposed a unified sentence of five years, with two years fixed, which it suspended for a term of four years. (Tr., p.342, Ls.17-19.) Ms. Heiner filed a notice of appeal timely from the judgement of conviction. (R., pp.236, 243.)

[5] Citations to "Exhibits" are to the electronic page numbers of the file entitled "CERTIFICATE OF EXHIBITS HEINER - aka - Olin 44575.pdf."

ISSUES

1. Whether the district court erred when it denied Ms. Heiner's request to instruct the jury pursuant to I.C. § 18-201(1).

2. Alternatively, whether the district court erred when it denied Ms. Heiner's motion for a new trial based on the failure to instruct the jury pursuant to I.C. § 18-201(1).

ARGUMENT

I.

The District Court Erred When It Denied Ms. Heiner's Request To Instruct The Jury Pursuant To I.C. § 18-201(1)

A. Standard Of Review

Whether the jury was properly instructed is a question of law which the appellate courts review *de novo*. *State v. Blake*, 133 Idaho 237, 239 (1999). Specifically, the appellate courts are reviewing to determine "whether the instructions as a whole fairly and accurately reflect the applicable law." *Id*. (internal quotation omitted). If an instruction is erroneous and misled or otherwise prejudiced the jury, the conviction should be vacated. *Id*. Additionally, "[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 adequately addressed by other jury instructions; and (4) the requested instruction does not constitute an impermissible comment as to the evidence." *State v. Macias*, 142 Idaho 509, 510 (Ct. App. 2005) (emphasis added).

B. The District Court Needed To Instruct The Jury Under I.C. § 18-201(1) Based On The Evidence Presented In Ms. Heiner's Case

Ms. Heiner requested the district court instruct the jury under I.C. § 18-201(1), to the effect that a person who commits an act under ignorance or mistake of fact which disproves any criminal intent is not capable of committing the charged offense. (Tr., p.203, L.1 - p.202, L.3; *see* R., p.211 (a copy of the requested instruction).)

That instruction properly stated the governing law. As the Idaho Supreme Court has made clear, when charging a person with possession of a controlled substance, methamphetamine, "To establish [that person's] guilt, the State must prove that [the person]

knowingly possessed methamphetamine." *Blake*, 133 Idaho at 242. As a result, "the defendant's ignorance of the identity of a substance would be a defense to a charge of possession of a controlled substance." *State v. McKean*, 159 Idaho 75, 82 (2015); *accord Blake*, 133 Idaho at 242. The statutory basis for this defense is I.C. § 18-201(1). *McKean*, 159 Idaho at 82. Therefore, the proposed instruction, which mirrored the applicable statutory language, was a proper statement of the law.

A reasonable view of at least some evidence supports Ms. Heiner's theory of defense under I.C § 18-201(1). In fact, the Idaho Supreme Court has indicated that less evidence than what was presented here can reasonably support a lack-of-knowledge defense under that statute. *See State v. Lamphere*, 130 Idaho 630, 632-33 (1997). In *Lamphere*, the defendant was charged with possession of methamphetamine based on his possession of a vial which had residue inside. *Id*. at 631. He told officers he did not *know* what was in the vial, but he thought it "might have been methamphetamine or something else" because the vial had been given to him by his girlfriend who, fearing her daughter had become involved in drug use, asked the defendant to help her figure out what was in the vial. *Id*. The Idaho Supreme Court indicated there was a reasonable view of some evidence in that case to support a lack-of-knowledge defense under I.C. § 18-201(1), such that the defendant in that case should have been allowed to present evidence in support of that defense to the jury. *See id*. at 633; *cf. Martinez v. State*, 143 Idaho 789, 793-95 (Ct. App. 2007) (holding that, if the post-conviction petitioner could prove that he had not been informed of what the State was required to prove in regard to his knowledge in a possession of methamphetamine case, he could withdraw his guilty plea based on his claim that he could have pursued a lack-of-knowledge defense in light of the fact that "the methamphetamine was placed in his wallet by his girlfriend without his knowledge").

The evidence here presents a stronger case in support of the lack-of-knowledge defense than did the evidence in *Lamphere*. For example, whereas the defendant in *Lamphere* knowingly possessed the container with the residue, the evidence here indicated Ms. Heiner did not know the container was in her purse. (Tr., p.260, L.24 - p.261, L.3 (Ms. Heiner testifying that she recalled seeing only one baggie, the one with the aspirin in it, in her purse).) In fact, the State's evidence bears this out, since the officer her testified he expressly did *not* ask Ms. Heiner about the black baggie. (Tr., p.138, Ls.5-7.)

Additionally, whereas the defendant in *Lamphere* suspected the residue was methamphetamine, the evidence in this case indicated Ms. Heiner did not believe any methamphetamine was in her purse. (Tr., p.261, Ls.7-9.) Furthermore, the evidence from both the officer and the lab technician reveals that, even if she had seen it, she could not have determined it was methamphetamine from its appearance. (Tr., p.159, Ls.11-23, Tr., p.198, Ls.17-25.) In fact, the evidence only indicates Ms. Heiner thought she ever had aspirin and Imodium in her purse. (Tr., p.260, Ls.3-23, Tr., p.264, Ls.2-7.)

Moreover, Ms. Heiner's son admitted he believed that the officer had found something of his which he had accidentally dropped. (Tr., p.240, Ls.12-15.) Thus, one reasonable view of the evidence in this case is that the baggie had been left in her purse by her son (accidentally or otherwise), and so, she was reasonably ignorant of the methamphetamine in her purse, and even if she had seen it, she would not have been able to identify it. That reasonable view of the evidence, more so than the reasonable view of the evidence in *Lamphere*, justified presenting a lack-of-knowledge defense under I.C. §18-201(1) because "[the defendant's] *ignorance* or mistake of fact, if believed by the jury, should *disprove any criminal intent*, requiring an acquittal." *Blake*, 133 Idaho at 242 (emphasis added).

The subject of the requested instruction was not adequately covered by the other instructions. (*See* Tr., p.286, L.20 - p.287, L.3 (the district court concluding the elements instruction (Instruction 15) covered the lack-of-knowledge defense).) The elements instruction given in this case told the jurors that one of the elements of the offense was that Ms. Heiner "knew it was methamphetamine or believed it was a controlled substance." (Exhibits, p.24.) However, it does not follow that, because the jurors were told that she has to have knowledge, they were also being instructed that a mistake or ignorance *deprives her of the capability* of forming the required knowledge. *Cf. McKean*, 159 Idaho at 82 (noting that persons who fall under I.C. § 18-201(1) "are not 'capable' of committing crimes"). The Idaho Supreme Court has recently, repeatedly held that this is a particular twist on the general elements formulation which provides a defense from liability. *See id.*; *State v. Goggin*, 157 Idaho 1, 10 (2014) ("[t]his knowledge element requires that the defendant know the identity of the substance."). If the general instruction adequately covered that defense, there would never be a situation where that instruction would be given, despite the problems that the general instruction can cause as it relates to that defense. For example, in *Blake*, the general instruction "allow[ed] the jury to convict [the defendant] if he knew there was some substance under his seat and something in the wallet but truly, although negligently, believed those substances to be harmless items such as sugar." *Blake*, 133 Idaho at 242. Therefore, the general elements instruction does not adequately cover this defense.

Finally, the requested instruction did not constitute a comment on the evidence. It would only have told the jurors that the law recognizes there may be certain circumstances in which a person is not capable of forming the requisite knowledge; it would not have told them whether or

not those circumstances were present in this case. Rather, it would have left that question of fact solely for the jury's determination.

Since the lack-of-knowledge instruction Ms. Heiner requested was a correct statement of the law, and because it was necessary to accurately and fairly instruct the jury on the law relevant to their decision given the facts presented, the district court erred by refusing to give that instruction.

II.

Alternatively, The District Court Erred When It Denied Ms. Heiner's Motion For A New Trial Based On The Failure To Instruct The Jury Pursuant To I.C. § 18-201(1)

A. Standard Of Review

The appellate courts review a ruling on a motion for new trial for an abuse of discretion, but exercises free review over questions of law included therein. *Goggin*, 157 Idaho at 4. When an appellate court reviews a discretionary decision, it looks at: "(1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason." *State v. Hedger*, 115 Idaho 598, 600 (1989).

B. Neither Of The Reasons The District Court Gave For Denying The Motion For A New Trial Are Proper

The district court gave two reasons for denying Ms. Heiner's motion for a new trial: first, that the elements instruction adequately covered the I.C. § 18-201(1) issues; and second, that I.C. § 18-201(1) does not apply to possession of controlled substance charges because they are general intent crimes. (R., p.230.) Neither conclusion is consistent with the applicable legal standards, and so, the district court's decision fails on the second step of the *Hedger* analysis.

As to the district court's first rationale, that decision is erroneous because, as discussed in Section I(B), *supra*, the elements instruction did not tell the jury that, if it found Ms. Heiner acted under ignorance or mistake of fact, she would not have been capable of forming the requisite knowledge. Therefore, the elements instruction did not adequately instruct the jurors on the I.C. § 18-201(1) issue.

As to the district court's second rationale, that decision is directly opposite to the Idaho Supreme Court's holding in its recent decision in *McKean*:

> The statutory basis for a defense based upon mistake of fact is Idaho Code section 18-201, which provides that '[p]ersons who committed the act or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent' are not 'capable' of committing crimes. *Thus, the defendant's ignorance of the identity of a substance would be a defense to a charge of possession of a controlled substance.*

McKean, 159 Idaho at 82 (quoting I.C. § 18-201(1)) (emphasis added). Therefore, regardless of whether possession of a controlled substance is a general intent crime, the Idaho Supreme Court has specifically held that I.C. § 18-201(1) applies to charges in that regard.

Since the district court's analysis is inconsistent with the legal standards applicable to specific choices, it abused its discretion by denying Ms. Heiner's motion for a new trial.

CONCLUSION

Ms. Heiner respectfully requests this Court vacate the verdict and judgment and remand this case for a new trial.

DATED this 12th day of May, 2017.

/s/
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of May, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, as follows:

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