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State v. Heiner Respondent's Brief Dckt. 44575

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STATEMENT OF THE CASE

Nature Of The Case

Melissa Heiner, a.k.a. Olin, appeals from her judgment of conviction for possession of methamphetamine. On appeal, she argues that the district court erred when it declined her requested mistake of fact instruction and abused its discretion when it subsequently denied her motion for a new trial.

Statement Of The Facts And Course Of The Proceedings

The district court set forth the factual background of this case as follows:

On May 18, 2015, Trooper S. Call of the Idaho State Police observed a black Dodge truck traveling directly in front of his patrol vehicle. Trooper Call observed the registration on the rear license plate had expired in April. After confirming the expired license with the dispatch center, Trooper Call conducted a traffic stop on the truck. Trooper Call made contact with the driver of the vehicle, who was identified as Cody M. Olin. Mr. Olin told the trooper his driver's license was suspended. The Defendant in this case, Melissa E. Olin, was a passenger in the truck. Trooper Call informed Mr. Olin of the reason for the traffic stop and then proceeded to conduct a driver's check on both of the Olins. As a result of that check, Trooper Call confirmed that Mr. Olin's driving status was invalid and further learned that he had a misdemeanor warrant for his arrest based on a probation violation out of Bonneville County. Trooper Call also discovered the Defendant's license was suspended out of California. Trooper Call then requested another officer to assist him with the stop. Officer P. Boll from the Pocatello Police arrived on the scene, and Trooper Call proceeded to arrest Mr. Olin on the basis of the Bonneville County warrant. After Mr. Olin was handcuffed, Trooper Call conducted a pat down search. In the course of that search, Trooper Call located a plastic bag inside Mr. Olin's baseball cap. A white crystal substance was inside the bag, and, upon questioning by the trooper, Mr. Olin "stated that [the substance in the bag] was methamphetamine."

Eventually, Trooper Call made contact with the Defendant, asking her to step outside of the truck. Trooper Call informed the Defendant he was going to search the vehicle. He observed a purse on the floor board

where the Defendant had been sitting. Ms. Olin confirmed the purse belonged to her. Trooper Call searched the purse and discovered other small coin purses within the purse. Inside a black coin purse, Trooper Call discovered a white bag with a white residue. Upon inquiry, the Defendant stated the white substance was aspirin. Trooper Call then found a blue coin purse, which held a black plastic bag. That black plastic bag also contained a white residue. The black bag with white residue tested presumptive positive for methamphetamine. The white bag with residue did not test presumptive positive for methamphetamine. Following the results of the NIK test, Trooper Call placed the Defendant under arrest for methamphetamine. No other illegal items were found in the vehicle.

(R., pp.226-27 (brackets original; internal citations and footnotes omitted).) The state charged Heiner with possession of methamphetamine (R., pp.40-41), and her case eventually went to trial (R., pp.212-17).

At trial, the defense presented a lack of knowledge defense to the possession charge. Cody Olin, Heiner's son, explained that a couple days before their arrests, his mother asked him to bring her some aspirin at her work. (Tr., p.236, L.18 – p.237, L.7.) He testified that he placed the aspirin in a *white* plastic baggie that had previously contained methamphetamine (Tr., p.237, L.11 – p.239, L.1; p.254, L.21 – p.255, L.1); before putting the aspirin in the baggie, he cleaned it by blowing it out (Tr., p.254, Ls.14-19); he then took the baggie to his mother's work and placed it in her purse (Tr., p.237, Ls.11-22; p.255, Ls.2-15). Finally, he testified that he only placed the one white baggie of aspirin in Heiner's purse. (Tr., p.255, Ls.16-22.) Heiner also testified, confirming that her son had brought her some aspirin in a baggie and asserting that she had no knowledge that the residue in one of the two baggies later found in her purse was methamphetamine. (Tr., p.260, L.3 – p.264, L.22.)

After the close of evidence, the district court asked the parties if they had any additional jury instructions to request. (Tr., p.271, Ls.10-14; p.276, Ls.5-7.) At first,

defense counsel responded that he did not. (Tr., p.276, L.8.) However, he later changed his mind (Tr., p.279, Ls.2-4), and ultimately requested an instruction based on Idaho Code § 18-201(1) (Tr., p.283, L.1 – p.284, L.3; R., p.211). The district court denied the request on the ground that the proposed instruction was adequately covered by the district court's instructions. (Tr., p.286, Ls.20-24.)

The jury found Heiner guilty of possession of methamphetamine. (Tr., p.327, L.16 – p.329, L.19; R., p.224.) Heiner filed a motion to set aside the verdict and for a new trial based on instructional error (R., pp.205-08), which the district court denied (R., pp.226-30). The district court entered judgment against Heiner and sentenced her to a unified term of five years with two years fixed, suspended that sentence, and placed her on probation for a period of four years. (R., pp.236-41.) Heiner filed a timely notice of appeal. (R., pp.243-45.)

ISSUES

Heiner states the issues on appeal as:

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).

(Appellant's brief, p.6.)

The state rephrases the issue as:

1. Has Heiner failed to show error in the district court's instructions to the jury?

2. Because the district court correctly instructed the jury, has Heiner failed to show that the district court abused its discretion when it denied her motion for a new trial, which was premised on alleged instructional error?

ARGUMENT

I.

Heiner Has Failed To Show Error In The District Court's Instructions To The Jury

A. Introduction

On appeal, Heiner claims that the district court erroneously instructed the jury when it declined her requested mistake of fact instruction. (Appellant's brief, pp.7-11.) Contrary to Heiner's claims, the legal substance of her requested instruction was adequately covered by the pattern-modeled instructions given in this case. The district court correctly instructed the jury and should be affirmed.

B. Standard Of Review

Whether a jury was properly instructed is a question of law over which the appellate court exercises free review. State v. Draper, 151 Idaho 576, 587-88, 261 P.3d 853, 864-65 (2011) (citing State v. Humphreys, 134 Idaho 657, 659, 8 P.3d 652, 654 (2000)). "An erroneous instruction will not constitute reversible error unless the instructions as a whole misled the jury or prejudiced a party." State v. Shackelford, 150 Idaho 355, 373-74, 247 P.3d 582, 600-01 (2010).

C. The District Court Correctly Instructed The Jury

Consistent with the pattern Idaho Criminal Jury Instructions, the district court instructed the jury in this case that:

In order for the defendant to be guilty of Possession of a Controlled Substance, the state must prove each of the following:

1. On or about May 18, 2015
2. in the state of Idaho

3. the defendant Melissa Edna Olin possessed any amount of methamphetamine, and
4. the defendant either knew it was methamphetamine or believed it was a controlled substance.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proved beyond a reasonable doubt, then you must find the defendant guilty.

(Instruction No. 15 (Exs., p.24); compare with I.C.J.I. 403.) The district court also instructed the jury that “[a] person has possession of something if the person knows of its presence and has physical control of it, or has the power and intention to control it.” (Instruction No. 17 (Exs., p.26).) The pattern instructions are presumptively correct statements of law, and trial courts are expected to use them unless another instruction would more adequately, accurately, or clearly state the applicable law. State v. Reid, 151 Idaho 80, 85, 253 P.3d 754, 759 (Ct. App. 2011). Here, the district court gave the pattern instruction for possession of methamphetamine, and no other instruction would have offered a better statement of the law.

In addition to these presumptively correct instructions, Heiner requested an additional jury instruction on mistake of fact, mirroring the language of Idaho Code § 18-201(1), under which a person is not capable of committing a crime if the person who committed the act that is charged did so “under an ignorance or mistake of fact which disproves any criminal intent.” (Tr., p.283, L.1 – p.284, L.3; R., p.211.) The district court denied this request, correctly determining that Heiner’s proposed instruction was already adequately covered by the court’s instructions. (Tr., p.286, Ls.20-24.)

In fact, more than merely being adequately covered by the instructions, Heiner's proposed instruction was entirely duplicative of the pattern element instruction. As the Idaho Supreme Court has previously recognized, Idaho Code § 37-2732(c), which criminalizes possession of a controlled substance, "does not contain any mental element." State v. Fox, 124 Idaho 924, 926, 866 P.2d 181, 183 (1993). Rather, that requirement was developed through the precedents of this Court. In Fox, the Court rejected the argument that a mistake of fact defense under Idaho Code § 18-201(1) could be available to a defendant who knew the nature of the substance he or she possessed, but was unaware that the substance was illegal. Id. at 926, 866 P.2d at 183. Then, in State v. Lamphere, 130 Idaho 630, 633, 945 P.2d 1, 4 (1997), the Court determined that where a defendant did not know the nature of the substance he or she possessed, a mistake of fact defense under Idaho Code § 18-201(1) was available. Following Lamphere, the committee amended the pattern jury instruction by adding element four. See I.C.J.I. 403, comment 6. Thus, element four of the pattern instruction *is* the instruction on mistake of fact under Idaho Code § 18-201(1).

A defendant is not entitled to a jury instruction that is an erroneous statement of the law, is not supported by the evidence, is an impermissible comment on the evidence, or is adequately covered by other instructions. State v. Johns, 112 Idaho 873, 881, 736 P.2d 1327, 1335 (1987). On appeal, Heiner claims that she was entitled to her requested instruction because, she asserts, "[a] reasonable view of at least some evidence support[ed her] theory" that she did not know the substance she possessed was methamphetamine. (Appellant's brief, p.8.) But Heiner ignores the fact that, if the jury agreed with her theory of the case—that Heiner believed the residue in one of the

baggies she possessed was aspirin and not methamphetamine (or some other controlled substance¹)—the jury could not have convicted Heiner under the instructions already given. Her proposed jury instruction, therefore, was adequately covered by (and in fact duplicative of) the presumptively correct model instructions already given, and the district court correctly denied Heiner’s requested instruction.

Heiner, relying on the Court’s opinion in State v. Blake, 133 Idaho 237, 985 P.2d 117 (1999), also argues that the general instruction on possession is inadequate because, she asserts, it could allow a jury to convict a defendant where the defendant did not know she was in possession of an illegal substance, but thought it was something benign. (Appellant’s brief, p.10.) Heiner’s reliance on Blake is misplaced. The jury instructions in Blake were different from those given in this case in a crucial aspect: In Blake, the jury was instructed—consistent with the pattern instruction then in use—that it could find the defendant guilty if the state proved that “the Defendant knew or **should have known** that the substance possessed was a controlled substance.” Blake, 133 Idaho at 240-41, 985 P.2d at 120-21 (emphasis original).

The pattern instructions on possession of a controlled substance have been updated since Blake to better reflect Idaho Code § 18-201(1). As noted by the Court of Appeals in State v. Hopper, 142 Idaho 512, 514, 129 P.3d 1261, 1263 (Ct. App. 2005), they now require the state to prove that “the defendant either knew it was [name of substance] or believed it was a controlled substance.” The Court’s conclusion in that case is equally relevant to this case: “Unlike the instructions in Blake, which allowed a

¹ Of course, had Heiner believed that the residue she possessed was cocaine and not methamphetamine, though still technically mistaken, this would not be a defense to possession of a controlled substance.

finding of guilty if the defendant was unaware the substance [she] possessed was a controlled substance, the instructions in this case allowed the jury to find [Heiner] guilty only if it concluded [she] knowingly possessed methamphetamine.” Id.

Because the presumptively correct jury instructions given by the district court required the state to prove that Heiner knowingly possessed methamphetamine, her proposed instruction was already adequately covered by the instructions given, and the district court correctly declined Heiner’s superfluous instruction. Heiner has failed to show that the district court erred by declining to give her requested instruction. Heiner’s judgment of conviction for possession of methamphetamine should be affirmed.

II.

Heiner Has Failed To Show That The District Court Abused Its Discretion When It Denied Her Motion For A New Trial

A. Introduction

Heiner argues that the district court abused its discretion when it denied her motion for a new trial. (Appellant’s brief, pp.11-12.) Application of the correct legal standards shows no abuse of the district court’s discretion.

B. Standard Of Review

Granting or denying a motion for a new trial is within the district court’s discretion and will not be disturbed on appeal unless that discretion is abused. State v. Jones, 127 Idaho 478, 481, 903 P.2d 67, 70 (1995).

C. The District Court Properly Denied Heiner's Motion For A New Trial

Following her conviction for possession of methamphetamine, Heiner moved for a new trial alleging that, by omitting her proposed instruction on Idaho Code § 18-201(1), the court had erroneously instructed the jury. (R., pp.205-08.) Concluding that the jury had been properly instructed because, *inter alia*, Heiner's proposed instruction was already adequately covered by the instructions already given, the district court denied Heiner's motion. (R., pp.226-30.) The district court was correct. As shown above (see Argument I(C), *supra*), and contrary to Heiner's arguments on appeal, her proposed instruction was adequately covered by (and duplicative of) the instructions which required the state to prove Heiner knew the substance she possessed was methamphetamine, or at least believed it was a controlled substance.

On appeal, Heiner asserts that the instructions were inadequate because they did not inform the jury that, if Heiner acted under a mistake of fact, she would not be capable of forming the requisite knowledge. (Appellant's brief, p.12.) This argument appears to misunderstand Idaho Code § 18-201(1). By its unambiguous terms, a mistake of fact alone is insufficient for that statute to apply; rather, the mistake of fact must *disprove any criminal intent*. I.C. § 18-201(1). In the context of possession of a controlled substance, the defendant's mistake of fact must raise a reasonable doubt on whether the defendant believed he or she possessed something other than a controlled substance. For instance, to raise the defense under the statute in this case, the jury would have needed reasonable doubt on element four regarding whether Heiner believed she possessed aspirin residue instead of methamphetamine residue. But contrary to Heiner's assertions, under the instructions given to the jury, if there was a

reasonable doubt that Heiner believed she possessed aspirin, the jury was already *required* to acquit her. (See Instruction No. 15 (Exs., p.24).) On the other hand, if the jury concluded beyond a reasonable doubt that Heiner knew that she possessed methamphetamine residue, then there is no mistake of fact and the jury could properly convict her. Finally, if the jury accepted that Heiner was unaware that the substance she possessed was methamphetamine residue, but concluded beyond a reasonable doubt that she believed it was some other controlled substance, Heiner's mistake of fact would not disprove criminal intent, and the jury could still properly convict her. Thus, the only defense available under Idaho Code § 18-201(1) is the same defense already granted by element four of the pattern jury instruction.

Heiner also emphasizes the Court's holding in State v. McKean, 159 Idaho 75, 82, 356 P.3d 368, 375 (2015), that "the defendant's ignorance of the identity of a substance would be a defense to a charge of possession of a controlled substance" to support her arguments. (Appellant's brief, p.12.) What Heiner fails to recognize is, under the presumptively correct pattern jury instructions offered in this case, that defense was available to Heiner—and she in fact availed herself of it. (See Tr., p.236, L.13 – p.241, L.17; p.260, L.3 – p.264, L.22; p.307, L.15 – p.314, L.9.) The jury rejected that defense, necessarily (under the instructions) concluding beyond a reasonable doubt that Heiner in fact knew that the residue she possessed was methamphetamine or that she at least believed that it was some other controlled substance.

The district court properly denied Heiner's motion for a new trial because, as it correctly concluded, the jury in her trial was properly instructed. Heiner has failed to

show that the district court abused its discretion by denying her motion. The district court's order denying Heiner's motion for a new trial should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm Heiner's conviction for possession of methamphetamine, and affirm the district court's order denying Heiner's motion for a new trial.

DATED this 6th day of July, 2017.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of July, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd