4-4-2018

State v. Wilson Respondent's Brief Dckt. 45193

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45193**
Plaintiff-Respondent,	)	
	)	**Canyon County Case No.**
v.	)	**CR-2016-14841**
	)	
RICHARD ALAN WILSON,	)	
AKA RICHARD BURRELL,	)	
RICHIE B. WILSON,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

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

Richard Alan Wilson appeals the district court's Judgment And Commitment entered after a jury found him guilty on two counts of aiding and abetting trafficking in methamphetamine. Wilson argues on appeal that the state did not present sufficient evidence for his convictions.

Statement Of The Facts And Course Of The Proceedings

On April 7, 2016, Regina Jones, an alleged drug dealer, contacted Mike Phillips, a detective with the Nampa Police Department working undercover in the special investigations unit, and told him "that she had just picked up two ounces of Methamphetamine and wanted to know if [he] wanted to get them." (2/28/2017 Trial Tr., p.169, L.25 – p.170, L.11; p.178, L.4 – p.179, L.15.) She offered to sell one ounce of methamphetamine for $650 or two ounces for $1200. (2/28/2017 Trial Tr., p.179, Ls.4-18.) Detective Phillips agreed to buy both ounces for $1200. (Id.) Jones and Detective Phillips agreed to meet at Target around 6 p.m. to make the exchange. (2/28/2017 Trial Tr., p.179, L.19 – p.180, L.1.)

Detective Phillips went alone in his car to Target. (2/28/2017 Trial Tr., p.180, Ls.2-3.) He wore a wire and had a team of officers surveilling the transaction. (2/28/2017 Trial Tr., p.180, Ls.4-11.) He contacted Jones before arriving. (2/28/2017 Trial Tr., p.180, Ls.12-20.) "She told [him] that she was going to be in a white Ford Expedition and the hood was going to be popped, and that's how [he] could tell that she was there." (Id.)

When Detective Phillips pulled up to the white Ford Expedition, he "saw a male subject standing outside the front of the vehicle . . . kind of lingering around the front of

the vehicle looking around." (2/28/2017 Trial Tr., p.181, Ls.2-8.) "The hood was popped." (Id.) Detective Phillips sent a text message to Jones informing her which car he was in. (2/28/2017 Trial Tr., p.182, Ls.9-15.)

Jones got out of the white Ford Expedition and into Detective Phillips's car. (2/28/2017 Trial Tr., p.182, Ls.9-22.) They had "kind of general conversation." (2/28/2017 Trial Tr., p.182, Ls.16-22.) Detective Phillips gave Jones the money, and she handed him "a Ziploc baggie" that "contained two smaller baggies which contained Methamphetamine." (2/28/2017 Trial Tr., p.182, Ls.9-22; p.190, Ls.9-17.) After the transaction, Jones went back to the white Ford Expedition. (2/28/2017 Trial Tr., p.191, Ls.11-13.) The unidentified male "shut the hood on the car and then went and got in the passenger seat of the Ford Expedition." (2/28/2017 Trial Tr., p.190, L.23 – p.191, L.3.)

Detective Phillips submitted the substance he obtained from Jones to the lab for testing. (2/28/2017 Trial Tr., p.194, Ls.5-24.) The lab results showed that the first baggie weighed 27.76 grams, and the second baggie weighed 27.89 grams. (3/1/2017 Trial Tr., p.21, Ls.13-25.) The substances in both baggies tested positive for methamphetamine. (3/1/2017 Trial Tr., p.23, L.2 – p.24, L.8.)

On April 27, 2016, Detective Phillips set up another deal with Jones: "an ounce of Methamphetamine for $600." (2/28/2017 Trial Tr., p.211, Ls.15-23; p.212, Ls.8-10.) Detective Phillips contacted Jones to "tell her specifically that [he] wanted an ounce" of methamphetamine. (2/28/2017 Trial Tr., p.212, Ls.11-20.) Jones told Detective Phillips "that she didn't have it with her, that she had to go pick it up from Robert's house." (2/28/2017 Trial Tr., p.212, Ls.21-23.) Jones told Detective Phillips that she would pick

up the methamphetamine and then meet him at "McDonald's off of Garrity in Nampa." (2/28/2017 Trial Tr., p.212, Ls.3-17.)

This time Detective Phillips made it to the agreed location first. (2/28/2017 Trial Tr., p.214, Ls.12-24.) He saw a four-door Nissan pull into the parking lot. (2/28/2017 Trial Tr., p.214, Ls.12-18.) The same unidentified male from the first transaction was driving the car, and Jones was in the passenger seat. (2/28/2017 Trial Tr., p.214, L.19 – p.215, L.1.) "The male subject got out of the vehicle, out of the driver's side, popped the hood, raised the hood, just like he did before. Milled around the front. Looked around while [Jones] was seated in the car for a couple minutes." (2/28/2017 Trial Tr., p.215, Ls.7-12.)

Detective Phillips sent Jones a text message with his location, and Jones eventually came over and sat in his car. (2/28/2017 Trial Tr., p.215, Ls.16-23.) She gave Detective Phillips "a baggie of white crystal substance" and he gave her $620.[1] (2/28/2017 Trial Tr., p.215, L.24 – p.216, L.5.) Detective Phillips told Jones that he needed another ounce. (2/28/2017 Trial Tr., p.216, Ls.6-11.) In the recorded conversation, he referred to the methamphetamine as "dope." (Exhibit 9 at 01:00 – 1:08.) Jones agreed to provide an additional ounce but "told [him] she would have to go back to Robert's house and pick it up and bring it back to [him]." (2/28/2017 Trial Tr., p.216, Ls.6-13.)

Jones "walked back to the Nissan where the male subject, he had already, after he had looked around a little bit, closed the lid and got back into the vehicle." (2/28/2017 Trial Tr., p.216, Ls.20-23.) Jones and the unidentified male left in the Nissan. (2/28/2017

[1] As Detective Phillips explained at the trial, the agreed-upon price for the ounce of methamphetamine was $600, but he unintentionally included an extra $20 in the money he gave to Jones. (2/28/2017 Trial Tr., p.230, Ls.6-14.)

Trial Tr., p.217, Ls.3-6.) The unidentified male was driving. (2/28/2017 Trial Tr., p.216, Ls.24-25.)

One of the officers surveilling the undercover transaction sent out a radio request stating he wanted the Nissan stopped. (3/1/2017 Trial Tr., p.92, L.17 – p.93, L.3; p.94, L.16 – p.95, L.15.) Officer Jacob Peper of the Nampa Police Department received the request and stopped the vehicle. (3/1/2017 Trial Tr., p.52, Ls.7-12; p.53, Ls.6-19.) The previously unidentified male, who was driving the vehicle, identified himself as Richard Alan Wilson. (3/1/2017 Trial Tr., p.54, Ls.8-17.) Jones was in the passenger seat. (3/1/2017 Trial Tr., p.54, L.25 – p.55, L.1.) Officer Peper conducted a search of Wilson and, "in his front left pants pocket, [he] found $600 cash." (3/1/2017 Trial Tr., p.55, Ls.9-12.) The serial numbers on the money seized from Wilson matched the serial numbers of the money Detective Phillips used to purchase the methamphetamine from Jones. (3/1/2017, Trial Tr., p.129, L.3 – p.130, L.4.)

Detective Phillips submitted to the lab the substance he received from Jones. (2/28/2017 Trial Tr., p.219, Ls.14-22.) The substance weighed 25.91 grams. (3/1/2017 Trial Tr., p.31, L.13 – p.32, L.17.) It also tested positive for methamphetamine. (3/1/2017 Trial Tr., p.32, L.23 – p.33, L.12.)

A few days after the April 27 transaction, Wilson contacted the police "wanting to come and try and recover the money that had been seized." (3/1/2017 Trial Tr., p.68, L.21 – p.69, L.11.) In a video-recorded interview with law enforcement, Wilson "stated that he had received that money from work and through loans from family and such." (3/1/2017 Trial Tr., p.70, L.24 – p.71, L.2; see State's Exhibit 5 at 01:48 – 02:16.) And Wilson wrote and signed a witness statement to that effect. (State's Exhibit 6.)

Wilson also stated that Jones had mentioned that law enforcement wanted her "to flip." (State's Exhibit 5 at 07:50 – 08:14.) One of the officers asked Wilson, "are you in the game, then?" (Id. at 08:34 – 08:36.) Wilson responded, "sort of." (Id. at 08:37 – 08:39). When asked to elaborate, Wilson explained that he goes with Jones "when she does deals." (Id. at 08:44 – 08:48.) Wilson told the officers that Jones compensates him with free lunch and free "dope." (Id. at 09:00 – 09:10.) He also admitted that he uses "dope." (Id.) Wilson stated that the reason he goes with Jones is "protection, mainly." (Id. at 09:10 – 09:17.)

The State charged Wilson with two counts of aiding and abetting Jones in trafficking methamphetamine, one count for the transaction on April 7, 2016, and one count for the transaction on April 27, 2016. (R., pp.7-8.) A jury found Wilson guilty on both counts. (R., pp.139-40.) The district court sentenced Wilson to ten years' imprisonment with three years fixed. (R., pp.155-56.) Wilson timely appealed. (R., pp.157-62.)

ISSUE

Wilson states the issue on appeal as:

> Was there sufficient evidence to support Mr. Wilson's convictions of two counts of aiding and abetting trafficking in methamphetamine?

(Appellant's brief, p.6)

The state rephrases the issue as:

Has Wilson failed to show that the state did not present sufficient evidence for his convictions?

ARGUMENT

Wilson Has Failed To Show That The State Did Not Present Sufficient Evidence For His Convictions

A. Introduction

The jury's convictions of Wilson on both counts of aiding and abetting the trafficking of methamphetamine are supported by substantial evidence. Wilson unsuccessfully attacks three conclusions reached by the jury: (1) Jones represented the methamphetamine sold on April 27 weighed one ounce; (2) Wilson intended to aid and abet the sale of methamphetamine on April 27; and (3) Wilson knew that the substance sold on April 7 and April 27 was methamphetamine.

The state proved that Jones represented the methamphetamine sold on April 27 weighed one ounce through the testimony of Detective Phillips, the individual to whom Jones made the representation. He testified that, prior to the transaction, he asked Jones specifically for one ounce of methamphetamine and she agreed to get "it" for him. That is substantial evidence that Jones represented the methamphetamine weighed one ounce, even under Wilson's definition of representation as "a presentation of fact—either by words or conduct—made to induce someone to act." (Appellant's brief, p.19.)

The state proved that Wilson intended to aid and abet the trafficking of methamphetamine on April 27 by showing his extensive participation in the sale. Wilson provided transportation to and from the transaction, sent the signal to the buyer that they had arrived, provided protection for the transaction, and walked away with virtually all of the money paid for the methamphetamine. Contrary to Wilson's assertion, the state did not need to prove that he knew that Jones represented the methamphetamine weighed an ounce because the only relevance of the representation was to prove the determinative

amount of methamphetamine under the statute, and the state does not need to prove knowledge of the amount to secure a conviction for trafficking methamphetamine.

The state proved that Wilson knew the substance was methamphetamine through circumstantial evidence. Specifically, the state presented evidence that Wilson knew Jones distributed methamphetamine, intimately participated in the sale of the methamphetamine on both occasions, received the going-rate for an ounce of methamphetamine after the second transaction, and lied about the source of the drug money to the police. All of that evidence belies Wilson's claim that "[t]he jury was presented with no evidence that he knew Ms. Jones sold methamphetamine." (Appellant's brief, p.21.)

B. Standard Of Review

"This Court 'will uphold a judgment of conviction entered upon a jury verdict so long as there is substantial evidence upon which a rational trier of fact could conclude that the prosecution proved all essential elements of the crime beyond a reasonable doubt.'" State v. Kralovec, 161 Idaho 569, 572, 388 P.3d 583, 586 (2017) (quoting State v. Severson, 147 Idaho 694, 712, 215 P.3d 414, 432 (2009)). "Evidence is substantial if a 'reasonable trier of fact would accept it and rely upon it in determining whether a disputed point of fact has been proven.'" Severson, 147 Idaho at 712, 215 P.3d at 432 (quoting State v. Mitchell, 130 Idaho 134, 135, 937 P.2d 960, 961 (Ct. App. 1997) (brackets omitted)). This Court must "view the evidence in the light most favorable to the prosecution in determining whether substantial evidence exists" and "will not substitute [its] own judgment for that of the jury on matters such as the credibility of witnesses, the weight to be given to certain evidence, and the 'reasonable inferences to be drawn from the evidence.'" Id. (quoting State v. Sheahan, 139 Idaho 267, 285, 77 P.3d 956, 974 (2003)).

C. The State Presented Substantial Evidence Upon Which A Rational Trier Of Fact Could Convict Wilson On Both Counts Of Aiding And Abetting The Trafficking Of Methamphetamine

The state presented substantial evidence that Wilson aided and abetted the trafficking of methamphetamine on April 7, 2016, and April 27, 2016. The district court instructed the jury that, in order to convict Wilson on each count, the state must prove five elements beyond a reasonable doubt: (1) on the relevant date, (2) in the state of Idaho, (3) "the defendant aided and abetted Regina L. Jones in the delivery of methamphetamine," (4) "the defendant knew it was methamphetamine," and (5) "Either: (a) the quantity delivered was at least twenty-eight (28) grams . . . Or (b) the quantity delivered was represented to be one ounce or more of methamphetamine." (Aug., pp.38-39 (underlining in original).) Wilson did not take issue with that characterization of the elements of the crime in the district court and has not done so on appeal. Instead, Wilson argues that the state failed to present substantial evidence to show that (1) the methamphetamine in the April 27, 2016 transaction weighed at least 28 grams; (2) Wilson had the requisite intent with respect to the April 27, 2016 transaction; and (3) Wilson knew that the substance Jones sold in either transaction was methamphetamine. He is wrong.

1. Substantial Evidence Showed The Methamphetamine Weighed At Least 28 Grams

The state presented substantial evidence at trial that the methamphetamine used in the transaction on April 27, 2016, weighed at least 28 grams. A person can be convicted of trafficking methamphetamine when the transaction involves "twenty-eight (28) grams or more of methamphetamine." I.C. § 37-2732B(a)(4). Pursuant to the statute, "the weight of the controlled substance as represented by the person selling or delivering it is determinative if the weight as represented is greater than the actual weight of the controlled

substance." I.C. § 37-2732B(c). This means the state can prove the weight element of the crime either by (1) showing the actual weight is at least 28 grams or (2) showing that the "person selling or delivering" the methamphetamine "represented" that it weighed at least 28 grams. See id.

For the April 27 transaction, the state used the second approach by offering substantial evidence that Jones "represented" that the methamphetamine sold on April 27 weighed more than 28 grams, I.C. § 37-2732B(c). Wilson does not dispute that Jones both sold and delivered methamphetamine to Detective Phillips on April 27, which means, as the "person selling or delivering" the methamphetamine, Jones's representation of the weight of the methamphetamine was "determinative." Id. Detective Phillips testified that, in discussing the terms of the transaction prior to the exchange, he "specifically" told Jones that he "wanted an ounce" of methamphetamine. (2/28/2017 Trial Tr., p.212 Ls.18-20.) He also testified as to what Jones said in response: "She told me that she didn't have *it* with her, that she had to go pick *it* up from Robert's house." (2/28/2017 Trial Tr., p.212, Ls.21-23 (emphases added).)

A rational trier of fact would, or at the very least *could*, conclude from Detective Phillips's testimony that Jones was telling Detective Phillips that she had exactly what he had requested (i.e., an ounce of methamphetamine) and she was willing to sell "it" to him but she had to go pick "it" up first. This representation by Jones that the methamphetamine she sold Detective Phillips on April 27 weighed an ounce satisfied the statute's 28-gram threshold. (See 3/1/2017 Trial Tr., p.35, Ls.15-17 (lab scientist testifying that "[t]here are 28.35 grams in an ounce"); 3/1/2017 Trial Tr., p.171, L.21 (district court instructing the jury that "[o]ne ounce equals 28.35 grams").)

The jury also heard other evidence that supported the conclusion that Jones "represented" to Detective Phillips that the methamphetamine weighed at least 28 grams. Detective Phillips, the individual to whom Jones made the representation, understood from the conversation that he "was supposed to be getting an ounce of Methamphetamine for $600." (2/28/2017 Trial Tr., p.212, Ls.3-10.) In addition, the "going rate" for an ounce of methamphetamine at the time of the deal was $600—the exact amount for which Jones agreed to sell the methamphetamine. (2/28/2017 Trial Tr., p.177, Ls.7-9.)

The state does not disagree with Wilson that "representation" can be defined as "a presentation of fact—either by words or by conduct—made to induce someone to act, esp. to enter into a contract." (Appellant's brief, p.19 (quoting Black's Law Dictionary, (10th ed. 2014)).) But that definition describes perfectly Jones's behavior and statements as explained by Detective Phillips. Detective Phillips told Jones "specifically that [he] wanted an ounce" of methamphetamine. (2/28/2017 Trial Tr., p.212, Ls.18-20.) Rather than tell Detective Phillips that she did not have an ounce or would be providing a different amount, Jones responded that "[s]he didn't have *it* with her, that she had to go pick *it* up from Robert's house." (2/28/2017 Trial Tr., p.212, Ls.21-23 (emphases added).) Then she met with Detective Phillips later that same day and gave him methamphetamine in exchange for $600, the going rate for an ounce of methamphetamine. (2/28/2017 Trial Tr., p.177, Ls.4-9; p.212, Ls.24-25; p.215, L.24 – p.216, L.5.) Both Detective Phillips and the jury reasonably concluded, based on Jones's words and conduct, that Jones represented as fact to Detective Phillips that she could get "an ounce of Methamphetamine" and sell it to him "for $600." (2/28/2017 Trial Tr., p.212, Ls.8-10.) Such a "represent[ation] by the person

selling or delivering" the methamphetamine is all that the statute requires. I.C. § 37-2732B(c).

Wilson focuses on the recorded conversation that took place at the time of the transaction, arguing that "there were no statements made *during the transaction* from which the jury could infer that Ms. Jones was representing the methamphetamine to weigh an ounce." (Appellant's brief, p.20 (emphasis added, footnote omitted).) But that is a red herring. Jones made the representation via cell phone *before* the transaction and recorded conversation took place.[2] (2/28/2017 Trial Tr., p.211, L.15 – p.212, L.23.) That is sufficient to meet the statute's 28-gram threshold; nothing in the statute requires the representation to be made at the exact time the methamphetamine changes hands. See I.C. § 37-2732B(c).

With respect to the cell-phone conversation that occurred prior to the transaction, Wilson simply notes "that if the State had merely called Ms. Jones as a witness it could, presumably, have provided sufficient context by having her testify as to the terms of her deal with Detective Phillips, including what statements were made during their unrecorded and unmonitored telephone calls." (Appellant's brief, p.20 n.5.) Even if Jones would have agreed to testify and could have provided additional information about the terms of the deal,[3] that does not make her testimony necessary for the state to prove the weight element

[2] Wilson's suggestion that Detective Phillips went into the transaction on nothing but an "assumption that it was the amount he asked for" finds no support in the record. (Appellant's brief, p.20.) Detective Phillips explained in his testimony exactly why he believed he was purchasing one ounce of methamphetamine: Jones agreed to sell him one ounce of methamphetamine. (2/28/2017 Trial Tr., p.211, L.15 – p.212, L.25.)

[3] Jones, of course, had a Fifth Amendment right not to testify on behalf of the state that she agreed to sell Detective Phillips an ounce of methamphetamine.

of the offense. The statute does not dictate how the state must prove that the seller represented the weight—much less demand that the seller herself testify that she made the representation. See I.C. § 37-2732B(c).

For this element of the crime, the state had to prove beyond a reasonable doubt that the methamphetamine sold on April 27 weighed more than 28 grams. The statute expressly allows the state to prove the weight by showing that the "person selling or delivering" the methamphetamine represented the weight to be at least 28 grams. I.C. § 37-2732B(c). The state did so through the testimony of Detective Phillips, the only individual besides Jones involved in the relevant conversation, who testified that he specifically asked Jones for one ounce of methamphetamine, and that Jones agreed to provide "it." (2/28/2017 Trial Tr., p.211, L.15 – p.212, L.25.) His testimony and the circumstances surrounding the transaction constituted substantial evidence from which the jury could—and did—find that Jones represented the weight of the methamphetamine to be more than 28 grams.

2. Substantial Evidence Showed Wilson Had The Requisite Intent

The state presented substantial evidence to show that Wilson had the requisite intent to support the state's aiding and abetting theory of liability for the April 27 transaction. In Idaho, the law makes no distinction between a person who directly commits a crime and a person who intentionally aids and abets its commission. I.C. § 19-1430; see State v. Shackelford, 150 Idaho 355, 379, 247 P.3d 582, 606 (2010). "To 'aid and abet' means to assist, facilitate, promote, encourage, counsel, solicit, or incite the commission of a crime." State v. Smith, 161 Idaho 782, 787, 391 P.3d 1252, 1257 (2017); see I.C. § 19-1430. "To be an aider and abettor one must share the criminal intent of the principal; there must be a

community of purpose in the unlawful undertaking." State v. Scroggins, 110 Idaho 380, 386, 716 P.2d 1152, 1158 (1985).

The evidence presented at trial proved that Wilson and Jones acted with "a community of purpose in the unlawful undertaking." Id. Wilson confessed, on a video played to the jury, that he "goes with [Jones] when she does deals" to provide "protection." (Exhibit 5 at 08:45 – 09:17.) He admitted that, in exchange for his services, Jones provides Wilson with "lunch" and "dope." (Id.)

Wilson's description of his role in the selling of methamphetamine matched his behavior on April 27. Wilson drove Jones to the meetup location. (2/28/2017 Trial Tr., p.214, L.19 – p.215, L.1.) Wilson got out of the car first and "[l]ooked around . . . for a couple of minutes" before Jones got out of the car. (2/28/2017 Trial Tr., p.215, Ls.7-12.) After the transaction, Wilson drove Jones away from the scene of the crime. (2/28/2017 Trial Tr., p.216, Ls.20-25.) The jury could readily infer from Wilson's role in providing transportation and protection for Jones that he and Jones shared the same intent: to sell methamphetamine.

But the evidence presented at the trial also showed that Wilson was a much more significant part of the methamphetamine-selling team than he admitted in the video-recorded interview. It was Wilson—not Jones—who propped up the hood of the car as a sign to Detective Phillips that they had his methamphetamine ready for sale. (2/28/2017 Trial Tr., p.215, Ls.7-12; see 2/28/2017 Trial Tr., p.180, Ls.12-20.) It was Wilson—not Jones—from whom Officer Peper seized $600 of the duo's ill-gotten gains. (3/1/2017 Trial Tr., p.55, Ls.5-12.) And it was Wilson—not Jones—who went to the police station, claimed that the drug money belonged *to him*, and told the officers that he obtained the

money from work and family loans even though the serial numbers matched the money Detective Phillips used to purchase the methamphetamine from Jones. (3/1/2017 Trial Tr., p.68, L.20 – p.76, L.21; p.129, L.11 – p.130, L.4; Exhibits 5-6.) Wilson's substantial participation in the sale of the methamphetamine strongly evinces "a community of purpose" between Wilson and Jones and shows that Wilson "share[d] the criminal intent of the principal." Scroggins, 110 Idaho at 386, 716 P.2d at 1158.

Wilson erroneously asserts that the state had to show that he specifically intended to aid and abet trafficking the exact purported amount of methamphetamine by "prov[ing] that Mr. Wilson knew the amount of methamphetamine Ms. Jones represented." (Appellant's brief, p.11 (capitalization altered, underlining omitted).) That is inconsistent with Idaho law. In trafficking cases, "the state is required to prove the amount of the controlled substance, but not knowledge of the amount." State v. Barraza-Martinez, 139 Idaho 624, 626, 84 P.3d 560, 562 (Ct. App. 2003).[4] And because the state does not need to prove knowledge of the amount to convict a principal of trafficking methamphetamine, the state does not need to prove knowledge of the amount when convicting an aider and abettor of the same crime. See State v. Romero-Garcia, 139 Idaho 199, 204, 75 P.3d 1209, 1214 (Ct. App. 2003).

[4] Although Barraza-Martinez was a cocaine trafficking case, the court's analysis and holding applies equally to methamphetamine trafficking, which is in the same section and has virtually identical wording. Compare I.C. § 37-2732B(2), with I.C. § 37-2732B(4); see also State v. Stefani, 142 Idaho 698, 704, 132 P.3d 455, 461 (Ct. App. 2005) (observing Barraza-Martinez generally held that "ignorance of the quantity of the substance possessed . . . is immaterial to a defendant's culpability for trafficking in a controlled substance"). Furthermore, the Idaho Supreme Court's pattern jury instruction for trafficking methamphetamine requires the state to prove the amount of methamphetamine but not that the defendant knew the amount. See ICJI 406D; see also State v. Hopper, 142 Idaho 512, 514, 129 P.3d 1261, 1263 (Ct. App. 2005) ("The pattern Idaho Criminal Jury Instructions are presumptively correct.").

In Romero-Garcia, the state convicted Romero-Garcia of aiding and abetting the failure to affix illegal drug tax stamps. 139 Idaho at 203, 75 P.3d at 1213. He argued on appeal that "the jury instructions improperly failed to require the jury to find that Romero-Garcia knew the required tax stamps were not affixed to the cocaine." 139 Idaho at 203, 75 P.3d at 1213. The Idaho Court of Appeals looked to the mental state required by the underlying offense to determine whether an aider and abettor must know whether the stamps were affixed. Romero-Garcia, 139 Idaho at 204, 75 P.3d at 1214 ("The mental state required is generally the same as that required for the underlying offense . . . ."). After reviewing the relevant statutes, the court found that "a person who fails to affix the illegal drug tax stamps becomes strictly liable for the omission." Id. Because there was no knowledge requirement to convict a principal of failing to affix a tax stamp, the court held the state did not have to prove knowledge to convict an aider and abettor. Id.

Similarly, the mental state required by the underlying offense here does not include knowledge of the amount of methamphetamine, Barraza-Martinez, 139 Idaho at 626, 84 P.3d at 562, which means it is not an element of aiding and abetting the underlying offense, see Romero-Garcia, 139 Idaho at 204, 75 P.3d at 1214. This, in turn, means the state did not need to prove that Wilson knew Jones represented the methamphetamine to weigh an ounce. Both the jury instructions, to which Wilson did not object, and the methamphetamine trafficking statute make clear that the relevance of Jones's representation was simply to prove the "determinative" amount of the methamphetamine. I.C. § 37-2732B(c). Specifically, the jury instructions explained that the state could prove the 28-gram weight element of the crime "Either" (1) by proving the actual "quantity delivered was at least twenty eight" grams "Or" (2) "the quantity delivered was represented

to be one ounce or more of methamphetamine." (Aug. pp.38-39 (underlining in original).) Thus, the state had to prove that Jones represented the methamphetamine to be at least one ounce to meet the 28-gram threshold of the trafficking statute but did not have to connect that representation to Wilson's knowledge or intent. See Barraza-Martinez, 139 Idaho at 626, 84 P.3d at 562.

Wilson cites Rosemond v. United States, 134 S. Ct. 1240 (2014), to support his argument (Appellant's brief, pp.14-15), but the holding of that decision does no such thing. In Rosemond, the Court addressed what intent the government must show when it accuses a defendant of aiding and abetting a violation of 18 U.S.C. § 924(c), which prohibits using or carrying a firearm during a drug trafficking crime. 134 S. Ct. at 1243. The question arose "from the compound nature of that provision," which requires the prosecutor to prove a predicate drug-trafficking crime *and* the use or carrying of a gun during the drug trafficking crime. Id. at 1245. The Court repeatedly emphasized the dual nature of the crime charged. See, e.g., id. at 1245-46, 1248 (referring to the crime at issue as "compound," a "two-part incident," a "combination crime," and a "double-barreled crime"). The Court held that "the intent must go to the specific and entire crime charged—so here, to the full scope (predicate crime plus gun use)." Id. at 1248. Accordingly, rather than merely have the intent to commit a drug trafficking offense (where a gun happens to be used), the defendant must have "advance knowledge that a confederate would use or carry a gun during the crime's commission." Id. at 1243.

Unlike the crime at issue in Rosemond, aiding and abetting the trafficking of methamphetamine is not a "combination crime" because it does not require proof of a predicate offense. See State v. Johnson, 145 Idaho 970, 978, 188 P.3d 912, 920 (2008)

("[A]iding and abetting is not a separate offense from the substantive crime."). And trafficking methamphetamine does not have two parts (e.g., drugs *and* guns); the full scope of the crime is simply selling methamphetamine. Thus, even under Rosemond, in order to prove intent, the state needed to prove only that Wilson knew that Jones was selling methamphetamine and intentionally assisted in that criminal activity. See, e.g., 134 S. Ct. at 1249.

Wilson reads Rosemond differently. He cites the U.S. Supreme Court's language that the jury must find the "defendant has chosen, with full knowledge, to participate in the illegal scheme," id. at 1250, and suggests the state could only prove he had "full knowledge" here if it proves he had advanced knowledge of the purported amount of the methamphetamine being sold (Appellant's brief, p.14). But nothing in Rosemond suggests that "full knowledge" for the aider and abettor means even more knowledge than required to convict the principal. Nor could a U.S. Supreme Court decision interpreting federal statutes overturn the Idaho Court of Appeals' Romero-Garcia decision or this Court's repeated holdings that, under Idaho law, "there are no additional elements the State must prove" to show accomplice, rather than principal, liability. State v. Adamcik, 152 Idaho 445, 464, 272 P.3d 417, 436 (2012) (citing State v. Johnson, 145 Idaho 970, 978, 188 P.3d 912, 920 (2008)). Because the state does not need to prove knowledge of the amount of methamphetamine being trafficked to convict a principal, Barraza-Martinez, 139 Idaho at 626, 84 P.3d at 562, the "full knowledge" required to convict someone accused of aiding and abetting the trafficking of methamphetamine cannot possibly include knowledge of the amount, see Adamcik, 152 Idaho at 464, 272 P.3d at 436.

The other federal decisions Wilson cites are distinguishable because the government in those cases charged the defendants with conspiracy to commit drug trafficking rather than as aiders and abettors. (Appellant's brief, pp.15-16.). In conspiracy cases, the criminal act is the making of the agreement, not the actual commission of the underlying crime. See, e.g., State v. Goggin, 157 Idaho 1, 12-13, 333 P.3d 112, 123-24 (2014). And under federal conspiracy law, at least as interpreted by one of the cases Wilson cites, the government must prove the defendant "could have reasonably foreseen a distribution conspiracy involving more than" the quantity of the drug required for the underlying offense. United States v. Rolon-Ramos, 502 F.3d 750, 756 (8th Cir. 2007).[5] No such requirement exists in Idaho's aiding and abetting law. Instead, "[t]he mental state required is generally the same as that required for the underlying offense—the aider and abettor must share the criminal intent of the principal and there must be community of purpose in the unlawful undertaking." Romero-Garcia, 139 Idaho at 204, 75 P.3d at 1214. Here, because the underlying offense does not require that a principal know or intend to

[5] Wilson cites two other federal decisions related to conspiracy charges, neither of which support his argument that "co-conspirators must have knowledge of quantity." (Appellant's brief, pp.15-16.) In United States v. Hayes, 342 F.3d 385 (5th Cir. 2003), the government charged the defendant with conspiracy to distribute 50 grams or more of crack cocaine and pointed to two separate drug transactions that each involved approximately 45 grams of crack cocaine. Id. at 386-87. The Fifth Circuit found "the Government's circumstantial evidence insufficient to prove that [the defendant] was involved in the [second] transaction," which meant it was not part of the charged conspiracy at all and could not be added toward the 50 grams of crack cocaine required by the statute. Id. at 389-92. The court said nothing about the defendant needing to have knowledge of the specific amount of crack cocaine used in the transactions. Wilson's other case is even further afield. See United States v. Gomez-Rosario, 418 F.3d 90, 104 (1st Cir. 2005) (holding, without mentioning knowledge required by defendant, that the district court did not constructively amend the indictment by allowing the jury to determine the drug quantity, in part, because "[n]o specific drug quantity needs to be proven for a jury to convict a defendant of conspiracy to possess with intent to distribute").

traffic the specific amount of methamphetamine purportedly sold, Barraza-Martinez, 139 Idaho at 626, 84 P.3d at 562, the state did not need to prove that Wilson knew the amount of methamphetamine purportedly sold—either through knowledge of Jones's representation or otherwise.

3. Substantial Evidence Showed Wilson Knew Jones Was Selling Methamphetamine

The state presented substantial evidence that Wilson knew the identity of the substance Jones sold to Detective Phillips. In order to find Wilson guilty on each count of trafficking methamphetamine, the jury had to find that Wilson knew the substance that Jones sold on April 7 and April 27 was methamphetamine. (Aug., pp.38-39.) "This knowledge 'may be proved by direct evidence or may be inferred from the circumstances.'" Goggin, 157 Idaho at 7, 333 P.3d at 118 (quoting State v. Armstrong, 142 Idaho 62, 65, 122 P.3d 321, 324 (Ct. App. 2005)). A rational trier of fact could infer from the circumstances surrounding the April 7 and April 27 transactions that Wilson knew Jones sold Detective Phillips methamphetamine.

The jury could reasonably infer that Wilson knew that Jones was a methamphetamine dealer. Wilson confessed in his video interview that Jones provides him with free "dope" in exchange for "protection" for Jones "when she does deals." (State's Exhibit 5 at 08:35 – 09:17.) Although dope can be a generic term that refers to any "illicit, habit-forming, or narcotic drug," Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/dope (last visited March 26, 2018), nothing in the record suggests Jones distributed any illegal substance other than methamphetamine.

In addition, and contrary to Wilson's assertion (Appellant brief, p.21), "dope" was identified as methamphetamine during the trial. In the audio recording of the second

transaction, Detective Phillips referred to methamphetamine as "dope" when he asked Jones for an additional ounce. (Exhibit 9 at 01:00 – 1:08; see 2/28/2017 Trial Tr., p.216, Ls.6-11.) Jones knew exactly what Detective Phillips meant: she agreed to provide an additional ounce but told him she would have to go back to her methamphetamine supplier and "pick it up and bring it back to [him]." (2/28/2017 Trial Tr., p.216, Ls.6-13.)

The jury could also reasonably infer that Wilson knew Jones sold methamphetamine to Detective Phillips based on Wilson's extensive participation in the drug sales and his sharing in a significant portion of the proceeds. Wilson rode with Jones and the methamphetamine to and from the April 7 transaction and drove Jones and the methamphetamine to and from the April 27 transaction. (2/28/2017 Trial Tr., p.181, Ls.4-8; p.190, L.23 – p.191, L.10; p.214, Ls.12-24; p.216, Ls.20-25.) He used the hood of their vehicle on both occasions to inform Detective Phillips that they had his methamphetamine. (2/28/2017 Trial Tr., p. 180, Ls.12-20; p.181, Ls.4-8; p.190, L.23 – p.191, L.3; p.215, Ls.7-12; p.216, Ls.20-23.) At both transactions, Wilson stood out in front of the car "lingering around"—presumably providing the confessed "protection" for the drug deal. (2/28/2017 Trial Tr., p.181, Ls.4-8; p.215, Ls.7-12; State's Exhibit 5 at 08:35 – 09:17.) And Officer Peper found $600 of the $620 of drug money on Wilson shortly after the second transaction. (3/1/2017 Trial Tr., p.55, Ls.5-12; p.129, L.11 – p.130, L.4.) Given Wilson's intimate participation in both sales of the methamphetamine and his reaping 97% of the reward from the second sale, it strains credulity to suggest he was completely ignorant of the product being sold.

The amount of money Wilson received also supports the conclusion that Wilson knew Jones had sold methamphetamine. Wilson confessed in the video played to the jury

that he had some involvement in the drug trade and that he uses "dope," which, as explained above, referred to methamphetamine in the context of the trial. (State's Exhibit 5 at 08:35 – 09:17; 3/1/2017 Trial Tr., p.76, Ls.7-13.) The jury also heard that $600, the amount found on Wilson, was the "going rate . . . for an ounce of Methamphetamine." (2/28/2017 Trial Tr., p.177, Ls.4-9.) Although that testimony did not come from Wilson, the jury could reasonably infer that an admitted participant in the drug trade who also uses methamphetamine would know the street price for methamphetamine.

Moreover, Wilson's failed attempt to reclaim the seized money suggests that he fully understood Jones had sold Detective Phillips methamphetamine. Wilson told the police that he received the money from work and family loans. (3/1/2017 Trial Tr., p.70, L.24 – p.71, L.2; State's Exhibit 5 at 01:48 – 02:16; State's Exhibit 6.) But the state put on evidence showing that the serial numbers on the money seized from Wilson matched the serial numbers on the money Detective Phillips used to purchase methamphetamine from Jones. (3/1/2017 Trial Tr., p.129, L.11 – p.130, L.4.) The jury could reasonably infer that Wilson misrepresented the source of the funds because he knew Jones sold Detective Phillips methamphetamine and wanted to avoid facing criminal charges.

In sum, Wilson accompanied a known methamphetamine dealer to two different clandestine transactions, popped the hood of the car prior to each transaction to inform the buyer of their presence, lingered around to provide protection while the transactions took place, closed the hood after each transaction, walked away from the second transaction with the going-rate for an ounce of methamphetamine in his pocket, and then lied to the police as to the source of his ill-gotten funds. Given those circumstances, the jury could

reasonably conclude that Wilson knew the substance being sold in each transaction was methamphetamine.

CONCLUSION

The state respectfully requests that this Court affirm the Judgment And Commitment entered upon a jury's guilty verdict against Wilson on two counts of aiding and abetting the trafficking of methamphetamine.

DATED this 4th day of April, 2018.

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of April, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

JN/dd