

Uldaho Law

Digital Commons @ Uldaho Law

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

5-30-2018

State v. Wilson Appellant's Reply Brief Dckt. 45193

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. Wilson Appellant's Reply Brief Dckt. 45193" (2018). *Idaho Supreme Court Records & Briefs, All*. 7337.

https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7337

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45193
)	
v.)	CANYON COUNTY NO. CR-2016-14841
)	
RICHARD ALAN WILSON,)	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**

HONORABLE JUNEAL C. KERRICK
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

SALLY J. COOLEY
Deputy State Appellate Public Defender
I.S.B. #7353
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	1
ISSUE PRESENTED ON APPEAL	2
ARGUMENT	3
There Was Insufficient Evidence To Convict Mr. Wilson Of Two Counts Of Aiding And Abetting Trafficking In Methamphetamine	3
CONCLUSION	9
CERTIFICATE OF MAILING	10

TABLE OF AUTHORITIES

Cases

Smith v. Goguen, 415 U.S. 566 (1974).....7

State v. Barraza-Martinez, 139 Idaho 624 (Ct. App. 2003).....5, 6, 7

State v. Cobb, 132 Idaho 195 (1998)7

State v. Parish, 79 Idaho 75 (1957)8

State v. Romero-Garcia, 139 Idaho 199 (Ct. App. 2003)7, 8

State v. Scroggins, 110 Idaho 380 (1985)8

State v. Taylor, 59 Idaho 724 (1939)8

Statutes

I.C. § 18–1148

I.C. § 37-2732B4, 5, 6

Additional Authorities

JI No. 154

JI No. 175

JI No. 185

STATEMENT OF THE CASE

Nature of the Case

After being charged with two counts of aiding and abetting trafficking in methamphetamine, Richard Wilson exercised his constitutional right to a jury trial. He was found guilty as charged, and received an aggregate sentence of ten years, with three years fixed.

On appeal, in what appears to be an issue of first impression for the appellate courts in Idaho, he asserts that the evidence presented at trial was insufficient to support his conviction for aiding and abetting trafficking by represented amount (Count II), because the State failed to establish that Mr. Wilson knew that his accomplice was representing the controlled substance to be “one ounce” or more. Additionally, the evidence presented at trial was insufficient to support Mr. Wilson’s conviction on Count II where the State failed to establish that his alleged accomplice affirmatively represented she was selling one ounce of methamphetamine. Finally, the evidence presented at trial was insufficient to support Mr. Wilson’s convictions as to both counts where the State failed to establish that Mr. Wilson knew the substance the alleged accomplice sold on the two occasions was methamphetamine.

This Reply Brief is necessary to address the State’s erroneous contentions.

Statement of the Facts and Course of Proceedings

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

ISSUE

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

ARGUMENT

There Was Insufficient Evidence To Convict Mr. Wilson Of Two Counts Of Aiding And Abetting Trafficking In Methamphetamine

In order for the jury to convict Mr. Wilson of aiding and abetting trafficking by represented amount, the State was required to establish that Mr. Wilson knew that Ms. Jones was representing the controlled substance to be “one ounce” or more. On appeal it is Mr. Wilson’s contention that, where the amount of methamphetamine Ms. Jones sold to the undercover officer was less than 28 grams, in order to prove Mr. Wilson aided and abetted trafficking, the State was required to establish that Mr. Wilson knew Ms. Jones represented the quantity she sold as “one ounce.” (Appellant’s Brief, p.1.) If he did not have such knowledge, he could not be guilty of the offense, as aiding and abetting requires a community of purpose—for him to have the same criminal intent as Ms. Jones. Where her conviction required a representation in order to establish an element, the amount, as an aider and abettor interchangeable with the principal, Mr. Wilson must have had knowledge of her representation(s).

The State asserts that it “presented substantial evidence at trial that the methamphetamine used in the transaction on April 27, 2016, weighed at least 28 grams.” (Respondent’s Brief, p.9.) However, the State acknowledges that the methamphetamine sold on this case was charged based on the “represented weight” theory—that the person selling it represented it to be at least 28 grams. (Respondent’s Brief, pp.9-10.)

The statute under which Mr. Wilson was charged provides:

Any person who knowingly delivers, or brings into this state, or who is knowingly in actual or constructive possession of, twenty-eight (28) grams or more of methamphetamine or amphetamine or of any mixture or substance containing a detectable amount of methamphetamine or amphetamine is guilty of a felony, which felony shall be known as “trafficking in methamphetamine or amphetamine.”

I.C. § 37-2732B(a)(4). The trafficking statute also states that, “For the purposes of subsections (a) and (b) of this section 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).

The State relied upon subsection (c) in prosecuting Mr. Wilson for trafficking, alleging Ms. Jones represented the weight of the methamphetamine was one ounce (28.35 grams), although the amount she delivered was less than twenty-eight grams (25.91 grams). (R., pp.7-8.)

At trial, the jury was instructed as to the elements of Count II:

In order for the defendant to be guilty of Aiding and Abetting Trafficking of methamphetamine as charged in Count I, the state must prove:

1. On or about April 27, 2016
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 of methamphetamine or any mixture or substance with a detectable amount of methamphetamine,

Or

- (b) the quantity delivered was represented to be one ounce or more of methamphetamine.

(Augmentation, p.39 (JI No. 15).) (reasonable doubt paragraph omitted).

The jury was also instructed on the representation theory:

Under Idaho law, 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.

(Augmentation, p.41 (JI No. 17).) Here, the amount sold on April 27, 2017, as charged in Count II, was only 25.91 grams, and not one ounce (28.35 grams). (3/1/17 Tr., p.32, Ls.1-17.)

The jury was instructed on aiding and abetting as follows:

All persons who participate in a crime either before or during its commission, by intentionally aiding, abetting, facilitating, encouraging, and/or assisting another to commit the crime with intent to promote or assist in its commission are guilty of the crime. All such participants are considered principals in the commission of the crime. The participation of each defendant in the crime must be proved beyond a reasonable doubt.

(Augmentation, p.42 (JI No. 18).)

The State relies on the Idaho Court of Appeals' decision in *State v. Barraza-Martinez*, 139 Idaho 624, 625 (Ct. App. 2003), to support its contention that “the state does not need to prove knowledge of the amount of methamphetamine being trafficked to convict a principal” therefore, “the ‘full knowledge’ required to convict someone accused of aiding and abetting the trafficking of methamphetamine cannot possibly include knowledge of the amount.” (Respondent’s Brief, p.18.)

In *Barraza-Martinez*, the defendant was charged with trafficking in 200 grams or more of cocaine by delivery. *Id.* The Idaho Court of Appeals held that the plain language of I.C. § 37-2732B(a)(2) does not require the State to prove beyond a reasonable doubt that the defendant knew the quantity of cocaine he delivered in order to sustain a trafficking conviction. *Barraza-Martinez*, 139 Idaho at 627.

However, *Barraza-Martinez* is inapposite for several reasons. First and foremost, Mr. Barraza-Martinez was charged under the weighed quantity theory, not the represented amount. 139 Idaho 625. Thus, the State’s reliance on *Barraza-Martinez* is misplaced. Its rationale ignores one of the elements of the “represented amount” theory of trafficking—that “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.” (Respondent’s Brief, pp.9-10) (quoting I.C. § 37-2732B(a)(4)) (emphasis added). The State acknowledges that the methamphetamine sold on this case was charged based on the “represented weight” theory—that the person selling it represented it to be at least 28 grams. (Respondent’s Brief, p.10.) However, the State fails to understand that the aider and abettor must still know (because the principal knows) the amount the principal is *representing* to be selling or delivering.

Second, Mr. Barraza-Martinez, charged with trafficking as a principle, actually handled the drugs—he gave them to the drug dealer in front of the undercover officer. *Barraza-Martinez*, 139 Idaho 625. The drug dealer then gave them to the undercover officer in exchange for \$6,750 in cash. *Id.* As such, Mr. Barraza-Martinez had sufficient notice that it was a large quantity—he handled the black bag containing nine ounces of cocaine, and he likely knew the actual quantity—he was present during the conversations between the dealer and the undercover officer. *Id.* Although the facts of *Barraza-Martinez* are inapposite because he was charged with the actual weight, it is clear from the facts of that case that the defendant knew the represented amount and probably even the actual weight of the cocaine. Here, the State put on no testimony or evidence that Mr. Wilson touched the drugs, talked about the drugs with the undercover officer, or ever saw the package(s) of drugs Ms. Jones delivered. (Appellant’s Brief, pp.10, 18; *see* 3/11/17 Trial Tr., *generally.*) Logically, under the represented amount theory, what the trafficker alleges is the weight of the drug is to be considered the chargeable amount of that controlled substance and, thus, the knowledge (or lack thereof) of an aider and abettor as to what the drug was represented to have weighed is required under the statute. When trafficking by

represented amount is charged, this offense does have an element of knowledge in the form of a representation, which the principal is required to know.

Finally, a statute must give adequate notice to people of ordinary intelligence concerning the conduct it proscribes. *State v. Cobb*, 132 Idaho 195 (1998). Due process requires that all “be informed as to what the State commands or forbids” and that “men of common intelligence” not be forced to guess at the meaning of the criminal law. *Id.* 132 Idaho at 197 (quoting *Smith v. Goguen*, 415 U.S. 566, 574 (1974)). Although it analyzed the elements of cocaine trafficking under the actual weight and not the representation theory, the *Barraza-Martinez* Court held the statute was ambiguous as far as the requisite knowledge.¹ *Barraza-Martinez*, 139 Idaho 626. Here, the State failed to show that Mr. Wilson had any notice that Ms. Jones was dealing with a trafficking amount of methamphetamine. The State’s assumption that, because Mr. Wilson was in possession of a portion of the \$620 paid to Ms. Jones for the methamphetamine, he knew the quantity of methamphetamine (or other controlled substance) Ms. Jones had sold to Detective Phillips, is unsupported by the trial evidence.

The State also relies on another 2003 decision of the Court of Appeals, *State v. Romero-Garcia*, 139 Idaho 199 (Ct. App. 2003). In *Romero-Garcia*, cocaine was sold by the drug dealer to the confidential informant in accordance with the arrangements made by Mr. Romero-Garcia. *Romero-Garcia*, 139 Idaho at 204. Mr. Romero-Garcia was convicted of aiding and abetting trafficking in cocaine by delivery and aiding and abetting failure to affix tax stamps. *Id.* On appeal, Mr. Romero-Garcia challenged the intent element of aiding and abetting the failure to affix tax stamps. *Id.* The Court of Appeals noted that the statute did not specifically indicate the

¹ As the State notes, the elements of trafficking in cocaine and the elements of trafficking in methamphetamine are essentially the same (save for the identity of the controlled substance). (Respondent’s Brief, p.15 n.4.)

necessary mental state, but analyzed the intent from the statute generally governing the intent necessary to commit a crime:

I.C. § 18–114 requires that in every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence. Intent as used in that section means not an intent to commit a crime, but merely the intent to knowingly perform the interdicted act or, by criminal negligence, fail to perform the required act. *State v. Parish*, 79 Idaho 75, 78–79, 310 P.2d 1082, 1083–84 (1957); *State v. Taylor*, 59 Idaho 724, 737–38, 87 P.2d 454, 460–61 (1939).

Romero-Garcia, 139 Idaho at 204. The Court concluded the failure to affix tax stamps was a strict liability crime. *Id.* However, in Mr. Romero-Garcia’s case, his criminal act was in failing to do something the law required. This case cannot be likened to Mr. Wilson’s circumstances, where he was unaware of the amount Ms. Jones represented she was delivering, and the statutory language was ambiguous as far as the requisite knowledge.²

As the State quoted, “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.” (Respondent’s Brief, pp.13-14) (quoting *State v. Scroggins*, 110 Idaho 380, 386 (1985)). Mr. Wilson does not disagree. Here, the State failed to show he had the criminal intent to deliver an ounce or more of methamphetamine to the undercover officer where he was not involved with any of the telephonic discussions prior to the exchange (his name was never even mentioned), he was not with Ms. Jones when she gave the methamphetamine to Detective Phillips, and he did not make any statements indicating he knew how much methamphetamine Ms. Jones sold. In order to convict a person of aiding and abetting in trafficking when the defendant is charged under the

² Mr. Wilson has also asserted on appeal that he did not know the substance Ms. Jones was selling was methamphetamine and Ms. Jones did not affirmatively represent the substance to be “one ounce or more.” (Appellant’s Brief, pp.16-21.) In this Reply Brief, Mr. Wilson will not restate the entirety of the arguments made in his Appellant’s Brief, but will address only the State’s contention that it was not required to prove Mr. Wilson knew the represented amount was “one ounce or more.”

represented amount theory, the State must prove the defendant's knowledge of the amount represented in order to secure a conviction. In Mr. Wilson's circumstances, where he was charged with aiding and abetting trafficking by represented amount, some evidence of his knowledge of the represented amount is necessary to sustain a conviction, otherwise he lacks the same knowledge required to convict the principal.

CONCLUSION

Mr. Wilson respectfully requests that this Court vacate his convictions.

DATED this 30th day of May, 2018.

_____/s/_____
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30th day of May, 2018, 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:

RICHARD ALAN WILSON
INMATE #63233
ISCC
PO BOX 70010
BOISE ID 83707

JUNEAL C KERRICK
DISTRICT COURT JUDGE
E-MAILED BRIEF

SCOTT GATEWOOD
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

SJC/eas