

SUMMARY STATEMENT

Docket No. 42219

The Idaho Supreme Court affirms Jorge Enrique Rodriguez conviction for possession of a controlled substance with intent to deliver. Rodriguez was found guilty in Nez Perce County of trafficking in methamphetamine. The district judge instructed the jury to consider possession with intent to deliver as a lesser-included charge. The jury found Rodriguez not guilty of trafficking, but convicted him of possession with intent to deliver.

On appeal, Rodriguez argued that the district court's jury instructions were erroneous because possession with intent to deliver is not a lesser-included offense of trafficking. Rodriguez contends that as a result, the district court lacked subject matter jurisdiction over the possession with intent to deliver charge.

Relying on the reasoning in *State v. McIntosh*, No. 41910 (Idaho Feb. 25, 2016), which held that although intent to deliver is not a lesser included of trafficking, the district court's delivery of an improper lesser-included jury instruction does not remove the district court's subject matter jurisdiction, the Court upheld Rodriguez's conviction.