

SUMMARY STATEMENT

State v. Serra J. Frank, aka Jennifer Frank

Docket No. 47010

Serra J. Frank was charged, in three separate cases, with possession of marijuana, Idaho Code § 37-2732(c)(3), and possession of paraphernalia, I.C. § 37-2734A(1). In the first case, Frank's charge arose when she was a passenger in a vehicle subject to a traffic stop and a search of her purse revealed the presence of marijuana and a marijuana pipe. In the second two cases (the protest cases) which occurred a year apart, Frank organized gatherings at the Idaho State Capitol building in which Frank gave speeches on the Capitol steps, expressed her intent to smoke marijuana, began to access marijuana, and was cited with the above-listed offenses. At Frank's request, the cases were consolidated for trial. Prior to trial, Frank filed a motion in limine and a motion for reconsideration, each with supporting documentation, requesting a ruling from the magistrate court that she could present evidence of her medical condition, her treatment with marijuana, and a jury instruction on the necessity defense. The magistrate court denied Frank's requests to present the necessity defense to the jury. Ultimately, the jury found Frank guilty of three counts of possession of marijuana and three counts of possession of paraphernalia. Frank filed an appeal to the district court. The district court affirmed Frank's judgments of conviction.

On appeal to the Idaho Court of Appeals, Frank argued that the trial court erred (1) by failing to allow Frank to present evidence of a necessity defense and provide jury instructions on the defense, and (2) by denying her motion for reconsideration. The Court of Appeals concluded that Frank failed to present prima facie evidence to support a necessity defense. The court explained that the evidence Frank presented in support of her motions, which consisted of evidence detailing her chronic medical condition, failed to show that (1) Frank was under a specific threat of immediate harm when she was cited in each case; (2) the circumstances which necessitate the illegal act were not brought about by Frank in the protest cases; and (3) the same objective could not have been accomplished by a less offensive alternative available to Frank in each case. Consequently, the Court of Appeals affirmed the district court's decision which affirmed the magistrate court's refusal to instruct the jury on the defense of necessity.

This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.