

SUMMARY STATEMENT

State v. Regan
Docket No. 52260

This appeal concerns the application of the fundamental error doctrine to unobjected to jury instructions. Josina Marie Regan was charged with multiple criminal counts following the death of her boyfriend, John Baker. The State alleged that Regan had killed Baker and subsequently, with the assistance of two other individuals, stolen drugs and money from Baker's residence. In addition to various counts not at issue in this appeal, the State charged Regan with conspiracy to commit possession of a controlled substance—methamphetamine, pursuant to Idaho Code sections 37-2732(c)(1) and 18-1701; conspiracy to commit grand theft, pursuant to Idaho Code sections 18-2403(1), 18-2407(1)(b), and 18-1701; and conspiracy to commit possession of a controlled substance—alpha-pyrrolidinohexanophenone (a-PHP) (commonly known as “bath salts”), pursuant to Idaho Code sections 37-2732(c)(3), 37-2705(f)(6), and 18-1701.

Regan pleaded not guilty to all charges and proceeded to jury trial. At the conclusion of evidence, the district court provided jury instructions regarding the elements of the conspiracy charges which included an element which required the State to prove that “the defendant Josina Regan, AKA Josina Marie Regan, AKA Josina M. Brooks, AKA Josina Regan Adams and/or Todd Potter and/or other unnamed or unknown persons agreed” to commit the underlying crime and one of the parties performed at least one enumerated overt act. The jury found Regan guilty of all three conspiracy counts. Regan appealed and her case was initially assigned to the Idaho Court of Appeals. On appeal, Regan asserted that the district court committed fundamental error in instructing the jury regarding the conspiracy charges and abused its discretion in admitting certain evidence. After the Court of Appeals affirmed her convictions, Regan filed a Petition for Review, which the Idaho Supreme Court granted.

On review, Regan reasserted that the district court committed fundamental error in instructing the jury regarding the conspiracy charges but withdrew her challenge to the district court's evidentiary rulings. The Supreme Court held that Regan had established fundamental error regarding her conspiracy convictions. The Court determined that the district court's inclusion of the term “and/or”—as opposed to merely “and”—between Regan's name and the names of the alleged co-conspirators in paragraph 3 of the elements instruction was erroneous; the error was clear and obvious from the record; and the error was not harmless. In determining that the error was not harmless, the Court conducted an analysis of its precedents regarding the harmless error prong of the fundamental error doctrine and held that, when a defendant challenges an unobjected to jury instruction under the fundamental error doctrine the requirement from *State v. Miller*, 165 Idaho 115, 119, 443 P.3d 129, 133 (2019), to demonstrate that the error “*actually affected* the outcome of the trial proceedings” may be met by demonstrating that (1) the challenged instruction omitted an essential element of the crime or otherwise relieved the State of its burden to prove the element beyond a reasonable doubt; (2) the omitted element was contested, and (3) competing evidence sufficient to support a contrary finding on the omitted element was offered. Consequently, the Court vacated Regan's conspiracy convictions.

*****This summary constitutes no part of the Court's opinion. It has been prepared by court staff for the convenience of the public.*****