

**VIA: ZOOM, THURSDAY, SEPTEMBER 17, 2020, AT 9:00 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 47010**

**STATE OF IDAHO,** )  
 )  
 **Plaintiff-Respondent,** )  
 )  
 **v.** )  
 )  
 **SERRA J. FRANK, aka JENNIFER** )  
 **FRANK,** )  
 )  
 **Defendant-Appellant.** )  
 )

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Gerald F. Schroeder, District Judge. Hon. Michael J. Oths, Magistrate.

Anthony Geddes, Ada County Chief Public Defender; Sarah E. Tompkins, Deputy Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; John C. McKinney, Deputy Attorney General, Boise, for respondent.

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In three separate cases, Frank was charged with possession of marijuana, Idaho Code § 37-2732(c)(3) and possession of paraphernalia, I.C. § 37-2734A(1). In the first case, Frank was a passenger in a vehicle subject to a traffic stop in 2015. A subsequent search of Frank's purse revealed the presence of marijuana and a marijuana pipe. In the second two cases, which occurred in 2016 and 2017, Frank organized a gathering at the Idaho State Capitol building called "Idaho Moms for Marijuana New Year's Smoke Out." During each event, Frank was cited after she gave a speech with marijuana in her possession and expressed her intent to smoke. At Frank's request, the cases were consolidated for trial.

Prior to trial, Frank filed a motion in limine and a motion for reconsideration 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 her 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 arguing that the magistrate court erred in denying her requests to present evidence and a jury instruction on the necessity defense. After hearing argument, the district court concluded that the magistrate court did not err in denying Frank's motions. On appeal, Frank argues that the trial court erred (1) by failing to allow Frank to present evidence of a necessity defense or provide jury instructions on the defense, and (2) by denying her motion for reconsideration.