

SUPREME COURT OF LOUISIANA

State v. Smith

885 So. 2d 508 (La. 2004) · No. 2004-KK-1123 · Decided September 24, 2004

SUMMARY

The Supreme Court of Louisiana reversed the court of appeal and reinstated the trial court's denial of Heather Smith's motion to quash charges for second-degree murder and possession of MDMA with intent to distribute. The court held that the allegations could support a finding that Smith acted as an intermediary by obtaining drugs from a source and transferring them to other members of a joint venture, potentially establishing distribution and the requisite intent.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Louisiana
DECIDED	September 24, 2004
DOCKET	2004-KK-1123
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sought review of a court of appeal ruling that quashed the prosecution and discharged the defendant. The Supreme Court of Louisiana granted the State's application, reversed the court of appeal, reinstated the trial court's denial of the defendant's motion to quash, and remanded for further proceedings.
STANDARD OF REVIEW	The court reviewed the legal sufficiency of the charging allegations on a pretrial motion to quash. A motion to quash based on a defense going to the merits is appropriate before trial only when the charge rests on factual allegations that cannot conceivably satisfy an essential element of the offense.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; precedential
PARTIES	State of Louisiana v. Heather Smith

TOPICS

- criminal procedure
- statutory interpretation
- appellate procedure
- preservation of error

PRACTICE AREAS

criminal law

criminal procedure

controlled substances

appellate law

QUESTIONS PRESENTED

1. Whether the State's allegations that Smith obtained MDMA from a source and then brought and divided it among members of the joint venture were sufficient to charge her as a principal in the distribution of a controlled substance.
2. Whether the State's allegations were legally insufficient on a pretrial motion to quash because Smith was allegedly only a purchaser and user.
3. Whether the allegations could support the intent-to-distribute element of the possession charge and the charged second-degree-murder offense.

HOLDINGS

1. The allegations were sufficient to support a charge that Smith acted as an intermediary and principal in the distribution of MDMA. A person who obtains a controlled substance from a source and then transfers it to other users may be a link in the chain of distribution even if she also intended to use some of the drug herself.
2. The trial court properly denied the motion to quash because the State's allegations could conceivably establish distribution and intent to distribute; the factual issues were for the factfinder at trial.

KEY QUOTATIONS

"The state's application is granted, the ruling of the court of appeal is reversed, and the judgment of the trial court denying defendant's motion to quash the prosecution against her for second degree murder" (509)

"If the state proves these circumstances at trial, a jury may rationally conclude that defendant made herself an intermediary in the transaction by serving as a link in the distribution of the drug from its source to its ultimate users" (510)

"The trial court therefore properly denied defendant's motion to quash." (510)

FACTUAL BACKGROUND

The State alleged that Smith joined three other people, including the victim, in purchasing MDMA for their own use. Smith took money from another participant, obtained the drug from a source at a separate location, and returned to the victim's residence, where the drug was divided among the participants. The victim later died after ingesting some of the MDMA.

PROCEDURAL HISTORY

The district court denied Smith's motion to quash charges of second-degree murder and possession of MDMA with intent to distribute. The Louisiana First Circuit Court of Appeal reversed, concluding that Smith was merely a purchaser and user and could not be charged with distribution. The Louisiana Supreme Court reversed the court of appeal, reinstated the district court's ruling, and remanded the case for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the district court for further proceedings consistent with the Supreme Court's views. The trial court's denial of the motion to quash was reinstated.

CASES CITED

- State v. Smith, 03-1556 (La. App. 1st Cir. Apr. 2, 2004)
- State v. Celestine, 671 So. 2d 896, 897 (La. 1996)
- United States v. Swiderski, 548 F.2d 445, 450 (2d Cir. 1977)
- People v. Edwards, 702 P.2d 555, 559 n. 5 (Cal. 1985)
- United States v. Washington, 41 F.3d 917, 920 (4th Cir. 1994)
- United States v. Speer, 30 F.3d 605, 608-09 (5th Cir. 1994)
- Long v. United States, 623 A.2d 1144, 1151 (D.C. 1993)
- United States v. Wright, 593 F.2d 105, 108 (9th Cir. 1979)
- State v. Moore, 529 N.W.2d 264, 266 (Iowa 1995)
- State v. Carithers, 490 N.W.2d 620 (Minn. 1992)
- State v. Legendre, 362 So. 2d 570, 571 (La. 1978)

OPINION

PER CURIAM.

885 So.2d 508 (2004) STATE of Louisiana v. Heather SMITH. No. 2004-KK-1123. Supreme Court of Louisiana. September 24, 2004. *509 PER CURIAM. The state's application is granted, the ruling of the court of appeal is reversed, and the judgment of the trial court denying defendant's motion to quash the prosecution against her for second degree murder in violation of La.R.S.

14:30.1(A)(3)(distribution of a controlled substance which directly causes of the death of the recipient), and for possession of MDMA (ecstasy) with intent to distribute in violation of La.R.S. 40:966(A)(1), is reinstated.

The state maintains, in part on the basis of custodial statements made by the defendant and her co-defendant following their arrests, that the defendant embarked on a joint venture with three other persons, including the victim, to purchase MDMA for their own use; that the defendant took cash provided by another member of the joint venture and made the purchase of the drug from a source at a separate location; that the defendant then returned to the victim's residence where the drug was divided among the various participants in the venture; and that the victim then died after ingesting some of the drug.

Given these circumstances, the court of appeal concluded that the four participants in the venture "jointly purchased and jointly used the ecstasy tablets" and that defendant had been "a mere purchaser and user." *State v. Smith*, 03-1556 (La.App. 1st Cir.4/2/04). Applying the rule in Louisiana that a buyer of a controlled substance in Louisiana is not a principal in the act of delivery and may not be charged with distribution of the drug, *State v. Celestine*, 95-1393 (La.1/26/96), 671 So.2d 896, the court of appeal ordered the prosecution quashed and the defendant discharged from custody because the state's allegations showed that she did not "distribute" the ecstasy which ultimately caused the victim's demise and did not, as a mere possessor and user of the drug, have the intent to distribute the drug to the other persons in the venture.

Some authority exists for the proposition endorsed by the court of appeal that "where two individuals simultaneously and jointly acquire possession of a drug for their own use, intending only to share it together, their only crime is personal drug abuse simple joint possession, without any intent to distribute the drug further." *United States v. Swiderski*, 548 F.2d 445, 450 (2nd Cir.1977); see also *People v. Edwards*, 39 Cal.3d 107, 216 Cal.Rptr.

397, 702 P.2d 555, 559, n. 5 (1985) ("[O]ne who acts as a go-between or agent of either the buyer or seller clearly may be found guilty of furnishing as an aider and abettor to the seller.... However, because one who merely purchases drugs is not guilty of furnishing as an aider and abettor of the seller... an equal partner in a copurchase cannot be found guilty of furnishing to his copurchaser on a theory that he aided and abetted the actual seller.").

The rationale underlying this rule is that "[s]ince both acquire possession from the outset and neither intends to distribute the drug to a third person, neither serves as a link in the chain of distribution." *Swiderski*, 548 F.2d at 450.

However, Louisiana law also holds that "an intermediary who arranges or facilitates the transfer of narcotics from the *510 seller to the buyer may... be charged and punished as a principal in the act of distribution." *Celestine*, 95-1393 at 3, 671 So.2d at 897 (citations omitted).

In the present case, the state alleges that defendant took delivery of the drug from her "source" and then made a second delivery to the other members in the joint venture when she brought the drugs back to the victim's residence. See La.R.S. 40:961(10) (defining distribution of controlled substances in terms of delivery, or "the transfer of a controlled dangerous substance, whether or not there exists an agency relationship.").

If the state proves these circumstances at trial, a jury may rationally conclude that defendant made herself an intermediary in the transaction by serving as a link in the distribution of the drug from its source to its ultimate users, which included herself but also included other persons not present at the initial delivery, and rendered herself a principal in the act of distribution.

See *United States v. Washington*, 41 F.3d 917, 920 (4th Cir.1994)("We agree... that a defendant who purchases a drug and shares it with a friend has 'distributed' the drug even though the purchase was part of a joint venture to use drugs."); *United States v. Speer*, 30 F.3d 605, 608-09 (5th Cir.1994)(distinguishing *Swiderski* because "[i]t is undisputed that at least some of the cocaine was intended by the trio to be subsequently distributed to [another member of the joint venture] who was not at or near the scene of the transaction."); *Long v. United States*, 623 A.2d 1144, 1151 (D.C.App.1993)(because the defendant "brought heroin home to his friends and... was about to pass several packets on to them when his plans were interrupted by a police battering ram....

Long had already begun to serve, and was intending to continue to serve, 'as a link in the chain of distribution.'" (quoting *Swiderski*); *United States v. Wright*, 593 F.2d 105, 108 (9th Cir.1979) ("This is not a case in which two individuals proceed together to a place where they simultaneously purchased a controlled substance for their personal use.... *Wright* operated as the link between the person with whom he intend to share the heroin and the drug itself."); *State v. Moore*, 529 N.W.2d 264, 266 (Iowa 1995)("[O]ne who shares drugs with others has transferred the drugs within the meaning of statutes prohibiting the distribution, furnishing or delivery of controlled substances.

A transfer occurs when the drugs are shared even though joint funds were used to purchase the drugs."); cf. *State v. Carithers*, 490 N.W.2d 620 (Minn.1992) (when married couple jointly acquire a controlled substance and one spouse dies after ingesting the drug, surviving spouse not guilty of felony murder on a theory that victim died as the result of delivery of controlled substances by one spouse to the other).

If accepted by a factfinder, that same evidence could lead the factfinder to conclude that defendant possessed the intent to distribute the drug obtained from her source to the other persons involved in the joint enterprise.

The trial court therefore properly denied defendant's motion to quash. Cf. *State v. Legendre*, 362 So.2d 570, 571 (pre-trial motion to quash on grounds of a defense going to the merits appropriate remedy only if charges based "upon an allegation of fact which cannot conceivably satisfy an essential element of the crime"). This case is accordingly remanded to the district court for further proceedings consistent with the views expressed herein.