

SUPREME COURT OF WYOMING

Luedtke v. State, 2005 WY 98

117 P.3d 1227 (Wyo. 2005) · No. No. 04-144 · Decided August 22, 2005

SUMMARY

The Supreme Court of Wyoming affirmed Thomas H. Luedtke’s convictions for forgery and attempting to obtain possession of a controlled substance by prescription fraud. The court held that the district court did not abuse its discretion by permitting a pharmacist omitted from the State’s initial witness list to testify, providing a supplemental instruction defining “intent to defraud,” or denying Luedtke’s motion for a new trial. The court also rejected his cumulative-error claim because it found no underlying error.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Burke, Justice; Hill, C.J.; Golden, J.; Kite, J.; Voigt, J.; Burke, J.
JURISDICTION	Wyoming
DECIDED	August 22, 2005
DOCKET	No. 04-144
DISPOSITION	affirmed
PROCEDURAL POSTURE	Luedtke appealed felony convictions for forgery and attempting to obtain possession of a controlled substance by prescription fraud, challenging the admission of a late-disclosed witness, a supplemental jury instruction given during deliberations, and the denial of his motion for a new trial.
STANDARD OF REVIEW	Evidentiary rulings and the decision to give a supplemental jury instruction are reviewed for abuse of discretion. Jury instructions are considered as a whole, and reversible error requires prejudice showing that the instruction confused or misled the jury regarding the governing legal principles. The denial of a motion for new trial is also reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Thomas H. Luedtke v. State of Wyoming

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion by permitting pharmacist Patrick Murray to testify after he was added to the State's witness list on the morning of trial.
2. Whether the district court abused its discretion by providing the jury with a supplemental instruction defining "with intent to defraud" during deliberations.
3. Whether the district court abused its discretion by denying Luedtke's motion for a new trial based on the witness testimony and supplemental instruction.
4. Whether cumulative error required a new trial.

HOLDINGS

1. The district court did not abuse its discretion by allowing Dr. Murray to testify because there was no court order requiring witness designation, no evidence that the State intentionally withheld his identity, the amended list was provided before trial, and Luedtke did not request a continuance or demonstrate material prejudice.
2. The district court did not abuse its discretion by answering the deliberating jury's question with a supplemental instruction stating that "with intent to defraud" means acting willfully and deliberately with the specific intent to deceive or cheat.
3. The district court did not abuse its discretion by denying Luedtke's motion for a new trial.
4. Cumulative error did not warrant a new trial because there was no underlying error to aggregate.

KEY QUOTATIONS

"A trial court is given wide latitude in instructing the jury and, as long as the instructions correctly state the law and the entire charge covers the relevant issue, reversible error will not be found." (¶ 28)

"While the district court was not required to provide the supplemental instruction, it was not prohibited from doing so." (¶ 33)

FACTUAL BACKGROUND

Luedtke received a prescription for eight Demerol or Meperidine pills after treatment for a migraine. He altered the prescription to increase the quantity to eighteen pills and presented it at a pharmacy, where the alteration was discovered and law enforcement was contacted. After being advised of his rights and waiving them, Luedtke admitted altering the prescription. At trial, the State called pharmacist Patrick Murray after adding him to an amended witness list served on the morning of trial, and the court later gave the jury a supplemental definition of "with intent to defraud" during deliberations.

PROCEDURAL HISTORY

The State charged Luedtke with forgery and prescription fraud after he altered a prescription and presented it at a pharmacy. The jury found him guilty on both counts. The district court denied his motion for a new trial and entered judgment and sentence, after which he appealed to the Supreme Court of Wyoming.

DISPOSITION

affirmed

CASES CITED

- *Urbigkit v. State*, 2003 WY 57, ¶ 39, 67 P.3d 1207, ¶ 39 (Wyo. 2003)
- *Hannon v. State*, 2004 WY 8, ¶ 13, 84 P.3d 320, ¶ 13 (Wyo. 2004)
- *Hilterbrand v. State*, 930 P.2d 1248, 1250 (Wyo. 1997)
- *Jackson v. State*, 522 P.2d 1286, 1288 (Wyo. 1974)
- *Emerson v. State*, 988 P.2d 518, 525 (Wyo. 1999)
- *Meek v. State*, 2002 WY 1, ¶ 19, 37 P.3d 1279, ¶ 19 (Wyo. 2002)
- *Lapp v. State*, 2004 WY 142, ¶¶ 7, 11, 16, 100 P.3d 862, ¶¶ 7, 11, 16 (Wyo. 2004)
- *Black v. State*, 2002 WY 72, ¶¶ 5, 16, 46 P.3d 298, ¶¶ 5, 16 (Wyo. 2002)
- *Ogden v. State*, 2001 WY 109, ¶ 8, 34 P.3d 271, ¶ 8 (Wyo. 2001)
- *Coburn v. State*, 2001 WY 30, ¶ 9, 20 P.3d 518, ¶ 9 (Wyo. 2001)
- *Merchant v. State*, 4 P.3d 184, 190 (Wyo. 2000)
- *Lane v. State*, 12 P.3d 1057, 1061 (Wyo. 2000)
- *Wilson v. State*, 14 P.3d 912, 916 (Wyo. 2000)
- *Henderson v. State*, 976 P.2d 203, 208-209 (Wyo. 1999)
- *Broom v. State*, 695 P.2d 640, 644-645 (Wyo. 1985)
- *Cronin v. State*, 678 P.2d 370, 371 (Wyo. 1984)
- *Burton v. State*, 2002 WY 71, ¶ 12, 46 P.3d 309, ¶ 12 (Wyo. 2002)
- *Young v. State*, 849 P.2d 754, 767 (Wyo. 1993)

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