

BOISE, FRIDAY, AUGUST 28, 2009 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent-Cross Appellant,)
)
 v.)
)
 DALE CARTER SHACKELFORD,)
)
 Defendant-Appellant-Cross Respondent.)

Docket No. 27966/31928

Appeal from the District Court of the Second Judicial District of the State of Idaho, Latah County. Hon. John R. Stegner, District Judge.

Griffard Law Offices, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for appellant.

Dale Carter Shackelford appeals from his convictions by a jury of first-degree murder, conspiracy to commit first-degree murder, first-degree arson, conspiracy to commit first-degree arson, and preparing false evidence, in the deaths of Donna Fontaine and Fred Palahniuk. Fontaine and Palahniuk were found shot to death in the aftermath of a fire that destroyed a garage in Latah County in 1999. Shackelford raises numerous issues on appeal, including whether the district court erred in: (1) admitting hearsay statements of Donna Fontaine, Sonja Abitz, and Mary Abitz; (2) giving jury instructions that lessened the State’s burden of proof and permitted a less than unanimous verdict; (3) dismissing Shackelford’s *Brady* claims; and (4) dismissing Shackelford’s claims as to deprivation of right to counsel of choice and ineffective assistance of counsel.

The State cross-appeals, challenging the district court’s order setting aside Shackelford’s death sentence for resentencing pursuant to *Ring v. Arizona*, 536 U.S. 584 (2002).

BOISE, FRIDAY, AUGUST 28, 2009 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

MELANIE LAMPIEN,)	
)	
Defendant-Appellant,)	
)	
v.)	Docket No. 36115
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County. Honorable Peter D. McDermott, District Judge.

Thompson, Smith, Wolff & Anderson, Idaho Falls, for appellant.

Hon. Lawrence G. Wasden, Attorney General, for respondent.

In August 2006, several law enforcement and probation and parole officers arrived at Melanie Lampien’s apartment in an attempt to locate her husband, Nicholas McKenna. Lampien knew that McKenna was wanted for felony probation violations and she knew that he was hiding in her apartment. Nonetheless, when she met the officers outside of her apartment, she told them that she had not seen McKenna for awhile and did not know his location. Suspecting that Lampien was lying, the officers returned later and entered the apartment to look for McKenna. Inside the apartment they found McKenna holding a gun. A struggle occurred when the officers tried to take McKenna into custody, resulting in the injury of three officers and the death of McKenna.

Lampien was charged with harboring a felon in violation of Idaho Code Section 18-205. She entered into a nonbinding plea agreement with the State. She agreed to plead guilty and the State agreed to recommend probation with no prison time and to not oppose a withheld judgment. At the sentencing, the district court allowed the three injured officers to give victim impact statements over Lampien’s objection. The officers all stated that they believed Lampien should serve a prison sentence. After the sentencing hearing, the district court sentenced Lampien to five years in prison, with a minimum period of confinement of three years.

Lampien filed a motion for reduction of the sentence, which the district court denied. On appeal, the Court of Appeals affirmed the district court’s decision. Lampien petitioned this Court for review, which was granted. She again challenges the charging information and the officers’ victim impact statements.

BOISE, FRIDAY, AUGUST 28, 2009 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**VAUGHN SCHMECHEL, individually and)
as surviving spouse and personal)
representative of THE ESTATE OF)
ROSALIE SCHMECHEL, deceased and)
ROBERT P. LEWIS, KIM HOWARD and)
TAMARA HALL, natural children of)
ROSALIE SCHMECHEL, deceased,)**

Docket No. 35050

Plaintiffs-Appellants,

v.

**CLINTON DILLE, M.D., SOUTHERN)
IDAHO PAIN INSTITUTE, an Idaho)
corporation, THOMAS BYRNE, P.A., and)
JOHN DOE and JANE DOE, I through X,)**

Defendants-Respondents.

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Twin Falls County. Honorable Richard G. Bevan, District Judge.

Comstock & Bush, Boise and Byron V. Foster, Boise, for appellants.

Hall Farley Oberrecht & Blanton, PA, Boise, for respondent Thomas Byrne P.A.

Givens Pursley, LLP, Boise, for respondents Clinton Dille, M.D. and Southern Idaho Pain Institute.

This is an appeal from a district court's decision denying a new trial after it entered judgments on a jury verdict finding that Dr. Clinton Dille, M.D., and the Southern Idaho Pain Institute (SIPI), and Mr. Thomas Byrne, P.A., (collectively referred to as Respondents) were not negligent in their medical treatment of Rosalie Schmechel, who died shortly after coming under their care at SIPI in 2003. Mrs. Schmechel's surviving spouse and children (collectively referred to as Appellants) contend that the district court abused its discretion in not granting their motion for a new trial based on their allegations that the court erred in excluding testimony from one of their experts, in declining to instruct the jury on negligence *per se*, in excluding the Idaho Administrative

Code (IDAPA) rules governing physician assistants in 2003, in declining to instruct the jury on recklessness, and in allowing testimony from one of Respondents' experts.

Mrs. Schmechel had been receiving pain management treatment from a medical provider in Sun Valley, Idaho, for ongoing chronic back pain and right leg pain. Owing to the expense and difficulty of travelling to Sun Valley from her home in Twin Falls, in September, 2003, Mrs. Schmechel decided to begin seeing a pain management provider in Twin Falls, Idaho, and thus she sought treatment at SIPI. SIPI is a pain management clinic and surgery center dedicated to pain management treatment. In 2001, Dr. Dille hired Mr. Byrne to work as a physician assistant at SIPI. In April, 2003, Dille and Byrne entered into a Delegation of Services (DOS) Agreement outlining the working relationship and delegation of duties between them as was required by the 2003 IDAPA rules.

On September 26, 2003, Mr. Byrne saw Mrs. Schmechel. Up to that point, Mrs. Schmechel had been taking OxyContin to manage her pain, and Mr. Byrne suggested that she should discontinue using OxyContin and prescribed her methadone instead. Over the next few days, Mrs. Schmechel and Mr. Byrne spoke on the phone twice, and both times Mr. Byrne advised Mrs. Schmechel to increase her dosage of methadone. After the second call, Mr. Byrne discussed Mrs. Schmechel's case with Dr. Dille, and Dr. Dille approved Mr. Byrne's treatment plan, although he did not learn the exact dosage of methadone that Mr. Byrne prescribed.

On October 2, 2003, Mrs. Schmechel passed away.

On October 3, 2005, Appellants brought suit against Respondents for medical malpractice. In early October 2007, Appellants learned about the 2003 IDAPA rules that required doctors and physician assistants to have DOS Agreements in place. Appellants then renewed their requests to Respondents to produce the DOS agreement that existed between them in 2003, and Respondents promptly did so, six days before trial. At the conclusion of the trial, on October 30, 2007, the jury returned a verdict finding that Respondents Dr. Dille and Mr. Byrne were not negligent in their treatment of Mrs. Schmechel. On November 19, 2007, Appellants filed a motion for a new trial, alleging that the district court erred: 1) when it excluded their expert from testifying that Respondents' breach of the 2003 DOS Agreement was a breach in the standard of care because that opinion had not been disclosed prior to trial; 2) when it declined to instruct the jury on negligence *per se* and excluded the 2003 IDAPA rules; 3) when it declined to instruct the jury on recklessness; and 4) when it allowed Respondents' expert to testify regarding the cause of Mrs. Schmechel's death despite that opinion being untimely disclosed. The district court denied the motion. Appellants timely appealed. Respondents Dr. Dille and SIPI ask for attorney fees on appeal.