ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

State v. Francis, CR-17-0062-PR

PARTIES:

Petitioner: State of Arizona

Respondent: Darrel Scott Francis

FACTS:

In 2014, Francis was booked into the Navajo County Jail Annex in Show Low and an officer took his clothing, boots, and cell phone. The next day, Francis asked to call his attorney. When the officer could not find the attorney's phone number, Francis stated that he had the phone number stored on his cell phone. The officer retrieved the cell phone, found the phone number, and called the lawyer from the jail landline. The officer did not hand Francis his cell phone. However, later that day, Francis was transported to the Navajo County Jail in Holbrook and an officer noticed Francis had his cell phone. The officer confiscated it.

Francis was charged with two counts of promoting prison contraband in violation of A.R.S. § 13-2505(A)—one count for possessing the cell phone in the jail and one count for possessing it while being transported there. Pre-trial, the court ruled that the State did not have to prove that Francis knew the phone constituted "contraband." The court instructed the jury:

> The crime of promoting prison contraband requires proof that the defendant knowingly: Took contraband into a correctional facility or the grounds of a correctional facility; or obtained, or possessed contraband while being confined in a correctional facility; or obtained, or possessed contraband while being lawfully transported or moved incident to correctional facility confinement.

State v. Francis, 241 Ariz. 449, 450 ¶ 4 (App. 2017). The jury convicted Francis of both counts and he was sentenced to two concurrent five-year prison terms.

Court of Appeals Majority.

In a split decision, the court of appeals held that "the crime of promoting prison contraband under § 13-2505(A) requires proof the defendant knew the object at issue was contraband." *Id.* at 454 ¶ 24. The majority agreed with Francis that under *State v. Bloomer*, 156 Ariz. 276 (App. 1987), the crime of possession of contraband requires proof the defendant knew that what he possessed was defined as contraband by statute.

The court rejected the State's argument that the definition of "knowingly" in A.R.S. § 13-105(10)(b) established that the State need not prove Francis knew the phone constituted

contraband. In the court's view, the issue was "not whether Francis knew what he was doing was unlawful; it is whether the requisite culpable mental state of 'knowingly' applies not only to 'making, obtaining or possessing' an object while in custody; but also to the fact that the object falls within the statutory definition of 'contraband.'" *Id.* ¶ 11. (quoting A.R.S. § 13-2505(A)(3)).

The majority held that A.R.S. § 13-202 governed, rather than A.R.S. § 13-105(10)(b). The crime of promoting prison contraband under A.R.S. § 13-2505(A) prescribes one mental state, "knowingly," without distinguishing among the elements; pursuant to A.R.S. § 13-202(A), that mental state requires "proof not only that the defendant knowingly obtained or possessed a proscribed object, but also that the defendant knew the object was contraband, within the meaning of the statute." *Id.* at 453 ¶ 16. Because "the crime of promoting prison contraband under § 13-2505(A) requires proof the defendant knew the object at issue was contraband," the court reversed Francis's convictions. *Id.* at 454 ¶ 24.

Court of Appeals Dissent.

The dissent agreed with the majority "that A.R.S. § 13-202(A) is applicable," and agreed that the "state is required to show that Francis knew he possessed contraband." *Id.* ¶ 28. But, in the dissent's view, *Bloomer* is inapposite because it involved "an application of the law regarding mistake of fact," which was not at issue because Francis knew he possessed a cell phone. *Id.* at 455 ¶ 26. Unlike the majority, the dissent concluded "that the requisite mens rea may be demonstrated either by proof that the defendant knew, as in *Bloomer* and [*People v.*] *Romero*[, 64 Cal. Rptr. 2d 16 (App. 1997)], that what he possessed was proscribed, although he was mistaken as to the precise nature of what he possessed, or that he knew what he possessed, but may not have known it was illegal, as here." *Id.* According to the dissent, because Francis knew he possessed a cell phone in jail that "sufficed to establish the requisite mens rea" element; it did not matter whether he knew "it constituted contraband as defined by statute." *Id.* ¶ 29. Consequently, the dissent would have affirmed Francis's convictions.

ISSUE:

> Respondent knew he possessed an item, knew the item was a cell phone, and knew that he was taking it into jail. By statute, a cell phone is contraband. To prove that Respondent promoted prison contraband, was the State required to prove that Respondent also knew that his cell phone was statutorily defined as contraband?