6-5-2012

State v. Sexton-Gwin Appellant's Brief Dckt. 39352

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 39352
	)	
v.	)	
	)	
JOSHUA NEIL SEXTON-GWIN,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

HONORABLE RANDY J. STOKER
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Joshua Sexton-Gwin entered a conditional guilty plea to the charge of burglary preserving his right to challenge the district court's Order Denying Defendant's Motion to Dismiss Information and Challenge-Bind Over Pursuant to I.C. 19-815A. Mr. Sexton-Gwin asserts that the district court erred in denying his motion to dismiss the burglary charge as his alleged conduct did not constitute entry of a vehicle and, thus, his conduct did not amount to burglary.

Statement of the Facts and Course of Proceedings

The State filed a Second Amended Criminal Complaint alleging that Mr. Sexton-Gwin had committed the crime of burglary by, "enter[ing] into a certain vehicle, to-wit: a cab over farm truck ... with the intent to commit the crime of theft." (R., pp.40-42.) During the preliminary hearing, Mike Sharp, a farmhand working for Paul Sliger, testified that he came upon Mr. Sexton-Gwin tinkering under the cab of a truck located at Mr. Sliger's shop near the highway. (Tr. Prelim, p.13, L.22 – p.17, L.5.) Mr. Sharp told Mr. Sexton-Gwin that he should leave and he did so. (Tr. Prelim, p.17, Ls.6-11.) He called 911 and, after an officer arrived and took photos, Mr. Sharp "had to put the air filter back on the carburetor and pull the hood, the cab back down into place and latch it." (Tr. Prelim, p.17, Ls.19-24.)

Mr. Sliger, the owner of the cab-over farm truck, testified that when he last saw his truck, the cab was down and that, in order to get access to the motor and transmission of the vehicle, "[y]ou have to undo the latch and then pull two safety latches before you can lift [the cab] up." (Tr. Prelim, p.6, L.19 – p.10, L.1; *see also*

Exhibits A, C.) Mr. Sliger testified that the "latches and locks that you have to pull in order to tip the cab forward" are "all outside" and that a person would not actually have to reach inside the cab in order to unlatch the pins and tip the cab forward. (Tr. Prelim, p.12, L.20 – p.21, L.9.) Officer Jerry Elliot testified that he was dispatched to the scene and came upon a "farm truck that had been tampered with" describing it as "a cab-over farm truck, which the cab has to be physically lifted to get to the engine compartment. The cab-over was lifted and the air filter housing had been taken off exposing the carburetor." (Tr. Prelim, p.18, L.22 – p.19, L.20.)

After all of the evidence was presented[1], counsel for Mr. Sexton-Gwin argued that the State failed to present evidence sufficient to support a burglary charge arguing that because the State did not present any evidence that Mr. Sexton-Gwin entered the passenger compartment of the vehicle, no "entry" was accomplished under the burglary statute. (Tr. Prelim, p.35, Ls.3-20.) The magistrate found that the Idaho legislature intended the burglary statute to apply broadly and that probable cause to bind Mr. Sexton-Gwin over into the district court existed. (Tr. Prelim, p.36, Ls.3-19.) The State then filed an Information again alleging that Mr. Sexton-Gwin had committed the crime of burglary by, "enter[ing] into a certain vehicle, to-wit: a cab over farm truck ... with the intent to commit the crime of theft." (R., pp.44-46.)

Counsel for Mr. Sexton-Gwin filed a document entitled Motion to Dismiss Information and Challenge Bind Over Pursuant to I.C. § 19-815A (*hereinafter,* Motion to

[1] The State presented the testimony of two additional officers who participated in the arrest and questioning of Mr. Sexton-Gwin, neither of whom had any helpful knowledge of the vehicle Mr. Sexton-Gwin allegedly burglarized. (Tr. Prelim, p.25, L.8 – p.33, L.24.)

Dismiss).[2] (R., pp.72-75.) In his Motion to Dismiss, Mr. Sexton-Gwin argued that "the state failed to allege sufficient facts to establish probable cause at the preliminary hearing." (R., p.72.) Mr. Sexton-Gwin argued that even if Mr. Sexton-Gwin lifted up the cab of the vehicle, his conduct did not constitute burglary under Idaho Code § 18-1401, as his conduct did "not constitute an entry into a vehicle" and, thus, the State failed to provide sufficient evidence at the preliminary hearing to establish probable cause that Mr. Sexton-Gwin committed a burglary. (R., pp.73-74.)

During the hearing on the Motion to Dismiss, counsel for Mr. Sexton-Gwin argued, *inter alia*, that accessing the engine compartment of the vehicle in this case did not constitute a burglary as it was not designed to shelter people, animals or property; that the engine compartment, unlike the passenger compartment or the trunk, is "simply part of the vehicle itself"; and that, alternatively, under the "doctrine of lenity" the court should construe the statute narrowly and find that the allegations in this case do not constitute a burglary as described in that statute. (Tr., p.5, L.12 – p.9, L.12; p.11, L.22 – p.12, L.19.) The State argued, *inter alia*, that because the contents of the engine are property, a person who accesses the engine compartment "enters" that vehicle for the purposes of the burglary statute. (Tr., p.9, L.15 – p.11, L.20.)

The district court ruled as follows:

> Well, I'm prepared to rule on this motion, despite the lack of law in Idaho, because you're both correct. I haven't found a case that fits this factual scenario at all. What we're dealing with here is what's called a cab-over truck. I think it's clear from the pictures that this is a truck that

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[2] In the body of the Motion to Dismiss, Mr. Sexton-Gwin stated that the motion was being brought "pursuant to I.C.R. 3, 5.1, 12(b)(3) and 47, and Idaho Code 19-815A." (R., p.72.) It is clear in the context of the Motion to Dismiss that the motion was brought, in part, pursuant to I.C.R. 12(b)(2) (objections based on defects in the complaint, indictment or information), rather than I.C.R. 12(b)(3) (motion to suppress based upon evidence being illegally obtained).

has the driver's, the passenger's seat inside the cab. In order to get access to the engine, you have to lift that whole part of the vehicle up.

The evidence is really undisputed at this point that the defendant was inside of the, over the engine area fiddling with an air cleaner or some tools or something. So the point I'm trying to make is that the evidence, as I read the preliminary hearing transcript, is that he was inside the engine compartment.

I will acknowledge that the statute could be interpreted either way. It is very similar in one regard to the [*State v. Ortega*, 130 Idaho 637 (Ct. App. 1997)] case because there the defendant had opened the passenger door, as Madam Prosecutor acknowledges or argues. That's similar to lifting up a cab, not exactly the same but it certainly breaks the barrier, if you will, of the vehicle.

(Tr. p.12, L.20 – p.13, L.17.) The court went on to articulate that it believed the evidence was sufficient to show that Mr. Sexton-Gwin was the person who lifted up the cab. (Tr. p.13, L.18 – p.14, L.13.) The Court continued,

So I'm not troubled with the fact that there was sufficient evidence to put him at the scene and opening the cab. The real question is, does that act of being under the cab constitute an entry within the meaning of the statute? I'm going to rule that it does. I recognize, Mr. Hatch, in all candor that there is another interpretation that could be given to the statute, but I rely on the language in the [*State v. Tarrant-Folsom*, 140 Idaho 556 (Ct. App. 2004)] case that's been cited that the court is to give a rather broad interpretation to the provisions of the statute. That doesn't mean that I can certainly just make things up, but I think the purpose of the burglary statute is to protect the integrity of the vehicle.

Under the unique circumstances of this case, I find that the acts alleged are sufficient to constitute an entry into a vehicle and violate the burglary statute. Based upon that, I will deny the motion to dismiss. Good luck on appeal.

(Tr. p.14, L.14 – p.15, L.6.) The district court entered a written Order Denying Defendant's Motion to Dismiss Information and Challenge Bind Over Pursuant to I.C. 19-815A, "[f]or the reasons stated on the record during the hearing." (R., pp.79-80.)

Mr. Sexton-Gwin entered into an agreement with the state whereby he pled guilty, pursuant to *Alford*[3], to the burglary charge specifically preserving his right to appeal the district court's denial of "Defendant's Motion to Dismiss Information and Challenge Bind-Over Pursuant to I.C. 19-815A held at 2:30 pm on June 6, 2011."[4] (R., pp.85-96; Tr., p.17, L.6 – p.24, L.17.) The district court sentenced Mr. Sexton-Gwin to a unified term of five years, with two years fixed, suspended, and placed Mr. Sexton-Gwin on probation for a period of two years.[5] (R., pp.100-111; Tr., p.36, Ls.7-13.) Mr. Sexton-Gwin filed a timely Notice of Appeal. (R., pp.112-115.)

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[3] *See North Carolina v. Alford*, 400 U.S. 25 (1970) ("An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.")

[4] This reflects the date and time that the district court heard oral argument on Mr. Sexton-Gwin's Motion to Dismiss. (R., p.78.)

[5] As part of his plea agreement, Mr. Sexton-Gwin agreed to waive his right to appeal his sentence provided that the district court did not exceed the State's recommendation of five years, with two years fixed, suspended, with Mr. Sexton-Gwin being placed on probation. (R., p.88; Tr., p.19, Ls.3-20.) Therefore, Mr. Sexton-Gwin does not challenge the district court's sentencing decision in this appeal.

ISSUE

Did the district court err in denying Mr. Sexton-Gwin's Motion to Dismiss because unlatching and lifting the cab-over truck to access the engine compartment does not constitute entry of a vehicle; therefore, there was no probable cause to believe Mr. Sexton-Gwin committed the crime of burglary?

ARGUMENT

The District Court Erred In Denying Mr. Sexton-Gwin's Motion To Dismiss Because Unlatching And Lifting The Cab-Over Truck To Access The Engine Compartment Does Not Constitute Entry Of A Vehicle; Therefore, There Was No Probable Cause To Believe Mr. Sexton-Gwin Committed The Crime Of Burglary

A. Introduction

The district court erred in denying Mr. Sexton-Gwin's motion to dismiss. Idaho Code § 18-1401 bars entry into only those areas of a vehicle normally used for transporting people or transporting or storing property. Although there was probable cause to believe that Mr. Sexton-Gwin was the individual who unlatched and lifted the cab portion of the cab-over truck to access the engine compartment, he did not commit the crime of burglary as defined in I.C. § 18-1401. Therefore, the district court erred in denying his Motion to Dismiss.

B. Entry Into The Engine Compartment Of A Vehicle With The Intent To Commit The Crime Of Theft Does Not Meet The Definition Of Burglary Under I.C. § 18-1401

Idaho Code § 19-815A provides that a defendant held to answer a criminal charge after a preliminary hearing may challenge that finding by filing a motion to dismiss in the district court. I.C. § 19-815A. Mr. Sexton-Gwin concedes that there was probable cause to believe that he was the individual who unlatched and lifted the cab of the vehicle and challenges only the district court's interpretation of Idaho Code § 18-1401 in this appeal. While the district court found that the statute "could be interpreted either way," the court ultimately interpreted the statute incorrectly. The interpretation of a statute is a question of law subject to *de novo* review by an appellate court. *State v. Schulz,* 151 Idaho 863, 865 (2011). The Idaho Supreme Court applies the following principles of statutory interpretation:

> The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

State v. Schulz, 151 Idaho 863, 866-67 (2011) (citing *Farber v. Idaho State Ins. Fund*, 147 Idaho 307, 310 (2009).)

1. Under The Plain Language Of Idaho Code § 18-1401, Accessing The Engine Compartment Of A Vehicle Is Not Subject To Prosecution For Burglary

Idaho Code § 18-1401 is entitled "Burglary defined," and reads as follows:

> Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, vehicle, trailer, airplane or railroad car, with intent to commit any theft or any felony, is guilty of burglary.

I.C § 18-1401. This statute can be broken down into three parts: 1) the criminal act, i.e., a person "enters"; 2) the possible locations where the criminal act can occur, i.e., the structures or things that a person can "enter"; and, 3) the criminal intent necessary at the time of the entry, i.e., the intent to commit theft or any felony. *Id.* The primary definition of the term "enter" is a verb meaning "to go or come in or into" and contains an additional definition of "to go into or upon and take possession." MERRIAM-WEBSTER'S DICTIONARY AND THESAURUS 267 (2007). Black's Law Dictionary defines "entry" as "To come or go into; esp., to go onto (real property) by right of entry so as to take possession." BLACK'S LAW DICTIONARY 572 (8th ed. 2004). Therefore, by the literal

language of I.C. § 18-1401, the term "person who enters" denotes a person who comes or goes into or onto a place.

The terms "house," "room," "apartment," and "tenement" all describe places that generally serve as shelter for people (as well as storage for their property). The terms "shop," "warehouse," "store," "mill," "barn," "stable," "outhouse," and "other building," all describe places that generally serve as storing personal property (including animals) for personal use or sale, as well as places where people commonly are employed or patronize. All of these terms refer generally to real property, as they are attachments to land.[6] In common parlance and under Black's definition, these are structures that human beings may "enter" for a variety of reasons. The term "tent" describes a movable temporary shelter for either human beings and/or their property. The terms "vessel," "vehicle," "trailer," "airplane," and "railroad car" all describe things that are generally designed to transport people and/or their property. Unlike the real property described above, these items are generally considered personal property.[7]

While vessels, vehicles, and airplanes may have engines or motors accessible via an enclosure of some kind, this does not mean that the legislature intended to include accessing the engine compartment as conduct potentially prohibited by I.C. § 18-1401. In order to determine what portions of these items are potentially subject to the burglary statute, this Court must consider these items in the context of the entire statute. "In determining legislative intent, [the Idaho Supreme] Court applies the maxim *noscitur a sociis,* which means 'a word is known by the company it keeps.'" *Schulz*, 151 Idaho at 867 (citing *State v. Hammersley,* 134 Idaho 816, 821 (2000).) The

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[6] "Real property or real estate consists of: 1. Lands, possessory rights to land, ditch and water rights, and mining claims, both lode and placer. 2. **That which is affixed to land.** 3. That which is appurtenant to land." I.C. § 55-101 (emphasis added).

commonality amongst each of the locations subject to the definition of what can be burglarized as provided by I.C. § 18-1401, whether real or personal property, is that they all serve the function of providing shelter for people and/or their property. The fact that, vessels, vehicles, trailers, airplanes, and railroad cars may serve the additional function of transporting people and/or property, does not mean that the burglary statute applies to those areas, such as an engine compartment, that accomplish the transportation.

When reviewing the statute in its entirety and applying the plain meaning of the term "enter," only those portions of a vehicle that are normally used for the shelter and/or transportation of people and/or their property, are subject to being burglarized pursuant to I.C. § 18-1401. As an engine comportment does not meet that definition, the plain language of Idaho Code § 18-1401 does not criminalize the unlatching and lifting of the cab portion of a cab-over truck (absent any indication that the defendant entered the passenger or storage compartment of the truck in order to unlatch and lift the cab).

2. Reading Idaho Code § 18-1401 In Conjunction With Other Statutes, Accessing The Engine Compartment Of A Vehicle Is Not Subject To Prosecution For Burglary

If this Court deems it necessary to go beyond the plain language of I.C. § 18-1401 itself to determine what conduct the legislature intended to prohibit, this Court should find that the legislature did not intend entry into the engine compartment of a vehicle to be conduct prohibited by I.C. § 18-1401. "Under the doctrine of *in pari*

[7] "Every kind of property that is not real is personal." I.C. § 55-102.

materia[8], the legislature's use of the term "vehicle" in the burglary statute should be defined in conjunction with the statutory definition of the term "vehicle" as used in Chapter 49 – the "Motor Vehicle" section – of Idaho Code.

The legislature has defined the term "vehicle" by the function it serves, not the means by which it serves that function. Idaho Code § 49-123(2)(a) provide the general definition of the term "vehicle" as, "Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks." I.C. § 49-123(2)(a).[9] As the legislature has defined the term "vehicle" as a "device" by which people and property may be transported, it is reasonable to assume that the legislature intended only those portions of a vehicle that can accomplish the transportation of people or property to be subject to I.C. § 18-1401. Thus, the legislature intended to criminalize, in the burglary statute, the entry into only those portions of a vehicle "by which any person or property is or may be transported or drawn upon a highway." *Compare* I.C. § 18-1401 *with* I.C § 49-123(2)(a).

The Idaho legislature has further signaled that it draws a distinction between entering into a vehicle's passenger compartment and accessing a vehicle's engine

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[8] "The rule that statutes *in pari materia* are to be construed together means that each legislative act is to be interpreted with other acts relating to the same matter or subject. Statutes are *in pari materia* when they relate to the same subject. Such statutes are taken together and construed as one system, and the object is to carry into effect the intention. It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy, and was intended to be consistent and harmonious in its several parts and provisions. For the purpose of learning the intention, all statutes relating to the same subject are to be compared, and so far as still in force brought into harmony by interpretation." *State v. Barnes*, 133 Idaho 378, 382 (1999) (quoting *Grand Canyon Dories v. Idaho State Tax Comm'n*, 124 Idaho 1, 4 (1993).)

[9] In contrast, the legislature has defined "motor vehicle" and "neighborhood electric vehicle," at least in part, by the means in which they accomplish motion. *See* I.C §§ 49-123(2)(g),(i).

compartment, in a criminal context. Idaho Code § 49-229 is entitled "Injuring vehicle," and reads,

> Any person who shall individually, or in association with one or more others, **wilfully break, injure, tamper with or remove any part or parts of any vehicle for the purpose of injuring, defacing or destroying the vehicle, or temporarily or permanently preventing its useful operation, or for any purpose** against the will or without the consent of the owner of the vehicle, or who shall in any other manner wilfully or maliciously interfere with or prevent the running or operation of the vehicle shall be guilty of a misdemeanor.

I.C § 49-229 (emphasis added). In contrast, Idaho Code § 49-230 is entitled "Tampering with vehicle," and reads,

> Any person who shall without the consent of the owner or person in charge of a vehicle **climb into or upon such vehicle with the intent to commit any crime, malicious mischief, or injury, or who while a vehicle is at rest and unattended shall attempt to manipulate any of the levers, starting crank or other starting device, brakes or other mechanism, or to set the vehicle in motion**, shall be guilty of a misdemeanor, except that the foregoing provisions shall not apply when the act is done in an emergency in furtherance of public safety or convenience or by or under the direction of an officer in the regulation of traffic or performance of any other official duty.

I.C. § 49-230 (emphasis added). Through their plain language and when read *in pari materia*, Idaho Code § 49-229 contemplates injuring or tampering with a vehicle without the necessity of climbing on or into the passenger compartment, such as through accessing the engine compartment or puncturing tire, while Idaho Code § 49-230 contemplates injuring the vehicle specifically through "climb[ing] into or upon such vehicle." *Compare* I.C. § 49-229 *with* I.C. § 49-230. Idaho Code § 49-229 criminalizes conduct perpetrated outside of the passenger compartment, while Idaho Code § 49-230 criminalizes conduct occurring via the passenger compartment.

The district court found that the Idaho Court of Appeals' decision in *State v. Tarrant-Folsom*, 140 Idaho 556 (Ct. App. 2004), demonstrates that courts should give a

broad interpretation to I.C. § 18-1401. (Tr. p.14, L.14 – p.15, L.1.) The district court's reliance upon *Tarrant-Folsom* is misplaced. In *Tarrant-Folsom*, the Idaho Court of Appeals relied upon language used by the Idaho Supreme Court in *State v. Marks*, 45 Idaho 92 (1927), and *State v. Oldham*, 92 Idaho 124 (1968), and its own decision in *State v. Smith*, 139 Idaho 295 (Ct. App. 1993), and found that "the relevant case law denotes a legislative intent to interpret the burglary statute broadly rather than narrowly so as to protect **structures** that shelter people, animals and property." *Tarrant-Folsom* at 558-559 (emphasis added). The *Tarrant-Folsom* Court applied this precedent and found that the 8 x 10 feet and 8 x 40 feet storage containers the defendant was involved with entering, "were large enough to constitute buildings and performed functions of buildings, that is, sheltering and protecting property from the elements and from theft by non-owners," and, thus, sufficient evidence was presented to support the conviction. *Id.* at 560

Neither the *Tarrant-Folsom* decision, nor the precedent upon which it relies, can be read as a judicial statement of the legislature's general intent as to what can or cannot be burglarized. The term "other building" contained within I.C. § 18-1401, when read in conjunction with the terms "house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, [and] outhouse," can and should be read as a catchall category describing "structures" designed for "sheltering and protecting property from the elements and from theft by non-owners." I.C. § 18-1401; *see also generally*, *Tarrant-Folsom*, *supra*. However, *Tarrant-Folsom* and the cases cited therein do not describe a judicial fiat requiring a broad interpretation of I.C. § 18-1401. Indeed such a holding would be of dubious legitimacy.

A reviewing Court merely interprets a statute, beginning with its plain language, and it is for the legislature, not the judiciary, to determine whether a statute is socially unwise or should be amended. *Verska v. St. Alphosus Regional Medical Center*, 151 Idaho 889, 893 (2011) (quoting *In re Estate of Miller*, 143 Idaho 556, 567 (2006).) For example, where the legislature itself provides a statement of purpose that is not specifically enacted into law, the statement of purpose has no legal effect. *Id.* at 892-893."'The asserted purpose for enacting the legislation cannot modify it plain meaning.'" *Id.* (quoting *Viking Constr., Inc. v. Hayden Lake Irr. Dist.*, 149 Idaho 187, 191-192 (2010).) By logical extension, the judiciary is not free to interpret a statute more broadly than the words contained therein, no matter how broadly the Court believes the legislature intended the statute to be interpreted. *See generally*, *Verska*, *supra.* There is simply no basis for this Court to conclude that the legislature intended an entry into a vehicle to extend beyond those places where people or property are normally transported or stored, based upon a belief or assumption that the legislature meant the statue to be interpreted broadly. The legislature defines what is criminal – it is not for prosecutors or the Courts to define what should be criminal.

C. Alternatively, Under The Doctrine Of Lenity, This Court Should Find That Accessing The Engine Compartment Of A Vehicle Is Not Subject To Prosecution For Burglary Under I.C. § 18-1401

"'The rule of lenity states that criminal statutes must be strictly construed in favor of defendants.'" *State v. Anderson*, 145 Idaho 99, 103 (2008) (quoting *State v. Barnes*, 124 Idaho 379, 380 (1983) (overruled on other grounds).) In denying Mr. Sexton-Gwin's Motion to Dismiss, the district court stated, "I will acknowledge that the statute could be interpreted either way," and further stated, "I recognize, Mr. Hatch, in all candor that there is another interpretation that could be given to the statute." (Tr. p.13, Ls.11-12,

p.14, Ls.19-21.) Mr. Sexton-Gwin asserts that should this Court not find that I.C. § 18-1401, on its face, bars prosecution under the statute where merely the engine compartment was accessed, this Court should apply the rule of lenity and construe the statute strictly against the State. The district court recognized I.C. § 18-1401 could be interpreted as counsel for Mr. Sexton-Gwin had argued, yet the Court construed the statute in favor of the State.[10] Applying the rule of lenity, this Court should construe the statute against the State and find that the district court erred in denying Mr. Sexton-Gwin's Motion to Dismiss.

CONCLUSION

Mr. Sexton-Gwin respectfully requests that this Court vacate his conviction and sentence and remand his case to the district court with instructions that it enter an order granting his Motion to Dismiss.

DATED this 5th day of June, 2012.

JASON C. PINTLER
Deputy State Appellate Public Defender

[10] To the extent that the district court's decision could be considered discretionary, the district court abused that discretion. "When reviewing the lower court's discretionary decision, this Court must conduct a three-part inquiry to examine '(1) whether the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the outer boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason.'" *State v. Hedger,* 115 Idaho 598, 600 (1989) (quoting *Assocs. Nw. Inc., v. Beets,* 112 Idaho 603, 605 (Ct. App. 1987)). In construing I.C. § 18-1401 against Mr. Sexton-Gwin, the district court acted inconsistently with the applicable legal standard, i.e., the rule of lenity. However, Mr. Sexton-Gwin recognizes that, ultimately, this Court must interpret I.C. § 18-1401 and does so *de novo*.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of June, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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RANDY J STOKER
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E-MAILED BRIEF

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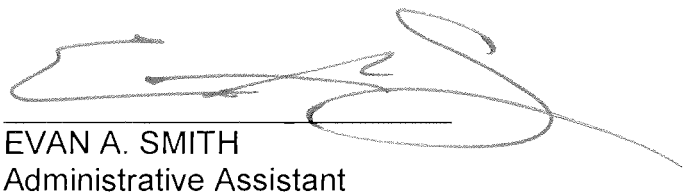

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