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Ada Cty. Prosecuting Atty. v. Motorcycle Appellant's Brief Dckt. 39359

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IN THE SUPREME COURT FOR THE STATE OF IDAHO

ADA COUNTY PROSECUTING)
ATTORNEY,)

Docket No. 39359-2011

Appellant,)

vs.)

2007 LEGENDARY MOTORCYCLE,)

VIN 4B7H8469X35007098,)

APPROXIMATELY THIRTEEN (13))

GRAMS METHAMPHETAMINE; ONE (1))

MOTOROLA VGA CELL PHONE; ONE (1))

BLACK VEST; AND ONE (1) BLACK)

JACKET,)

Respondents.)

APPELLANT'S BRIEF

Appeal from the District Court of the Fourth
Judicial District, County of Ada, State of Idaho

HONORABLE KATHRYN A. STICKLEN,
Fourth District Senior Judge, Presiding

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ADA COUNTY PROSECUTING ATTORNEY,)
)
Appellant,) **Case No. 39359-2011**
)
vs.)
)
2007 LEGENDARY MOTORCYCLE, VIN)
4B7H8469X35007098, APPROXIMATELY)
THIRTEEN (13) GRAMS)
METHAMPHETAMINE; ONE (1) MOTOROLA)
VGA CELL PHONE; ONE (1) BLACK VEST;)
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I. STATEMENT OF THE CASE

Christopher Rubey had been riding the Defendant Property 2007 Legendary Motorcycle, VIN 4B7H8469X35007098. After he got off the motorcycle, law enforcement found over 13 grams of methamphetamine on Rubey. Rubey was charged with possession with intent to deliver, but accepted a plea arrangement and pled guilty to felony possession of a controlled substance pursuant to Idaho Code § 37-2732(c). The Ada County Prosecuting Attorney seeks civil forfeiture of the Defendant Property motorcycle pursuant to Idaho Code § 37-2744(a)(4).

A. Factual Background

On April 22, 2009, Officer Kip Paporello, a Boise City Police Officer, saw Christopher Rubey and Cassandra Poulton leave Rubey's manufactured home driving the Defendant Property 2007 Legendary Motorcycle. R. at 316, 434-35. Officer Paporello also saw a blue truck follow the motorcycle. R. at 316-17, 435. Two other officers joined Paporello; and they all observed Rubey drive the motorcycle "into various parking lots, gas stations, and residential neighborhoods." R. at 317. All three officers, Paporello, Teuber and Holland stated in their affidavits that these driving maneuvers are commonly used to avoid surveillance for those involved in illegal drug activity. R. at 317, 435. Anthony Pezzaza and Cassandra Poulton's infant son were in the blue truck which was stopped by the police at a gas station at Deer Flat. R. at 317. Rubey then arrived at the gas station driving the motorcycle. R. at 317, 435. Rubey was subjected to a search; and Officer Paporello found approximately 13 grams, or a half of an ounce, of suspected methamphetamine inside Rubey's coat. R. at 318, 435. The suspected

substance tested positive for methamphetamine. R. at 318, 435. Rubey was charged with possession of methamphetamine with intent to deliver, but eventually he pled guilty to possession of methamphetamine, felony, Idaho Code § 372732(c). R. at 224, 435.

B. Chronology of Proceedings.

On May 20, 2009, the Ada County Prosecuting Attorney filed a Complaint in Magistrate Court which named the 2007 Legendary Motorcycle, VIN 4B7H8469X35007098; Approximately Thirteen (13) Grams Methamphetamine; One (1) Motorola VGA Cell Phone; One (1) Black Vest; and One (1) Black Jacket as the items of defendants property. R. at 5. Because of the criminal complaint, the Court stayed the civil forfeiture case pending resolution of the criminal proceeding. R. at 49.

After Rubey pled guilty to felony possession of methamphetamine and was sentenced in the criminal proceeding, the Ada County Prosecuting Attorney filed a Motion for Summary Judgment on January 4, 2010 in the civil forfeiture case. R. at 63-246. Rubey responded on January 15, 2010. R. at 254-276. The Magistrate Court heard argument on February 1, 2010. R. at 313-315. The Magistrate Court issued its *Order* granting the Ada County Prosecuting Attorney's Motion on February 25, 2010. R. at 316-328.

Rubey appealed the grant of summary judgment in favor of the Ada County Prosecuting Attorney to the District Court on April 7, 2010 (R. at 329-332), and amended the appeal on April 15, 2010. R. at 342-345. Appellant Rubey's brief was filed on July 28, 2010. R. at 374-390. Respondent Ada County Prosecuting Attorney filed its brief on August 25, 2010 (R. at 391-408)

and Appellant Rubey replied on September 15, 2010. R. 409-423. The District Court heard argument on the appeal on November 4, 2010 (R. at 428-429); and the District Court issued its decision on October 13, 2011 reversing and remanding the Magistrate Court's judgment. R. at 434-441. The Ada County Prosecuting Attorney appealed the District Court's decision on November 8, 2011.

II. ISSUE ON APPEAL

Whether the District Court erred in reversing the Magistrate Court's decision that Idaho Code § 37-2744(a)(4) allows conveyances to be forfeited when used to transport controlled substances.

III. STANDARD OF REVIEW

When the district court renders an opinion in its intermediate appellate capacity, the Supreme Court "directly reviews the district court's decision." *Hausladen v. Knoche*, 149 Idaho 449, 452, 235 P.3d 399, 402 (2010) (quoting *In re Doe*, 147 Idaho 243, 248, 207 P.3d 974, 979 (2009)). "The interpretation of a statute is a question of law subject to free review." *Kimbrough v. Idaho Bd. of Tax Appeals*, 150 Idaho 417, 247 P.3d 644 (2011) (citing *Callies v. O'Neal*, 147 Idaho 841, 847, 216 P.3d 130, 136 (2009)).

IV. ARGUMENT OF ISSUE ON APPEAL

A. **Idaho Code § 37-2744(a)(4) Is Ambiguous so the Court Should Look to Legislative History to Determine the Legislature's Intent.**

Idaho Code § 37-2744(a)(4) currently states:

[A]ll conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, delivery, receipt, possession or concealment, for the purpose of distribution or receipt of [controlled substances].

The Magistrate Court determined that the statute was ambiguous and applied the principles of statutory interpretation. R. at 321-322. The Magistrate Court utilized federal case law to determine the intent of the Idaho Legislature and found that a vehicle could be forfeited for transporting controlled substances. R. at 323-325. The District Court, in its intermediate appellate capacity, determined that Idaho Code § 37-2744(a)(4) was not ambiguous, and that the phrase “for the purpose of distribution and receipt” applied to the actions described in the statute. R. at 439-440.

The Magistrate Court and the District Court read Idaho Code § 37-2744(a)(4) in different ways. When the words in a statute can be read in different ways, the statute “is ambiguous and [] this Court must construe the statute ‘to mean what the legislature intended it to mean. To determine that intent, [this Court] examine[s] not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history.’” *Hausladen*, 149 Idaho at 452, 235 P.3d at 402 (2010) (quoting *State v. Doe*, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009)) (which quoted *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141

Idaho 388, 398-99, 111 P.3d 73, 83-84 (2005)). Because Idaho Code § 37-2744(a)(4) is susceptible to different interpretations, it is ambiguous, and it is appropriate to examine the legislative history of the statute.

1. The Legislative History of § 37-2744(a)(4) and § 37-2732(c) Indicates the Legislature Intended that a Conveyance Could Be Forfeited for Either the Transportation of Drugs or the Trafficking of Drugs.

In 1971, the Legislature enacted the *Uniform Controlled Substances Act*. H.B. 261, 41st Leg., 1st Extraord. Sess., 1971 Idaho Session Laws 965. The new law subjected to civil forfeiture: “all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of” controlled substances. Idaho Code § 37-2744(a)(4) (1971). This specific forfeiture provision related to conveyances, however, was not made applicable in the case of a violation of § 37-2732(c), Idaho Code, or misdemeanor possession of a controlled substance. Idaho Code § 37-2744(a)(4)(C) (1971).¹

¹ In 1971, subsection (C) of Idaho Code § 37-2744(a)(4) specified: “a conveyance is not subject to forfeiture for a violation of section 37-2732(c), Idaho Code.”

Section 37-2732(c) in 1971, as enacted, made it “unlawful for any person knowingly or intentionally to possess a controlled substance” and provided that a violation was a misdemeanor. H.B. 261. In 1972, § 37-2732(c) was amended to remove “knowingly or intentionally.” In addition, subsections (c)(1) and (c)(2) were added differentiating between different schedules of drugs and the resulting penalties. Section 37-2732(c)(1) referred to possession of Schedule I and Schedule II drugs and felony penalties while section 37-2732(c)(2) referenced nonnarcotic drugs in Schedule I and controlled substances in schedules III, IV and V and misdemeanor penalties. H.B. 627, 41st Leg., 2nd Sess., 1972 Idaho Session Laws 273.

“[T]he Court must consider all sections of applicable statutes together to determine the intent of the legislature.” *Ameritel Inns, Inc. v. Pocatello-Chubbuck Aud.*, 146 Idaho 202, 204, 192 P.3d 1026, 1029 (2008) (citing *Davaaz v. Priest River Glass Co., Inc.* 125 Idaho 333, 336, 870 P.2d 1292, 1295 (1994)). When read together, the two statutory provisions, Idaho Code § 37-2744(a)(4) and Idaho Code § 37-2732(c) indicate a conveyance could not be subject to forfeiture for misdemeanor possession of a controlled substance in 1971. Such a reading also indicates the Legislature purposefully did not attach the phrase “for the purpose of sale or receipt of” or trafficking to the verb “to transport.” If the Legislature had intended the reading that Rubey suggests, that “any forfeiture authorized under [§ 37-2744(a)(4)] must involve a conveyance used for the purpose of the distribution or receipt of a controlled substance,” (R. at 379) it would have been unnecessary for the Legislature to provide the limiting language in § 37-2744(a)(4)(C) and § 37-2732(c) that misdemeanor possession was insufficient for the forfeiture of a vehicle. Rubey suggests reading the verb “to transport” out of the statute. Statutory interpretation requires that effect be given to all words so that none are void or superfluous. *State v. Yzaguirre*, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007). In order to give meaning to the verb “to transport,” it must be read as a separate action from facilitating the transportation for the purpose of sale or receipt of controlled substances.

Further evidence of the Legislature’s intention to make the “transport” of controlled substances separate from “in any manner to facilitate the transportation, for the purpose of sale or receipt of” controlled substances is found in later amendments. The Legislature amended Idaho

Code § 37-2744(a)(4) in 1972 by expanding the phrase “in any manner to facilitate the transportation” to “in any manner to facilitate the transportation, delivery, receipt, possession or concealment.” H.B. 627, 41st Leg., 2nd Sess., 1972 Idaho Session Laws 277. The Legislature also amended subsection B of § 37-2744(a)(4) to provide: “no conveyance is subject to forfeiture under this section if the owner establishes that he could not have known in the exercise of reasonable diligence that the conveyance was being used to unlawfully transport”² controlled substances. *Id.* (emphasis added). The fact that the Legislature did not amend subsection B to state “transport for the purpose of [distribution]³ or receipt of” again indicates that the Legislature viewed the transportation of a controlled substance differently than facilitating the transportation, delivery, receipt, possession or concealment for the purpose of sale or receipt of controlled substances.

The legislative changes enacted in 1990 are the final evidence that the Legislature intended that conveyances could be forfeited when drugs were possessed and transported by the conveyance. The Legislature repealed § 37-2744(a)(4)(C), that since 1971, had provided a conveyance was not subject to forfeiture for certain possession violations found in Idaho Code

² In 1986 the Legislature expanded the statute to read: “No conveyance is subject to forfeiture under this section if the owner establishes that he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a)(4) of [37-2744]. S.B. 1419 As Amended, 48th Leg., 2nd Sess., 1986 Idaho Session Laws 712.

³ The word “sale” was amended to “distribution” in 1972. S.B. 1635, 41st Leg., 2nd Sess., 1972 Idaho Session Laws 1199.

§ 37-2732(c).⁴ H.B. 640, Centennial Leg., 2nd Sess., 1990 Idaho Session Laws 852. The language that was struck in 1990 was the reference to the specified possession violations. In explaining the rationale for striking the language, the Legislature focused on the word “transport.” The Statement of Purpose for RS 23871⁵ indicates the Legislature was not discussing *trafficking* (for the purpose of distribution or receipt of) but was only discussing the *transport* of drugs. The Committee Minutes for RS 23871 [HB 640] state: “Because of an oversight, the present statute states that if LSD is being transported, the conveyance is not subject to forfeiture. This new legislation would correct this.” *Hearing on RS 23871 Before the House Judiciary, Rules & Administrative Comm.*, Centennial Leg., 2nd Sess. (Feb. 13, 1990) (emphasis in original). In the Senate Committee, the Minutes for House Bill 640 state: “HB 640 would

⁴Idaho Code § 37-2744(a)(4)(C) referenced all of § 37-2732(c) until 1986. In 1986, § 37-2744(a)(4)(C) was amended and limited: “A conveyance is not subject to forfeiture for a violation of section 37-2732(c)(2).” S.B. 1419 As Amended. At the time of this change in 1986, § 37-2732(c)(2) referenced possession of a nonnarcotic drug classified as schedule I and controlled substances classified in schedules III, IV and V. The penalty for the possession was a misdemeanor.

In 1989, the Legislature amended Idaho Code § 37-2732(c) adding a new provision between (c)(1) and (c)(2); hence, the new § 37-2732(c)(2) stated: “Any person who violates this subsection and has in his possession lysergic acid diethylamide is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, or fined not more than five thousand dollars (\$5,000) or both.” H.B. 257, Centennial Leg., 1st Sess., 1989 Idaho Session Laws 656. Idaho Code § 27-2744(4)(C) was not changed. The result was that in 1989, a conveyance could not be forfeited for transporting LSD but the conveyance could be forfeited for transporting all other drugs, even if the penalty was a misdemeanor.

⁵ “The purpose of this amendment is to repeal the section of the forfeiture law that immunizes a person transporting LSD from forfeiture of his or her conveyance.” Statement of Purpose, RS 23871, H.B. 640, Centennial Leg., 2nd Sess. (1990).

repeal the section of the forfeiture law that immunizes a person transporting LSD from forfeiture of his or her conveyance.” *Hearing on H.B. 640 Before the Senate Judiciary and Rules Comm.*, Centennial Leg., 2nd Sess. (Mar. 19, 1990).

By looking at the language that the 1990 Legislature was repealing and the Committee Minutes, it is clear that the Legislature was tying possession of a controlled substance to the transport of that substance. Although the Legislature was focused on the transport of LSD, the Legislature made the decision to remove the exception for violations found in Idaho Code § 37-2732(c). Rubey plead guilty to felony possession of a controlled substance pursuant to Idaho Code § 37-2732(c), the same statutory provision that the legislature removed from Idaho Code § 37-2744(a)(4)(C) in 1990 to ensure that possession would result in civil forfeiture of a conveyance. Rubey’s reading of the statute would immunize a person transporting methamphetamine from forfeiture of his motorcycle. Based on the record of Legislative intent, that is not what the Legislature intended. The legislative history of the statute clearly shows that from its enactment, the Legislature intended to make conveyances transporting drugs subject to forfeiture.

2. **Federal Law, on which Idaho Code § 37-2744(4) was Based, Indicates that the Transportation of Controlled Substances is Separate from Facilitating the Transportation for the Purpose of Distribution or Receipt of Controlled Substances.**

When Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970, the intent of section 511 of that Act was that all conveyances used, or intended for use, to

transport or conceal controlled substances in violation of the act were subject to forfeiture. H.R. Rep. No. 91-1444, at 4623 (1970). In 1971, the Idaho Legislature began the process of enacting the *Uniform Controlled Substances Act* in Idaho with H.B. No. 261. The purpose of the Idaho legislation was “[t]o conform Idaho’s drug laws with the new federal drug laws which go into effect May 1, 1971.” *Hearing on H.B. 261 Before the House Printing & Legislative Expense Comm.*, 41st Leg., 1st Extraord. Sess. (Mar. 2, 1971).

The original federal statute (21 U.S.C. § 881) provided in relevant part:

All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9).

R. at 437. The original Idaho statute is very similar to the original federal statute and states:

[A]ll conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of [controlled substances].

H.B. 261, Idaho Code § 37-2477(a)(4) (1971). In a case from 1977 interpreting 21 U.S.C § 881, the claimant was charged with illegal possession of marijuana on a boat. *United States v. One Clipper Bow Ketch Nisku*, 548 F.2d 8, 10 (1st Cir. 1977). The claimant argued that the statute “should be construed to require forfeiture only where a vessel had been used in illegal drug trafficking, not where a quantity of illicit drugs for personal consumption has been found in a vessel.” *Id.* at 11. The First Circuit disagreed with the claimant and stated: “The plain meaning of ‘to transport’ is simply to carry or convey from one place to another.” *Id.*

The Second Circuit Court of Appeals has also upheld the forfeiture of a car that had transported “the remains of a marijuana cigarette in the ashtray.” *United States v. One 1986 Mercedes Benz Vin WD-BEA20D2GA143459*, 846 F. 2d 2, 4 (2nd Cir. 1988). In *United States v. 1990 Toyota 4Runner*, the Seventh Circuit Court of Appeals distinguished transport from facilitating the transportation, finding that to transport is a separate clause from any manner to facilitate the transportation. 9 F.3d 651, 652 (7th Cir. 1993). In *Toyota 4Runner*, the claimant drove the Toyota to the meeting where arrangements were made to bring heroin into the United States, but the Toyota did not actually transport the heroin in the vehicle. *Id.* at 651. The Seventh Circuit found the Toyota was used in the claimant’s drug business and therefore facilitated the attempted transportation. *Id.* at 653.

The federal courts’ interpretation of the federal statute is that “to transport” and “to facilitate transportation for the purpose of receipt” are separate actions. Since the purpose of the *Uniform Controlled Substances Act* in Idaho in 1971 was to conform Idaho’s drug laws with federal drug laws, the federal courts’ decisions offer persuasive evidence that to transport should be read separately from facilitating transportation for the purpose of sale or receipt.

3. Tennessee and New Mexico, States with Similar Conveyance Forfeiture Statutes, have Interpreted the Statute as To Transport Being a Separate Action from Facilitating the Transportation for the Purpose of Distribution and Receipt.

Many of the states adopted the federal statute⁶ that did not contain the language “for the purpose of sale or receipt of” while a few states like Tennessee, New Mexico and Idaho, adopted statutes that included the “for the purpose of sale or receipt of” language. “[T]he Idaho legislature included a ‘uniformity of interpretation’ provision [in the *Uniform Controlled Substances Act*], which directs that the Idaho act shall be applied and construed to make uniform the law with respect to the subject of the act among those states that enact it.” *State v. Barraza-Martinez*, 139 Idaho 624, 626, 84 P.3d 560, 562 (2003). The *Idaho Uniform Controlled Substances Act* should be construed to make it uniform with states that have already interpreted a similar section of the Act.

In 1985, Tennessee’s statute, including its punctuation, was nearly identical to Idaho’s initial statute:⁷

⁶ All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9). R. at 437.

⁷ Further evidence that the Tennessee statute was similar to Idaho’s, is that the Tennessee statute also had a subsection (c) provision that stated the conveyance was not subject to forfeiture for a violation of the possession statute. *Hughes v. State Dept. of Safety*, 776 S.W.2d 111, 112 (Tenn. Ct. App. 1989). This Tennessee provision appears to be similar to Idaho Code § 37-2744(a)(4)(C) which was repealed in 1990.

[A]ll conveyances, including aircraft, vehicles or vessels, which are used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of the sale or receipt of [controlled substances].

Tennessee Code Annotated § 53-11-409(a)(4) (1978). Idaho's statute in 1971⁸ read:

[A]ll conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of [controlled substances].

H.B. 261, Idaho Code § 37-2744(a)(4) (1971). In Interpreting the Tennessee statute, the Tennessee Court of Appeals, in *Featherston v. Wood*, noted that the vehicle in question had not been used to transport contraband. 1985 WL 4551, at *3 (Tenn. Ct. App. Dec. 18, 1985). The Court stated:

It is true that the statute describes the transportation as being for the purpose of sale or receipt; but the phrase, 'for the purpose of sale or receipt' describes and limits the word, 'transportation' and does not describe and extend the words, 'to facilitate' which are limited only by the word 'transportation.'

Id. at *4; *Hughes v. State Dept. of Safety*, 776 S.W.2d 111, 112-113 (Tenn. Ct. App. 1986). The Tennessee statute, like the Idaho statute, had two verbs: "to transport" and "to facilitate." According to the Tennessee Court's interpretation, the phrase "for the purpose of sale or receipt" does not modify the verb to facilitate but rather modifies the noun "transportation" that follows the verb "to facilitate." If the phrase does not modify the verb to facilitate, then it cannot be read to modify the verb "to transport" which occurs earlier in the statute.

⁸ The Legislature amended the statute in 1972 adding: [A]ll conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, delivery, receipt, possession or concealment, for the purpose of sale or receipt of [controlled substances]. H.B. 627

New Mexico also had a similar provision in its early forfeiture statute. New Mexico's prior statute, including its punctuation, was nearly identical to the Idaho civil forfeiture statute. The 1978 New Mexico statute stated:

[A]ll conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation for the purpose of the sale of [controlled substances].

New Mexico Statutes Annotated § 30-31-34 (1978). In interpreting the New Mexico statute, the Supreme Court of New Mexico found that "transportation need not be for the purpose of sale." *Matter of Forfeiture*, 673 P.2d 1310, 1312 (N.M. 1983).⁹

Since Idaho's *Uniform Controlled Substances Act* is almost identical to the statutes in two states that have interpreted the specific statutory provision at issue, it is persuasive evidence that Idaho's statute should be construed to make it uniform with the states that have already interpreted the Act. In order to make it uniform, there should be a finding that transporting a controlled substance is sufficient for the civil forfeiture of the conveyance.

B. The Decisions of Idaho Courts Support Civil Forfeiture of Conveyances, such as Motorcycles, Used to Transport Methamphetamine.

The recent Court of Appeals decision, *State of Idaho v. Key*, 149 Idaho 691, 239 P.3d 796 (Ct. App. 2010) is of importance, and supports the interpretation that transportation of a

⁹ The New Mexico Legislature has since amended its statute removing three commas. The most significant one was between "to transport" and "or" so it now reads: "to transport or in any manner to facilitate the transportation . . ." *State ex rel. Dept. of Public Safety v. Ortega*, 857 P.2d 44, 47 (N.M. 1993). In *Ortega*, the New Mexico Court found that because the statute had been modified with the removal of commas, forfeiture was allowed only when a vehicle contained a controlled substance for the purpose of sale. *Id.* at 49.

controlled substance is sufficient for forfeiture of a vehicle. The facts in *Key* are strikingly similar to this case. In the *Key* case, 5.23 ounces of marijuana was found in a backpack inside Key's car. *Id.*, at 693, 239 P.3d at 798. In this case, Rubey was found with 13 grams of methamphetamine inside his jacket after Rubey dismounted his motorcycle. Key was charged with possession of marijuana with the intent to deliver. *Id.* Rubey was charged with possession of methamphetamine with intent to deliver. Key pled guilty to possession of marijuana as part of a plea agreement. *Id.* Rubey plead guilty to possession of methamphetamine as part of a plea agreement.

The state, in the criminal proceeding, argued that Key's car "should be forfeited on the basis that it had been used to possess and transport the large amount of marijuana found in the backpack." *Id.* at 694, 239 P.3d at 799. The Prosecuting Attorney, in the civil proceeding, argued that Rubey's motorcycle should be forfeited because it was used to transport methamphetamine. Key argued that since she had pled guilty to possession "as opposed to possession with an intent to deliver, there was no evidence that the vehicle was used to facilitate possession of the marijuana." *Id.* Rubey argues that under Idaho Code § 37-2744(a)(4) possession and transport of methamphetamine is not sufficient for a forfeiture; instead, the Court must find that the vehicle was used or intended for use for the purposes of distribution or receipt of methamphetamine in violation of the *Uniform Controlled Substances Act*. R. at 379, 385.

In *Key*, the Court of Appeals concluded that the district court did not err in finding that Key's vehicle had been used to facilitate her possession offense such that it was subject to

criminal forfeiture. *Id.* at 705, 239 P.3d at 810. The Magistrate Court concluded that “the plain language of the statute [] will not require the Plaintiff, in a civil forfeiture case, [to] prove the criminal elements of distribution of methamphetamine or receipt of methamphetamine.” R. at 325.

The criminal forfeiture statute provides forfeiture for: “Any of the person’s property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of such violation.” Idaho Code § 37-2801(2). The civil forfeiture statute provides: “[A]ll conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, delivery, receipt, possession or concealment, for the purpose of sale or receipt” of controlled substances. Idaho Code § 37-2744(a)(4). The Court of Appeals in *Key* distinguished the criminal forfeiture statute from the civil forfeiture statute. The Court stated that the criminal forfeiture statute is different from the civil forfeiture statute because the criminal forfeiture statute “limits criminal forfeiture to property that facilitated the crime for which the defendant has been convicted.” *Key*, at 702, 239 P.3d at 808 (citing *State v. Stevens*, 139 Idaho 670, 675, 84 P.3d 1038, 1043 (Ct. App. 2004)). However, Rubey is in essence arguing that the civil forfeiture statute should be construed in the same manner as the criminal statute, and that civil forfeiture of a vehicle cannot occur unless the vehicle facilitated the specific crime of delivery or receipt of methamphetamine. Such a requirement is not in keeping with the Court of Appeals’ decisions or the civil forfeiture statute.

In fact, the Court of Appeals, citing *Stevens*, stated it is not necessary in a criminal forfeiture to have evidence that a vehicle was used to acquire drugs, but only that there is some connection between the drugs and the vehicle. *Key*, at 704, 239 P.3d at 809. The Court found that Key's possession of drugs in her car created the "requisite connection between the drugs and the vehicle" to warrant a criminal forfeiture. The Court of Appeals explained there is a "more difficult burden to prove a relationship" between a conveyance and the conviction of a specific offense in a criminal forfeiture. *Stevens*, 139 Idaho at 675, 84 P.3d at 1043. If transporting drugs in a vehicle is sufficient for a criminal forfeiture, and there is a more difficult burden to prove a relationship between a vehicle and an offense in a criminal proceeding, it seems illogical that the Legislature intended that transporting drugs on a motorcycle should be insufficient for a civil forfeiture.

As the Court of Appeals found in *Stevens*, the difference between criminal and civil forfeiture is the nexus between the crime and the item being forfeited. *Id.* The Court of Appeals found that Idaho Code § 37-2744(a)(4) was similar to 21 U.S.C § 881 "in that it does not limit forfeitures to property connected with the specific offense for which a defendant has been convicted." *Id.* Rubey argues that the "civil forfeiture action must be based upon the use of a vehicle for the purpose of distribution or receipt of a controlled substance that was possessed or distributed in violation of the act." R. at 379. Rubey's interpretation would simply eviscerate the difference between criminal and civil forfeiture. Congress and the Idaho Legislature would not

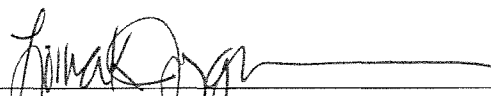
have created both the criminal and civil forms of forfeiture if they both required the same nexus between crime and the item forfeited.

V. CONCLUSION

Idaho Code § 37-2744(a)(4) is ambiguous. In the face of ambiguity, this Court determines the intent of the Idaho Legislature. The legislative history of Idaho Code § 37-2477(a)(4) and § 37-2732(c) indicate an intent by the Idaho Legislature to allow the forfeiture of conveyances for transporting controlled substances. In addition, federal case law, state case law from other states with similar statutory provisions, and related Idaho case law all support the interpretation that the Legislature intended the civil forfeiture of a conveyance when the conveyance is transporting controlled substances.

DATED this 10th day of April, 2012.

GREG H. BOWER
Ada County Prosecuting Attorney



Lorna K. Jorgensen
Deputy Prosecuting Attorney

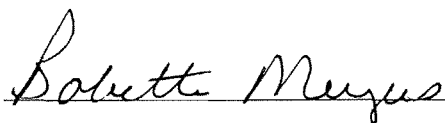
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF to the following person by the following method:

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