

6-15-2012

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

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Ada Cty. Prosecuting Atty. v. Motorcycle Appellant's Reply Brief Dckt. 39359" (2012). *Idaho Supreme Court Records & Briefs*. 3832.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/3832

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

ADA COUNTY PROSECUTING ATTORNEY,)

Appellant,)

vs.)

2007 LEGENDARY MOTORCYCLE, VIN)

4B7H8469X35007098, APPROXIMATELY)

THIRTEEN (13) GRAMS)

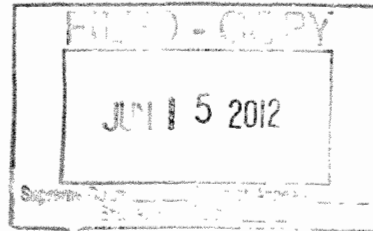
METHAMPHETAMINE; ONE (1) MOTOROLA)

VGA CELL PHONE; ONE (1) BLACK VEST;)

AND ONE (1) BLACK JACKET,)

Respondents.)

Case No. 39359-2011



APPELLANT'S REPLY 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

Greg H. Bower
Ada County Prosecuting Attorney
Lorna K. Jorgensen, ISB # 6362
Civil Division
200 W. Front Street, Room 3191
Boise, ID 83702
(208) 287-7700

G. Scott Gatewood, ISB # 5982
Attorney at Law
Sallaz & Gatewood, Chtd.
P.O. Box 8956
Boise, Idaho 83707
(208) 336-1145

Attorneys for Appellant

Attorney for Claimant/Respondent

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;)
AND ONE (1) BLACK JACKET,)
)
Respondents.)
_____)

APPELLANT'S REPLY 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

Greg H. Bower
Ada County Prosecuting Attorney
Lorna K. Jorgensen, ISB # 6362
Civil Division
200 W. Front Street, Room 3191
Boise, ID 83702
(208) 287-7700

Attorneys for Appellant

G. Scott Gatewood, ISB # 5982
Attorney at Law
Sallaz & Gatewood, Chtd.
P.O. Box 8956
Boise, Idaho 83707
(208) 336-1145

Attorney for Claimant/Respondent

TABLE OF CONTENTS

Table of Contents i

Table of Cases and Authorities ii

I. Argument of Issue on Appeal 1

 A. Idaho Code § 37-2744(a)(4) Is Ambiguous so the Court Should
 Look to Legislative History to Determine the Legislature’s Intent. 1

 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 4

 2. The Grammatical Structure of Idaho Code § 37-2744(a)(4)
 Indicates that “for purposes of distribution and receipt”
 Does Not Modify the Verb “to transport.” 7

 3. Federal Law, on Which Idaho Code § 37-2744(a)(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. 9

 4. 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. 12

 B. The Decisions of Idaho Courts Support Civil Forfeiture of Conveyances,
 Such as Motorcycles, Used to Transport Methamphetamine..... 15

II. Conclusion 15

Certificate of Mailing..... 17

TABLE OF CASES AND AUTHORITIES

Table of Cases:

<i>Arambarri v. Armstrong</i> , 152 Idaho 734, 274 P.3d 1249 (2012)	2
<i>BHC Intermountain Hosp., Inc. v. Ada County</i> , 150 Idaho 93, 244 P.3d 237 (2010)	2-3,7,8
<i>Carrier v. Lake Pend Oreille Sch. Dist. No. 84</i> , 142 Idaho 804, 134 P.3d 655 (2006)	1
<i>Commonwealth v. One 1988 Ford Coupe</i> , 574 A.2d 631 (Pa. 1990)	4
<i>Featherston v. Wood</i> , 1985 WL 4551 (Tenn. Ct. App. Dec 18, 1985)	12,13
<i>Hickman v. Lunden</i> , 78 Idaho 191, 300 P.2d 818 (1956)	1
<i>Hughes v. State Dept. of Safety</i> , 776 S.W.2d 111 (Tenn. Ct. App. 1986)	12,13
<i>Idaho Dept. of Law Enforcement By and Through Richardson v. \$34,000 U.S. Currency</i> , 121 Idaho 211, 824 P.2d 142 (Ct. Apps. 1991)	4
<i>Matter of Forfeiture</i> , 673 P.2d 1310 (N.M. 1983)	14
<i>Myer v. Ada Cnty.</i> , 50 Idaho 39, 293 P. 322 (1930)	8
<i>State v. Barraza-Martinez</i> , 139 Idaho 624, 84 P.3d 560 (2003)	12
<i>State ex rel. Dept. of Public Safety v. Ortega</i> , 857 P.2d 44 (N.M. 1993)	14
<i>State v. Giovanelli</i> , 152 Idaho 717, 274 P.3d 18, 20. (Ct. Apps. 2012)	2
<i>State v. Jennings</i> , 195 Neb. 434, 238 N.W.2d 477 (1976)	8
<i>State of Idaho v. Key</i> , 149 Idaho 691, 239 P.3d 796 (Ct. App. 2010)	4,15
<i>State v. Nunez</i> , 2 P.3d 264 (N.M. 1999)	4
<i>State of Idaho v. One 1977 Subaru Two Door</i> , 114 Idaho 43, 753 P.2d 254 (1988)	5
<i>State v. Paciorek</i> , 137 Idaho 629, 51 P.3d 443, (Ct. App. 2002),	3
<i>State v. Ross</i> , 129 Idaho 380, 924 P.2d 1224 (1996)	5

<i>State v. Stevens</i> , 139 Idaho 670, 84 P.3d 1038 (Ct. App. 2004)	3,10
<i>State of Idaho v. Patrick Stevens</i> , (In the Supreme Court of the State of Idaho 2002) (No. 29057)	10
<i>State v. Spooner</i> , 520 So.2d 336 (La. 1988)	4
<i>State v. Troughton</i> , 126 Idaho 406, 888 P.2d 419 (Ct. App. 1994)	8
<i>State v. Yzaguirre</i> , 144 Idaho 471, 163 P.3d 1183 (2007)	1,6
<i>United States v. 1990 Toyota 4Runner</i> , 9 F.3d 651 (7th Cir. 1993)	10,11
<i>United States v. Lewis</i> , 987 F.2d 1349 (8th Cir. 1993)	10
<i>United States v. One 1974 Cadillac Eldorado Sedan</i> , 548 F.2d 421 (2d Cir. 1977)	10
<i>United States v. One 1977 Cadillac Coupe Deville</i> , 644 F.2d 500 (5th Cir. 1981)	10,11
<i>United States v. One 1979 Porsche Coupe</i> , 709 F.2d 1424 (11th Cir. 1983)	10,11
<i>United States v. One 1984 Cadillac</i> , 888 F.2d 1133 (6th Cir. 1989)	10
<i>United States v. One 1986 Ford Pickup, Ca. License No. 2W03753</i> , VIN 2FTJW36L6GCA99688, 56 F.3d 1181 (9th Cir. 1995)	10,11
<i>United States v. Linn</i> , 880 F.2d 209 (9th Cir. 1989)	11
<i>U.S. v. \$39,480.00 in U.S. Currency</i> , 190 F.Supp.2nd 929, 933 (W. D. Tex. 2002)	4
<i>United States v. Ursery</i> , 518 U.S. 267 (1996)	5

Authorities:

Idaho Code § 18-4105(b)	3
Idaho Code § 18-8410	2
Idaho Code § 37-2732(c)	4
Idaho Code § 37-2744	3
Idaho Code § 37-2744(a)(4)	1-7,9,12,13,15
Idaho Code § 37-2750	12
Idaho Code § 56-1002(3)	2

Idaho Code § 66-327	7
Uniform Controlled Substances Act	8,11
S.B. 1467, 41st Leg., 2nd Sess., 1972 Idaho Session Laws 277	6
<i>Hearing on H.B. 640 Before the Senate Judiciary and Rules Comm.,</i> Centennial Leg., 2nd Sess. (Mar. 19, 1990)	6
H.B. 261	9,13
H.B. 627	13
New Mexico Statutes Annotated § 30-31-34 (1978)	14
New Mexico Statutes Annotated § 30-31-34 (D)	14
Tennessee Code Annotated § 53-11-409(a)(4) (1978)	13
21 U.S.C. § 881	9,10
50 Am.Jur., Statues, 204, sec. 225	1

I. ARGUMENT OF ISSUE ON APPEAL

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

A statute is not open to construction as a matter of course. It is open to construction only where the language used in the statute requires interpretation, that is, where the statute is ambiguous, or will bear two or more constructions, or is of such doubtful or obscure meaning, that reasonable minds might be uncertain or disagree as to its meaning.

Hickman v. Lunden, 78 Idaho 191, 195, 300 P.2d 818, 820 (1956) (quoting 50 Am.Jur., Statutes, 204, sec. 225)); *see also State v. Yzaguirre*, 144 Idaho 471, 475, 163 P.3d. 1183, 1187 (2007) (*Carrier v. Lake Pend Oreille Sch. Dist. No. 84*, 142 Idaho 804, 807, 134 P.3d 655, 658 (2006) (“If the language of the statute is capable of more than one reasonable construction it is ambiguous).

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].

Idaho Code § 37-2477(a)(4) bears two or more constructions and is doubtful in meaning so that reasonable minds disagree as to its meaning. As evidence that this statutory provision bears two or more constructions and is doubtful in meaning so that reasonable minds disagree, the Fourth District Magistrate Court and the Fourth District Court came to different conclusions regarding its meaning. In addition, the courts of two other states, New Mexico and Tennessee, which once had similar statutes, found it necessary to interpret the meaning of the statute.

In addition to the evidence that courts have already found it necessary to interpret the meaning of Idaho Code § 37-2744(a)(4), some recent decisions by this Court and the Court of Appeals offer examples of when a statute may or may not be found to be ambiguous. An example of an unambiguous statute was recently provided in *State v. Giovanelli*, 152 Idaho 717, ____, 274 P.3d 18, 20. (Ct. Apps. 2012). Idaho Code § 18-8410 states: “[W]hen a registered juvenile sex offender reaches twenty-one (21) years of age, the prosecutor may petition the court to transfer the offender to the adult registry.” 274 P.3d at 20. The Court noted that the statute is clear that “[o]nly when an offender reaches twenty-one may the prosecutor file a petition.” *Id.* In *Arambarri v. Armstrong*, 152 Idaho 734, 274 P.3d 1249 (2012), Arambarri argued that the language “[e]ach substate administrative region shall be headed by a regional director” required seven regional directors, one for each of the seven administrative regions. This Court found that the plain language of Idaho Code § 56-1002(3) did not require a regional director for each region. *Id.*

In contrast, Idaho courts appear to have found statutes ambiguous when the grammar of a statute is at issue. For example, in *BHC Intermountain Hosp., Inc. v. Ada County*, 150 Idaho 93, 96, 244 P.3d 237, 239 (2010), the parties had differing opinions regarding what the phrase “in accordance with the provisions of chapter 35, title 31 Idaho Code” referenced. This Court utilized the last antecedent rule in interpreting the phrase, and found because the phrase was placed immediately after the phrase “the court shall fix responsibility” that “in accordance with the provisions of chapter 35, title 31” was limited to fixing responsibility. *Id.* at 96, 244 P.3d

240. In *State v. Paciorek*, 137 Idaho 629, 51 P.3d 443, (Ct. App. 2002), the Court of Appeals found it necessary to interpret Idaho Code § 18-4105(b). The statute stated: ““(b) An actual or simulated sex act, or sexual contact between humans and animals, or masturbation, or any graphic or pictorial display thereof; . . . is guilty of a misdemeanor.”” *Id.* at 632, 51 P.3d at 446 (quoting Idaho Code § 18-4105(b)). Paciorek argued that the adjective “simulated” only modified “sex act” according to the rules of grammar. The Court of Appeals found that utilization of grammar rules is a consideration; however, “ultimately our task is to interpret the statute not as a professor of English grammar would parse it but as the legislature intended it.” *Id.* The Court found that simulated modified other nouns in the sentence. It appears from these recent decisions that when the words of a statute are clear, Idaho courts find statutes to be unambiguous; however, it appears that when differing interpretations result from grammar, the statutes are found to be ambiguous. Because the grammar in the statute at issue could lead to different interpretations, Idaho Code § 37-2744(a)(4) should be found to be ambiguous.

The Fourth District Magistrate Court and the Fourth District Court came to different conclusions regarding the meaning of Idaho Code § 37-2744 indicating reasonable minds disagree as to its meaning. In addition, courts with similar statutes to Idaho Code § 37-2744(a)(4) have found it necessary to interpret the statute, indicating the statute will bear two or more constructions. Finally, it appears that when grammar obscures the meaning, it appears that a statute is ambiguous. Because Idaho Code § 37-2744(a)(4) is ambiguous,

requiring interpretation, this Court should determine the intent of the Legislature by reviewing legislative history and engaging in statutory construction.

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.

‘Forfeiture’ has been defined as the taking of property without compensation, because of an offense, when the taking has been ‘deemed necessary by the legislature to restrain the commission of the offense and to aid in its prevention.’ 36 AM.JUR.2D *Forfeiture*, § 1, p. 611 (1968); *Spooner*, 520 So.2d at 357;¹ *One 1988 Ford Coupe*, 574A.2d at 636². Forfeiture statutes impose an economic penalty by rendering the illegal behavior unprofitable, and deterring such behavior by preventing further illegal use of the property.

Idaho Dept. of Law Enforcement By and Through Richardson v. \$34,000 U.S. Currency, 121 Idaho 211, 217, 824 P.2d 142, 148 (Ct. Apps. 1991). Rubey argues that the civil forfeiture statute, which “acts in rem against the seized property itself” should be construed against the Prosecuting Attorney and in favor of Rubey. *State v. Key*, 149 Idaho 691, 699, 239 P.3d 796, 804 (Ct. Apps. 2010). He supports this argument with a lease case and two criminal cases from Idaho. Rubey’s main citation³ is to page 284 of *State v. Nunez*, 2 P.3d 264 (N.M. 1999). On page 284 of the Nunez opinion, the New Mexico Court finds civil forfeiture punitive for

¹ *State v. Spooner*, 520 So.2d 336 (La. 1988).

² *Commonwealth v. One 1988 Ford Coupe*, 574 A.2d 631 (Pa. 1990).

³ Rubey offers several other citations, including one from the federal district court in Texas. Although the U.S. District Court in Texas did state that statutes are to be strictly construed, the Court made the decision not to strictly construe the statute and allowed an untimely filing because the federal government had made a good faith effort to comply with the statute. *U.S. v. \$39,480.00 in U.S. Currency*, 190 F.Supp.2nd 929, 933 (W. D. Tex. 2002).

double-jeopardy standards, and concludes the opinion by declining to follow the United States Supreme Court's decision in *United States v. Ursery*, 518 U.S. 267 (1996). Idaho, on the other hand has followed *Ursery* in *State v. Ross*, 129 Idaho 380, 381 n.1, 924 P.2d 1224, 1225 n.1 (1996). Rubey's support is not persuasive that the civil forfeiture statute should be construed in favor of Rubey. The evidence that is persuasive are the actions of the Idaho Legislature enacting and amending the *Uniformed Controlled Substances Act*. Those actions, as outlined in the Prosecuting Attorney's opening Brief and in this Reply, indicate that the Legislature has expanded the forfeiture provisions rather than restricted those provisions.⁴

Claimant Ruby agrees with the Prosecuting Attorney that until 1990, there was an exemption for the forfeiture of vehicles for misdemeanor possession of a controlled substance. Respondent's Brief at 15. As argued in the Prosecuting Attorney's opening brief, this exemption was only necessary if the verb "to transport" in Idaho Code § 37-2744(a)(4) is separate from the verb "to facilitate" and its modifying language "for the purpose of distribution or receipt." If the forfeiture of vehicles can only occur when there is trafficking, as Rubey argues, then there would have been no need for the specific misdemeanor possession exemption when the law was enacted. The repeal of the exemption in 1990 left in place a statute that allows for the forfeiture of conveyances that are transporting controlled substances, as well as an allowance for the forfeiture of vehicles that are facilitating the transportation of controlled substances for the

⁴ In addition, the Legislature amended the statute in 1986 to allow for the forfeiture of currency that was in close proximity to a controlled substance. *State of Idaho v. One 1977 Subaru Two Door*, 114 Idaho 43, 45, 753 P.2d 254, 256 n.1 (1988).

purpose of distribution and receipt. 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). The legislative history indicates that in order to give meaning to the verb “to transport,” it must be read as a separate action from facilitating the transportation, delivery, receipt, possession or concealment for the purpose of sale or receipt of controlled substances.

Rubey does not address the Prosecuting Attorney’s argument regarding how the exemption affected the rest of the statute nor does he address the Legislature’s specific focus on the word transport⁵ during the legislative discussions and in amendments. Instead, Rubey puts his focus on the words misdemeanor and felony, and argues that “No question has been presented on this appeal concerning the civil forfeiture of a conveyance arising out of a misdemeanor

⁵The 1972 Committee Minutes for RS 3734 [SB 1467] state: “Subparagraph (4), [], broadens the use of various vehicles or types of vehicles used in transporting drugs, which could result in forfeiture of the vehicle.” Hearing on S.B. 1467 Before the Senate Judiciary and Rules Comm., 41st Leg., 2nd Sess. (Feb. 9, 1972) (explanation of Mr. Martin Ward, Office of Attorney General) (emphasis added). 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”⁵ controlled substances.—S.B. 1467, 41st Leg., 2nd Sess., 1972 Idaho Session Laws 277 (emphasis added).

The Committee Minutes for RS 23871 [HB 640] in 1990 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 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) (emphasis added).

conviction.” Respondent’s Brief at 15. This is not an argument about misdemeanors and felonies, but as stated above, is how the exemption that once existed in Idaho Code § 37-2744(a)(4) and has since been repealed, and other legislative discussions and amendments all assist in interpreting Idaho Code § 37-2744(a)(4). The exemption, its repeal, other amendments and legislative discussions all indicate that the “mere” possession of methamphetamine and its transportation result in the forfeiture of the conveyance.

2. The Grammatical Structure of Idaho Code § 37-2744(a)(4) Indicates that “for purposes of distribution and receipt” Does Not Modify the Verb “to transport.”

The last antecedent rule, as interpreted by this Court and the Court of Appeals indicates that the phrase “for purpose of distribution or receipt of” references “or in any manner to facilitate the transportation, delivery, receipt, possession or concealment” of methamphetamine. In *BHC Intermountain Hosp., v. Ada County*, 150 Idaho 93, 244 P.3d 237 (2010), this Court interpreted the following sentence from Idaho Code § 66-327:

If the court determines such person is unable to pay all or any part of such costs, the court shall fix responsibility, in accordance with the provisions of chapter 35, title 31 Idaho Code, for payment of such costs on the county of such person’s residence to the extent not paid by such person or not covered by third party resources, including medical assistance as aforesaid.

This Court determined that the phrase “in accordance with the provisions of chapter 35, title 31 Idaho Code” referred only to shall fix responsibility because “[u]nder the rule of the last antecedent clause, a referential or qualifying clause refers solely to the last antecedent, absent a

showing of contrary intent.” *Id.* at 96, 244 P.3d at 240 (citing *Myer v. Ada Cnty.*, 50 Idaho 39, 42, 293 P. 322, 323 (1930)).

In Rubey’s Brief, he cites to *State v. Troughton*, 126 Idaho 406, 888 P.2d 419 (Ct. App. 1994) as support for his argument that the statutory phrase “for the purpose of distribution or receipt of” is applicable to transport. The Prosecuting Attorney believes *Troughton*, like *BHC Intermountain Hospital*, supports a finding that “for the purpose of distribution or receipt of” is not applicable to “to transport.” At issue in *Troughton* was the following phrase from the Uniform Controlled Substances Act: “which contains any quantity of the following substances having a stimulant effect on the central nervous system.” *Id.* at 411, 888 P.2d at 424; Idaho Code § 37-2707. *Troughton* argued that “having a stimulant effect on the central nervous system” referred to quantity. *Id.* at 410, 888 P.2d at 423. The Court of Appeals agreed with the district court that “having a stimulant effect on the central nervous system” modified substances and not quantity. *Id.* at 411, 888 P.2d at 424. In making its decision, the Court of Appeals cited to language from a Nebraska case: “Under this rule, known as the rule of the last antecedent clause, a referential or qualifying phrase refers solely to the last antecedent, absent a showing of contrary intent.” *Id.* (citing *State v. Jennings*, 195 Neb. 434, 238 N.W.2d 477, 481 (1976)).

Rubey has not provided any proof of any contrary intent by the Idaho Legislature. The Prosecuting Attorney, on the other hand, has shown the intent of the Legislature to make a vehicle subject to forfeiture for transporting a controlled substance. Without a showing of contrary legislative intent, the phrase “for the purpose of distribution or receipt of” refers solely

to the last antecedent “or in any manner to facilitate the transportation, delivery, receipt, possession or concealment.”

3. Federal Law, on Which Idaho Code § 37-2744(a)(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.

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). Rubey argues that the federal statute does not contain the phrase “for the purpose of distribution or receipt” and thus offers little assistance in construing the statute. Respondent’s Brief at 23. The original federal statute did not need the phrase “for the purpose of distribution or receipt” because the statute provided a vehicle could be forfeited if used “in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1), (2), or (9)” (emphasis added). Idaho’s initial

statute had the phrase “for the purpose of sale or receipt of” because facilitation was limited to transportation.⁶

In *State v. Stevens*, 139 Idaho 670, 675, 84 P.3d 1038, 1043 (Ct. App. 2004), the Court of Appeals noted that the district court had relied heavily on federal case law involving civil forfeiture proceedings in making its forfeiture determination. The Court of Appeals further noted that 21 U.S.C. § 881 was similar to Idaho Code § 37-2744[a](4) and “[h]ad the prosecutor pursued civil forfeiture, the federal cases upon which the district court relied would be persuasive and the result of this appeal would likely be different.” *Id.* The federal cases that the district court relied on were *United States v. 1990 Toyota 4Runner*, 9 F.3d 651 (7th Cir. 1993); *United States v. One 1986 Ford Pickup, Ca. License No. 2W03753, VIN 2FTJW36L6GCA99688*, 56 F.3d 1181 (9th Cir. 1995); *United States v. Lewis*, 987 F.2d 1349 (8th Cir. 1993); *United States v. One 1984 Cadillac*, 888 F.2d 1133 (6th Cir. 1989); *United States v. One 1979 Porsche Coupe*, 709 F.2d 1424 (11th Cir. 1983); *United States v. One 1977 Cadillac Coupe Deville*, 644 F.2d 500 (5th Cir. 1981); *United States v. One 1974 Cadillac Eldorado Sedan*, 548 F.2d 421 (2d Cir. 1977). Brief of Respondent, Appendix 2 (Memorandum Decision Re: Forfeiture Request), *State of Idaho v. Patrick A. Stevens*, (In the Supreme Court of the State of Idaho 2002) (No. 29057).

⁶ In 1972, the Legislature amended the statute to add “delivery, receipt, possession or concealment” to facilitate and changed sale to distribution.

Although the federal cases were cited by the *Patrick A. Stevens*’ District Court in support of facilitation, specifically transporting a person to a drug transaction, some of the cases are also instructive regarding “to transport.” In *1990 Toyota 4Runner*, the Seventh Circuit stated: “A vehicle or other conveyance used to transport the drugs is forfeitable by virtue of the ‘to transport’ clause.” *1990 Toyota 4Runner*, 9 F.3d at 652. The Seventh Circuit also analyzed the legislative history of the federal statute and noted that the transport clause was specifically mentioned. *Id.* at 653 (citing H.R. Rep. No. 1444, 91st Cong., 2d Sess., pt. 1, at p. 55 (1970)). The Ninth Circuit noted: “Our vehicle forfeiture statutes do establish some general rules. It is not necessary that the vehicle actually be used to transport drugs; use of a vehicle to transport purchase money to the site of a drug sale subjects the vehicle to forfeiture.” *One 1986 Ford*, 65 F.3d at 1187 n.7 (citing *United States v. Linn*, 880 F.2d 209, 214 (9th Cir. 1989)); *see also One 1979 Porsche Coupe*, 709 F.2d at 1427. The Second Circuit has found it would be nonsensical that a vehicle could be forfeited for transporting minute quantities of drugs but could not be forfeited if the vehicle was used to get a person to a drug sale. *One 1974 Cadillac*, 548 F.2d at 435.

The federal courts’ interpretation of the federal statute is that “to transport” a controlled substance is a separate action from “in any manner to facilitate the transportation, sale, receipt, possession, or concealment.” 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 transporting methamphetamine subjects a vehicle to forfeiture.

4. 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.

At the time the Tennessee Court of Appeals and the New Mexico Court of Appeals interpreted their civil forfeiture conveyance statutes, the statutes were nearly identical to Idaho's civil forfeiture conveyance statute. Because the Idaho forfeiture statute contains a uniformity of interpretation provision,⁷ and because Idaho Courts have not yet interpreted Idaho Code § 37-2744(a)(4), the decisions by other state courts with similar provisions offer persuasive authority. In 1985 when the Tennessee Court of Appeals interpreted its conveyance statute in *Featherston v. Wood*, WL 4551 (Tenn. Ct. App. Dec. 18, 1985),⁸ the statute, including its punctuation, read as follows:

[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].

⁷ Idaho Code § 37-2750; *State v. Barraza-Martinez*, 139 Idaho 624, 626, 84 P.3d 560, 562 (2003).

⁸ *Featherston v. Wood* is quoted as a Court of Appeals Opinion in *Hughes v. State Dept. of Safety*, 776 S.W.2d 111, 112-13, (Tenn. Ct. App. 1989).

Tennessee Code Annotated § 53-11-409(a)(4) (1978) (emphasis added). Idaho's statute in 1971⁹ read, including punctuation, read as follows:

[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) (emphasis added). 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.” *Featherstone v. Wood*, 1985 WL 4551, at *4 (Tenn. Ct. App. Dec. 18, 1985); *Hughes v. State Dept. of Safety*, 776 S.W.2d 111, 112-113 (Tenn. Ct. App. 1986). 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.

Rubey points out that the Tennessee Legislature repealed the statute after the *Featherstone* decision to bring the Tennessee statute in line with the federal statute. That may be true; however, it is not relevant to how the Tennessee Court of Appeals interpreted its statute. At the time of the *Featherstone* decision, the Tennessee statute was almost identical to the Idaho

⁹ 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

statute. The Tennessee Court of Appeals interpreted that statute in a manner where transporting a controlled substance is sufficient for the conveyance to be forfeited.

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). New Mexico then amended the statute and removed three commas so it 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 the sale of [controlled substances].

State ex rel. Dept. of Public Safety v. Ortega, 857 P.2d 44 (N.M. 1993) (quoting New Mexico Statutes Annotated § 30-31-34(D)). In *Ortega*, the Court noted that the comma after the verb "to transport" had been removed, applied "a less technical version of the 'last antecedent rule,'" and found forfeiture of a conveyance was allowed only when transportation occurred for the purpose of sale of a controlled substance. *Id.* at 47-48. Idaho's statute still has a comma after the verb "to transport," thus the *Matter of Forfeiture* decision is persuasive that trafficking is not required for a vehicle to be forfeited.

B. The Decision in *Key* Supports Civil Forfeiture of Conveyances, Such as Motorcycles, Used to Transport Methamphetamine.

Rubey frames the issue in this case as “whether that statute [37-2744(a)(4)] can be construed to allow for civil forfeiture arising out of nothing more than an offense based upon mere [felony] possession.” Respondent’s Brief at 6. A finding that there cannot be a civil forfeiture of a vehicle based upon “mere” possession would lead to an absurd result. Ginger Key’s car was forfeited based upon “mere” possession. *State of Idaho v. Key*, 149 Idaho 691, 239 P.3d 796 (Ct. App. 2010). As outlined in the Prosecuting Attorney’s opening Brief, the only difference between this case and *Key*, is that in *Key* the forfeiture action for the conveyance was brought under the criminal forfeiture provision, rather than the civil forfeiture provision. Interpreting Idaho Code § 37-2744(a)(4) as requiring trafficking for a civil forfeiture proceeding while “mere” possession is sufficient for a criminal forfeiture proceeding leads to an absurd result. There is no evidence in the legislative history that the Idaho Legislature intended the civil forfeiture procedure to be more stringent than the criminal forfeiture procedure.

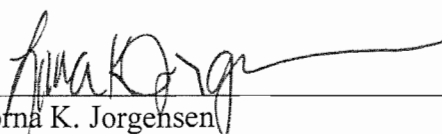
II. CONCLUSION

Because reasonable minds can disagree regarding the meaning of Idaho Code § 37-2744(a)(4), it is ambiguous. When a statute is ambiguous, this Court determines the intent of the Idaho Legislature. In the case of this particular statute, the task of determining the legislative intent is easier because there is a documented history. That history indicates an intent by the Idaho Legislature to allow the forfeiture of conveyances for transporting controlled substances. Coupled with the legislative intent is statutory construction, which also indicates that

the phrase “for the purpose of distribution or receipt of” does not reference to transport. Finally, federal case law, interpretations of similar statutes from other states and 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 15th day of June, 2012.

GREG H. BOWER
Ada County Prosecuting Attorney



Lorna K. Jorgensen
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of June, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF to the following person by the following method:

G. Scott Gatewood
Sallaz & Gatewood, Chtd.
P.O. Box 8956
Boise, ID 83707

Hand Delivery
 U.S. Mail
 Certified Mail
 Facsimile: (208) 336-1263

Number of Copies: 2

