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## State v. Wright Appellant's Brief Dckt. 39483

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

)

) Docket No. 39483-2011

) Plaintiff, ) Case No. CR-2009 -0025609

v.

)

)

RICHARD W. WRIGHT,

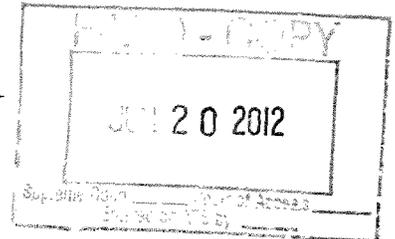
)

)

) Defendant/Appellant, )

\_\_\_\_\_)

APPELLANT'S OPENING BRIEF



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#### a. Standards of Review

##### *I. Sufficiency of the Evidence*

“Appellate review of the sufficiency of the evidence is limited in scope. A finding of guilt will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct.App.1998); *State v. Knutson*, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct.App.1991).”

*State v. Stone*, 147 Idaho 890, 216 P.3d 648 (Idaho App. 2009) (rev. denied Sept 25, 2009.)

“Due Process requires that the State prove every element of an offense.”

*State v. Anderson*, 144 Idaho 743, 750, 170 P.3d 886 (Idaho 2007)

“The Fourteenth Amendment of the United States Constitution guarantees the right to due process, and the U.S. Supreme Court has held that as a part of that due process, " no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof-defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S.Ct.

2781, 2787, 61 L.Ed.2d 560, 571 (1979). The relevant inquiry is not whether this Court would find the defendant to be guilty beyond a reasonable doubt, but whether " after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Id. at 319, 99 S.Ct. at 2789, 61 L.Ed.2d at 573 (emphasis in original)."

State v. Adamcik, 152 Idaho 445, 272 P.3d 417 (Idaho 2012).

*ii. Statutory Interpretation*

"The interpretation of a statute is a question of law over which we exercise free review." McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 813, 135 P.3d 756, 759 (2006). "This Court must construe a statute to give effect to the intent of the legislature." Carrier v. Lake Pend Oreille School Dist. # 84, 142 Idaho 804, 807, 134 P.3d 655, 658 (2006). "It must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole." McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 813, 135 P.3d 756, 759 (2006) (citations omitted). "Statutes that are in pari materia must be construed together to effect legislative intent. Statutes are in pari materia if they relate to the same subject." City of Sandpoint v. Sandpoint Indep. Highway Dist., 139 Idaho 65, 69, 72 P.3d 905, 909 (2003) (citations omitted)."

Paolini v. Alberston's, Inc., 143 Idaho 547, 149 P.3d 822, 824 (Idaho 2006).

*iii. Applicability of Idaho Code § 49-1301*

"In the case before us, where the property damage caused by the accident was to the front bumper of Swift's truck and to a runaway horse, the applicability of the statute [I.C. § 49-1301] is not obvious."

Munns v. Swift Transportation Company, 138 Idaho 108 (Idaho 2002).

"The inherent ambiguity in the statute precludes a conclusion that Swift Transportation Co. Inc., and its driver were negligent as a matter of law for violating the statute by not remaining at the scene of the accident with the horse."

Munns v. Swift Transportation Company, 138 Idaho 108 (Idaho 2002).

*iv. The Rule of Lenity*

“The rule of lenity states that criminal statutes must be strictly construed in favor of defendants.”

State v. Anderson, 145 Idaho 99, 103, 175 P.3d 788, 792 (Idaho 2008).

3. OTHER IDAHO AUTHORITY

a. Idaho Criminal Jury Instruction 1036

ICJI 1036. LEAVING SCENE OF ACCIDENT - ATTENDED VEHICLE

INSTRUCTION NO. \_\_\_\_\_

In order for the defendant to be guilty of Leaving the Scene of an Accident [Involving an Attended Vehicle], the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] was driving a motor vehicle
4. on public or private property open to the public,
5. the defendant's vehicle was involved in an accident
6. which resulted in damage to another vehicle which was driven or attended by a person,
7. the defendant had knowledge of the accident, and
8. either the defendant failed to immediately stop [his] [her] vehicle at the scene of the accident, or to stop as close as possible and then immediately return to the scene of the accident, or after stopping at or returning to the scene of the accident, the defendant failed to remain at the scene until [he] [she] had done the following:
  - (a) given his or her name and address;
  - (b) given the name of his or her insurance agent or company, if the defendant had automobile liability insurance;
  - (c) given the vehicle registration number of the vehicle the defendant was driving;

and

(d) if available, exhibited [his] [her] driver's license to the driver of or person attending the other vehicle involved in the collision.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. §§ 49-1301 and 49-1302. Although the statute does not expressly require that the defendant have knowledge of the accident, it is an essential element of the offense. *State v. Parish*, 79 Idaho 75, 310 P.2d 1082 (1957).

#### 4. AUTHORITY FROM OTHER STATES

##### a. Foreign State Statutes

###### *i. Colorado - C.R.S. 42-4-1403*

"The driver of any vehicle directly involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of section 42-4-1403."

###### *ii. Kansas - K.S.A. 8-1603*

"The driver of any vehicle involved in an accident resulting only in damage to a vehicle *or other property* which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible, but shall forthwith return to and in every event shall remain at the scene of such accident until he or she has fulfilled the requirements of K.S.A. 8-1604."  
[Emphasis added]

###### *iii. Iowa - Iowa Code § 321.261*

1. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close as possible and if able, shall then return to and remain at the scene of the accident in accordance with section 321.263. Every such stop shall be made without obstructing traffic

more than is necessary.

2. Any person failing to stop or to comply with the requirements in subsection 1 of this section, in the event of an accident resulting in an injury to any person is guilty upon conviction of a serious misdemeanor."

b. Foreign State Case Law

*I. Lumbardy v. Colorado, 625 P.2d. 1026, 1027 (Colo. 1981).*

"Section 42-4-1402 plainly applies to an accident involving injury to someone other than the driver or damage to two or more vehicles. The statute contemplates a situation where there are other persons to whom the driver should report information about himself."

\*\*\*

"The county court, in determining that section 42-4-1402 applied to the facts in this case, interpreted "any person" in the first sentence of the statute to refer back to "the driver." So construed, "accident," as used in the statute, would include all one car accidents since the driver and "any person" would be one and the same individual.

The district court affirmed the county court's interpretation of "any person." It also interpreted the emphasized "and" in section 42-4-1403(2), p. 3, supra, as an "or" in order to make section 42-4-1403 logically applicable to single vehicle accidents.

The defendant argues that the duties of a driver involved in a one car accident are prescribed by section 42-4-1406, C.R.S.1973:

"(1) The driver of a vehicle involved in a traffic accident resulting in injury to or death of any person or any property damage shall, after fulfilling the requirements of section 42-4-1402 and 42-4-1403(1), give immediate notice of the location of such accident and such other information as is specified in section 42-4-1403(2) to the nearest office of the duly authorized police authority and, if so directed by the police authority, shall forthwith

and without delay return to and remain at the scene of the accident until said police have arrived at the scene and completed their investigation thereat."

We agree. Section 42-4-1406(1) unequivocally applies to a single car accident. Apparently, the county court and the district court overlooked or ignored section 42-4-1406. Instead, they found it necessary to stretch the terms of section 42-4-1402 to "reasonably effect the legislative intent evidenced by the entire statutory scheme." The duty to report a single car accident under section 42-4-1406 is included within the leaving the scene of the accident ("hit and run") statutory scheme. *Gammon v. State Dept. of Revenue*, 32 Colo.App. 437, 513 P.2d 748 (1973). Therefore, section 42-4-1406, rather than section 42-4-1402, as interpreted by the two lower courts, is the provision requiring a driver to report property damage in a single car accident. The facts of this case do not support the defendant's conviction under section 42-4-1402.

We reverse and remand to the district court with directions to vacate the defendant's conviction.

- ii. State v. Holm, 41 Kan.App.2d 1096, 1100, 208 P.3d. 325, 328 (Kan.App. 2009).

"A reading of these statutes appears to require remaining at the scene of a noninjury accident only if the property damaged by the damaging driver is attended by another person. Therefore a single car accident does not require remaining at the scene unless the property the property of some other person is damaged."

- iii. State v. Tarbox, 739 N.W.2d 850 (Iowa 2007)

"In his petition for further review Christopher Jerome Tarbox asks this court to reverse the court of appeals decision finding the district court erred when it dismissed the trial information charging him with leaving the scene of an accident in violation of Iowa Code section 321.261 (2003).

Tarbox claims because he was involved in a single-vehicle accident, and he was the only person who suffered a personal injury, his conduct did not violate section 321.261. Accepting the facts alleged by the State in the trial information and minutes as true, we agree with Tarbox that his conduct of leaving the scene of the single-vehicle accident did not violate section 321.261. Accordingly, we vacate the decision of the court of appeals and affirm the decision of the district court.”

## INTRODUCTION

This appeal stems from the conviction following a court trial of the Defendant, Richard William Wright, of a violation of Idaho Code § 49-1301 arising from a single vehicle accident involving only the Defendant's vehicle and a speed limit sign which was located adjacent to a public road.

The Defendant appeared pro-se at trial.

The question presented to the Court is whether Idaho Code § 49-1301 is violated if a driver fails to remain at the scene of an accident involving damage only to his own vehicle and to the personal property of another.

There was no evidence presented at trial by either party as to the monetary value of the damage either to Wright's vehicle nor to the street sign, but the fair inference from the evidence is that Wright's vehicle slid off a public road on ice as he drove to work at about 7:55, a.m.; that a speed limit sign was knocked down, that the damage to Wright's vehicle was limited to plastic door molding.

In a case titled Munns v. Swift Transportation, Inc., cited at 138 Idaho 108, 58. P.3d 92, 95 (Idaho 2002), this Court questioned the applicability of Idaho Code § 49-1301 to a highway collision between a tractor-trailer and a horse. This appeal provides an opportunity to further address that question.

## STATEMENT OF FACTS

A summary of the facts underlying the criminal misdemeanor citation would be that on December 18, 2009, at about 7:55 a.m., the Defendant/Appellant, Richard W. Wright, was

driving his Black 1996 Jeep on Nita Street near its intersection with Government Way, in Hayden, Kootenai County, Idaho.

The road conditions were very icy and Mr. Wright's Jeep slid off of the road on the ice and knocked over a speed limit sign. Mr. Wright's Jeep sustained some damage to plastic door molding. Mr. Wright drove his vehicle back onto the roadway and continued to his business, a café called 'City Perc,' in downtown Coeur d'Alene, Idaho.

A motorist observed the event and called '911' to provide a description of the event and of the vehicle involved. A police officer drove to Mr. Wright's residence and talked with Mr. Wright's wife, who called Mr. Wright at his business. The officer asked to speak with Mr. Wright and Mr. Wright advised the officer that his vehicle slid off of Nita Street, knocked over a street sign and that he had intended to report the accident on a 'self-report form.'

The officer then drove to Mr. Wright's business and after some discussion in which the officer believed Mr. Wright's answers were somewhat evasive, he cited Mr. Wright with a violation of Idaho Code § 49-1301.

#### COURSE OF THE PROCEEDINGS

Mr. Wright pleaded not guilty to the misdemeanor citation and on March 1, 2010 a court trial was held before the Honorable Penny Friedlander, Magistrate Judge. Mr. Wright appeared pro-se.

After the parties and the Court wrangled through an issue regarding the State's failure to provide a response to the Defendant's written request for discovery, the State called four witnesses, Mr. Donald Blanchard and Mr. Timothy DeWitt, the driver and a passenger of a car who observed the incident, and Kootenai County Deputies Joshua Leyk and Patrick Meehan.

Mr. Blanchard testified generally that he observed a black jeep slide on ice over a curb and knock down a 'standard street sign' which said '25 miles an hour' on it (Tr. pp. 9-10). Mr. Blanchard testified that following the collision with the street sign the Jeep 'continued back out' and turned southbound on Wayne (Tr. p. 10, ll. 2-4). Mr. DeWitt did not testify regarding his actual observations of the incident (See Generally Tr. p. 17, ll. 13-24). Deputy Meehan testified that after he received a report of the incident, including the license plate, he drove to the scene and observed a speed limit sign broken up at the base and on the ground and that he also observed part of a 'covering that goes over the side of a vehicle to protect it from door dings' lying on the ground (Tr. pp. 23-34.).

Deputy Leyk testified that after the report of the collision he drove to the Defendant's home and spoke with his wife and told her that the Defendant had been involved in an accident (Tr. p. 33). Deputy Leyk testified that Mrs. Wright called Mr. Wright and overheard the conversation in which Mr. Wright told Mrs. Wright that he had slid on ice, hit a traffic sign and knocked it down, but that he was "fine and not hurt" (Tr. pp. 34-35).

Deputy Leyk then spoke with the individual he believed was Mr. Wright and that during that conversation Mr. Wright had told him he had "slipped on the ice on Government and knocked over a traffic sign and that "he had intended to report the accident to law enforcement through...a self-report form." (Tr. p. 36, ll. 15-23). Mr. Wright explained to Deputy Leyk that he was former law enforcement and that was the process he was familiar with as far as reporting an accident (Tr. P. 36, ll. 23-25).

Deputy Leyk then erroneously advised Mr. Wright that "per Idaho Code, he's required to immediately notify law enforcement of any accident" (Tr. pp. 36-37).

In closing the State's theory was that Mr. Wright was guilty of the offense charged because he had not reported the collision to law enforcement (Tr. p. 51, ll. 14-22).

The State introduced no evidence of the ownership of the street sign, no evidence of the value of the damage done to the street sign and no evidence of the value of the damage done to Mr. Wright's vehicle.

The record is also entirely devoid of any evidence from either party regarding whether or not the accident had been reported to the owner of the sign.

Following trial the court convicted Mr. Wright of a violation of Idaho Code § 49-1301 (Tr. p. 57, ll. 9-10).

Mr. Wright timely appealed to the District Court and on May 11, 2011, through a written "Memorandum Decision and Order on Appeal," the District Court, Hon. John T. Mitchell, denied the appeal.

Mr. Wright timely petitioned the District Court for a re-hearing and on October 11, 2011 the District Court denied the petition for rehearing.

On November 23, 2011, Mr. Wright timely filed this appeal to the Idaho Supreme Court.<sup>1</sup>

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<sup>1</sup>Mr. Wright's intermediate appeal to the District Court included issues related to whether or not he had been denied his right to counsel at the time of the sentencing in this matter. For the reason that on March 13, 2012 the underlying Idaho Code § 49-1301 conviction has been dismissed following Mr. Wright's successful completion of the withheld judgment imposed in this matter, those issues are not pursued by Mr. Wright through this appeal.

## ISSUES PRESENTED ON APPEAL

I. Whether the evidence at trial was insufficient for the trial court to convict the Defendant of a violation of Idaho Code § 49-1301

A. Idaho Code § 49-1301 should not apply to collisions between a vehicle and personal property where the factors set forth in Idaho Code § 49-1305 are not met.

B. The State of Idaho failed to prove each essential element of the charged violation of Idaho Code § 49-1301 at trial.

## STANDARDS OF REVIEW

This Court has provided clear standards for the review of issues such as those presented by this appeal. Segregated into categories, the applicable standards of review appear to be as follows:

1. Sufficiency of the Evidence for Conviction.

Appellate review of the sufficiency of the evidence is limited in scope. A finding of guilt will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct.App.1998); *State v. Knutson*, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct.App.1991).

*State v. Stone*, 147 Idaho 890, 216 P.3d 648 (Idaho App. 2009) (rev. denied Sept 25, 2009.)

“The Fourteenth Amendment of the United States Constitution guarantees the right to due process, and the U.S. Supreme Court has held that as a part of that due process, " no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof-defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787, 61 L.Ed.2d 560, 571 (1979). The relevant inquiry is not whether this Court would find the defendant to be guilty beyond a reasonable doubt, but whether " after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have

found the essential elements of the crime beyond a reasonable doubt." Id. at 319, 99 S.Ct. at 2789, 61 L.Ed.2d at 573 (emphasis in original)."

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## 2. Statutory Interpretation

"The interpretation of a statute is a question of law over which we exercise free review." McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 813, 135 P.3d 756, 759 (2006). "This Court must construe a statute to give effect to the intent of the legislature." Carrier v. Lake Pend Oreille School Dist. # 84, 142 Idaho 804, 807, 134 P.3d 655, 658 (2006). "It must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole." McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 813, 135 P.3d 756, 759 (2006) (citations omitted). "Statutes that are in pari materia must be construed together to effect legislative intent. Statutes are in pari materia if they relate to the same subject." City of Sandpoint v. Sandpoint Indep. Highway Dist., 139 Idaho 65, 69, 72 P.3d 905, 909 (2003) (citations omitted).

Paolini v. Alberston's, Inc., 143 Idaho 547, 149 P.3d 822, 824 (Idaho 2006).

## ARGUMENT

I. The evidence at trial was insufficient for the trial court to convict the Defendant of a violation of Idaho Code § 49-1301

A. Idaho Code § 49-1301 should not apply to collisions between a vehicle and personal property where the factors set forth in Idaho Code § 49-1305 are not met.

The interpretation of a statute is a question over which this Court exercises free review, State v. Maidwell, 137 Idaho 424, 426, 50 P.3d 439, 441 (2002) (citing Lopez v. State, 136 Idaho 174, 30 P.3d 952 (2001)).

The *Rule of Lenity* requires that criminal statutes be strictly construed to favor

defendants in criminal matters, State v. Anderson, 145 Idaho 99, 103, 175 P.3d 788 (Idaho 2008).

In its 2002 decision in Munns v. Swift Transportation Co. Inc., cited at 138 Idaho 108, 58 P.3d 92, this Court has commented upon what it termed “the inherent ambiguity” of Idaho Code § 49-1301:

“Idaho Code section 49-1301(1) directs the driver of any vehicle involved in an accident to immediately stop and to remain at the scene until he has fulfilled the requirements of law. The statute prescribes the duty owed by the drivers in an accident to each other, presumably to allow information gathering concerning the accident. However, the statute qualifies "an accident" by limiting it to one "resulting in only damage to a vehicle which is driven or attended by a person." In the case before us, where the property damage caused by the accident was to the front bumper of Swift's truck and to a runaway horse, the applicability of the statute is not obvious. The inherent ambiguity in the statute precludes a conclusion that Swift Transportation Co., Inc., and its driver were negligent as a matter of law for violating the statute by not remaining at the scene of the accident with the horse.”

Munns v. Swift Transportation Co. Inc., supra., at 138 Idaho at 111.

The evidence the State produced at Mr. Wright’s trial was that Mr. Wright’s vehicle had left the roadway after sliding on ice, knocked over a speed limit sign, suffered un-quantified damage to plastic door molding and that Mr. Wright failed to immediately report the accident to law enforcement.

The State’s theory at trial seems to have attempted to intertwine the duties required of drivers involved in accidents under Idaho Code § 49-1305, with the statutory phrase “until he has fulfilled the requirements of law” as used in Idaho Code § 49-1301(1).

The issues presented by Mr. Wright in this appeal also appear to necessarily intertwine:

1) whether Idaho Code § 49-1301 can have legal application under the facts of this case, and 2) if so, whether the evidence presented at this trial was sufficient to sustain the Defendant's conviction of violating that statute.

To evaluate Mr. Wright's argument the language of Idaho Code § 49-1301 is a starting point. That statute reads in its entirety as follows:

§ 49-1301. ACCIDENTS INVOLVING DAMAGE TO VEHICLE

(1) The driver of any vehicle involved in an accident, either on public or private property open to the public, resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop the vehicle at the scene of the accident, or as close as possible, and shall immediately return to, and in every event shall remain at, the scene of the accident until he has fulfilled the requirements of law.

(2) For any accident which occurs on a divided, controlled-access highway or interstate highway of the state highway system, a stop as required by subsection (1) of this section shall be made by moving the vehicle into a safe refuge on the shoulder, emergency lane or median whenever such moving of a vehicle may be done safely and the vehicle is capable of being normally and safely driven, does not require towing, and may be operated under its own power in its customary manner without further damage or hazard to itself, to the traffic elements or to the roadway.

(a) For any other highway, a stop as required by subsection (1) of this section shall be made without obstructing traffic more than is necessary.

(b) The driver or any other person who has removed a motor vehicle from the main-traveled part of the road as provided in this subsection before the arrival of a law enforcement officer shall not be considered liable or at fault regarding the cause of the accident solely by reason of moving the vehicle pursuant to this subsection.

(3) Any person failing to stop or to comply with the requirements under these circumstances shall be guilty of a misdemeanor.

(4) The department shall revoke for a period of one (1) year the driver's license, privileges or permit to drive, or the nonresident operating privilege, of any person convicted of a violation of the provisions of subsection (1) of this section.

(5) Nothing herein shall be construed to interfere with the duty of any city, county or state police officer to investigate and detect crime and enforce the penal, traffic or highway laws of this state or any political subdivision.

The facts of this case seem to much more involve the application of Idaho Code § 49-1304, which expressly pertains to accidents involving vehicles and fixtures. Idaho Code § 49-1304 reads as follows:

§ 49-1304. DUTY UPON STRIKING FIXTURES UPON OR  
ADJACENT TO A HIGHWAY

The driver of any vehicle involved in an accident resulting in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of the property of the fact, of his name and address, the name of his insurance agent or company if he has automobile liability insurance, the motor vehicle registration number of the vehicle he is driving, and upon request and if available exhibit his driver's license.

Idaho Code § 49-1304 does not require that an involved driver remain at the scene of an accident with a fixture or other property. Idaho Code §§ 49-1301 and 49-1304 clearly describe two distinctly separate crimes. Idaho Code § 49-1301 expressly applies to an accident involving damage to a vehicle driven or attended by any person, while Idaho Code § 49-1304 applies only to an accident resulting in damage to fixtures or property.

Further, Idaho Code § 49-1301 expressly limits its application to accidents “resulting only in damage to a vehicle which is driven or attended by any person.” What statute applies if an accident results in damage to a vehicle, but also results in damage to fixtures or property? Or does the driver have separate duties in an accident that involves damage to a vehicle and also to fixtures or property? Add in the legislative definition of ‘accident’ and the duties of a driver involved in an accident become even more complicated.

Idaho Code § 49-102(3) defines the term 'accident':

"Accident" means any event that results in an unintended injury or property damage attributable directly or indirectly to the motion of a motor vehicle or its load, a snowmobile or special mobile equipment."

The statutory term "accident" clearly encompasses such events as a rock or other debris being propelled onto vehicle either by its own motion or by the motion of another vehicle.

Could Idaho Code § 49-1301 have been intended by the legislature to require a driver to stop and return to the scene of a windshield rock chip? Clearly some rule of reason must apply.

The legislature's statutory scheme as previously limited by this Court works only if Idaho Code §49-1301 applies only to accidents involving a vehicle driven or attended by someone other than the defendant driver. With that limitation, drivers duties become clear under multiple scenarios:

If a driver is involved in an accident resulting only in damage to another vehicle driven or attended by any person, then that driver must immediately stop the vehicle at the scene of the accident, or as close as possible, and shall immediately return to, and in every event shall remain at, the scene of the accident until he has fulfilled the requirements of Idaho Code § 49-1302. In other words, Idaho Code § 49-1302 describes the duties required of a driver who strikes an attended vehicle within the contemplation of Idaho Code § 49-1301.

Idaho Code §§ 49-1303 and 49-1304 are not part of that statutory scheme. They stand alone and apart. Idaho Code §§ 49-1301 and 49-1302 require the presence of another driver or person attending the struck vehicle to give information to.

Idaho Code § 49-1303 contains independent language requiring that the driver of a

vehicle which strikes an unattended vehicle, stop and “then and there” either locate and provide specific information the operator or owner of the unattended vehicle.

Notably, Idaho Code § 49-1304 does not require the driver of a vehicle striking a fixture or other property located on or adjacent to the highway to stop at the scene, but rather requires only that a driver involved in an accident resulting in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of the property of the fact and provide specific identifying information.

For that reason, Mr. Wright had no duty to stop or return to the scene of the accident in question in this case as a consequence of damaging someone else’s property. The question becomes whether he had a duty to stop and return to the scene of the accident because his own vehicle suffered minor damage.

Idaho Code § 49-1305 defines the circumstances under which an accident must be reported to law enforcement:

§ 49-1305. IMMEDIATE NOTICE OF ACCIDENTS

(1) The driver of a vehicle involved in an accident resulting in injury to or death of any person, or damage to the property of any one (1) person in excess of one thousand five hundred dollars (\$1,500) shall immediately, by the quickest means of communication, give notice of the accident to the local police department if the accident occurs within a city, otherwise to the office of the county sheriff or the nearest office of the state police.

(2) Whenever the driver of a vehicle is physically incapable of giving immediate notice of an accident as required herein, and there was another occupant in the vehicle at the time of the accident capable of doing so, the occupant shall give or cause to be given the notice not given by the driver.

In this case, there was no evidence presented at trial by the State, or by Mr. Wright, of the monetary value of the damage to Mr. Wright's vehicle or of the monetary value of the damage to the speed limit sign. The only evidence that related to the issue of whether any person was injured was testimony by a witness named Blanchard who testified that "...there was no bodily injury or threat to anybody" (Tr. p. 12, ll. 16-17.), and testimony by Deputy Leyk that Mr. Wright had told him that "he (Wright) was fine, that he was not hurt." (Tr. p. 35, ll. 1-2). The trial court made no findings in that regard. For those reasons the accident was not one that was required to be immediately, or otherwise, reported to law enforcement.

If the statutory phrase "until he has fulfilled the requirements of law" from Idaho Code § 49-1301(1) is considered to include the reporting duty described by Idaho Code § 49-1305, that section also has no application to Mr. Wright's case.

Thus, the only possible way that Idaho Code § 49-1301 could have application to Mr. Wright's situation is if damage to his own vehicle could trigger the duty to stop at, or return to, the scene of the accident and remain there.

The analysis of this Court in Munns, supra., is persuasive on that issue. The purpose of the 'stop and remain' provisions Idaho Code §§ 49-1301 and 49-1302 is to require that identifying and insurance information be provided to each driver or other person attending a vehicle involved in a collision. That policy is not advanced by requiring the driver of a vehicle involved in a single vehicle collision to remain at the scene of the collision. Given a hypothetical where an accident occurs between a vehicle and a natural rock wall bordering a roadway, where the single vehicle involved sustains damage and the natural rock wall sustains none, what could be the policy advanced by requiring that driver to remain at the scene of that accident?

Construing nearly identical language to that of Idaho Code § 49-1301, appellate courts from other jurisdictions have concluded that the statutory language "any vehicle directly involved in an accident resulting only in damage to a vehicle which is driven or attended by any person " does not apply to describe the defendant driver's own vehicle.

For example, the Colorado Supreme Court examined the statutory language of Colorado's similar statute, C.R.S. 42-4-1403, which states:

"The driver of any vehicle directly involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of section 42-4-1403."

Lumbardy v. Colorado, 625 P.2d. 1026, 1027 (Colo. 1981). Construing that language the

Colorado Supreme Court held:

Section 42-4-1402 plainly applies to an accident involving injury to someone other than the driver or damage to two or more vehicles. The statute contemplates a situation where there are other persons to whom the driver should report information about himself.

The Colorado Supreme Court reasoned that the lower courts had stretched the application of C.R.S. 42-4-1402 too far to try to give it application to a single vehicle collision:

The county court, in determining that section 42-4-1402 applied to the facts in this case, interpreted "any person" in the first sentence of the statute to refer back to "the driver." So construed, "accident," as used in the statute, would include all one car accidents since the driver and "any person" would be one and the same individual.

The district court affirmed the county court's interpretation of "any person." It also interpreted the emphasized "and" in section 42-4-1403(2), p. 3, supra, as an "or" in order to make section 42-4-1403 logically applicable to single vehicle accidents.

The defendant argues that the duties of a driver involved in a one car accident are prescribed by section 42-4-1406, C.R.S.1973:

"(1) The driver of a vehicle involved in a traffic accident resulting in injury to or death of any person or any property damage shall, after fulfilling the requirements of section 42-4-1402 and 42-4-1403(1), give immediate notice of the location of such accident and such other information as is specified in section 42-4-1403(2) to the nearest office of the duly authorized police authority and, if so directed by the police authority, shall forthwith and without delay return to and remain at the scene of the accident until said police have arrived at the scene and completed their investigation thereat." We agree.

Section 42-4-1406(1) unequivocally applies to a single car accident. Apparently, the county court and the district court overlooked or ignored section 42-4-1406. Instead, they found it necessary to stretch the terms of section 42-4-1402 to "reasonably effect the legislative intent evidenced by the entire statutory scheme." The duty to report a single car accident under section 42-4-1406 is included within the leaving the scene of the accident ("hit and run") statutory scheme. *Gammon v. State Dept. of Revenue*, 32 Colo.App. 437, 513 P.2d 748 (1973). Therefore, section 42-4-1406, rather than section 42-4-1402, as interpreted by the two lower courts, is the provision requiring a driver to report property damage in a single car accident. The facts of this case do not support the defendant's conviction under section 42-4-1402.

We reverse and remand to the district court with directions to vacate the defendant's conviction.

Likewise, the Court of Appeals of Kansas has construed language in its Leaving the Scene of an Accident statute to require the involvement of at least two (2) vehicles. In that case, *State v. Holm*, 41 Kan.App.2d 1096, 208 P.3d 325 (Kan.App. 2009) the court was construing K.S.A. 8-1603, which reads in the pertinent part:

"The driver of any vehicle involved in an accident resulting only in damage to a vehicle or other property which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible, but shall forthwith return to and in every event shall remain at the scene of such accident until he or she has fulfilled the requirements of K.S.A. 8-1604."

The Kansas statute is substantially identical to Idaho Code § 49-1301 with the exception that it expressly applies when there is damage only to a "vehicle or to other property." Idaho Code Section 49-1301 omits any reference to 'other property' and expressly applies only to accidents resulting only in damage to a vehicle. Like the Colorado Supreme Court, the Kansas Court of

Appeals held that:

"A reading of these statutes appears to require remaining at the scene of a noninjury accident only if the property damaged by the damaging driver is attended by another person. Therefore a single car accident does not require remaining at the scene unless the property the property of some other person is damaged."

State v. Holm, 41 Kan.App.2d 1096, 1100, 208 P.3d. 325, 328 (Kan.App. 2009).

It is critical to recall that the Kansas statute expressly applies to collisions involving damage to 'personal property' rather than only to damage to vehicles. Idaho Code § 49-1301 expressly applies to accidents involving only damage to a vehicle.

The Supreme Court of Iowa has also interpreted similar statutory language as having no application to single vehicle accidents. In State v. Tarbox, 739 N.W.2d 850 (Iowa 2007) the Supreme Court of Iowa wrestled with a similar issue. In that case Tarbox crashed his car into a concrete wall, suffered a personal injury and fled the area. Tarbox was charged with a violation of Iowa Code § 321.261 which provides:

"§ 321.261. Death or personal injuries

1. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident or as close as possible and if able, shall then return to and remain at the scene of the accident in accordance with section 321.263. Every such stop shall be made without obstructing traffic more than is necessary.

2. Any person failing to stop or to comply with the requirements in subsection 1 of this section, in the event of an accident resulting in an injury to any person is guilty upon conviction of a serious misdemeanor."

The Supreme Court of Iowa ruled that the statutory language 'accident resulting in injury to, or death of any person' does not apply to the driver of a vehicle involved in a single-vehicle collision:

"In his petition for further review Christopher Jerome Tarbox asks this court to

reverse the court of appeals decision finding the district court erred when it dismissed the trial information charging him with leaving the scene of an accident in violation of Iowa Code section 321.261 (2003). Tarbox claims because he was involved in a single-vehicle accident, and he was the only person who suffered a personal injury, his conduct did not violate section 321.261. Accepting the facts alleged by the State in the trial information and minutes as true, we agree with Tarbox that his conduct of leaving the scene of the single-vehicle accident did not violate section 321.261. Accordingly, we vacate the decision of the court of appeals and affirm the decision of the district court."

The Colorado, Kansas and Iowa decisions seem to line up very well with the language adopted for Idaho Criminal Jury Instruction 1036, which is to be given when a Defendant is tried by a jury for a violation of either Idaho Code § 49-1301 or Idaho Code § 49-1302. That instruction reads as follows:

ICJI 1036 LEAVING SCENE OF ACCIDENT - ATTENDED VEHICLE

INSTRUCTION NO. \_\_\_\_\_

In order for the defendant to be guilty of Leaving the Scene of an Accident [Involving an Attended Vehicle], the state must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] was driving a motor vehicle
4. on public or private property open to the public,
5. the defendant's vehicle was involved in an accident
6. which resulted in damage to another vehicle which was driven or attended by a person,
7. the defendant had knowledge of the accident, and
8. either the defendant failed to immediately stop [his] [her] vehicle at the scene of the accident, or to stop as close as possible and then immediately return to the scene of the accident, or after stopping at or returning to the scene of the accident, the defendant failed to remain at the scene until [he] [she] had done the following:
  - (a) given his or her name and address;
  - (b) given the name of his or her insurance agent or company, if the defendant had automobile liability insurance;
  - (c) given the vehicle registration number of the vehicle the defendant was driving; and
  - (d) if available, exhibited [his] [her] driver's license to the driver of or person attending the other vehicle involved in the collision.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you

must find the defendant guilty."

ICJI 1306. ICJI 1036 contains the express requirement that in order to convict a defendant of a violation of Idaho Code § 49-1301 or § 49-1302 that the State must prove that the defendant's vehicle was involved in an accident which resulted in damage to another vehicle which was driven or attended by a person.

B. The State of Idaho failed to prove at trial each essential element of the charged violation of Idaho Code § 49-1301.

The essential elements of a violation of Idaho Code § 49-1301 according to the plain language of the statute are as follows:

1. The driver of any vehicle involved in an accident,
2. either on public or private property open to the public,
3. resulting only in damage to a vehicle,
4. which is driven or attended by any person,
5. shall immediately stop the vehicle at the scene of the accident, or as close as possible, and,
6. shall immediately return to, and in every event shall remain at, the scene of the

accident until he has fulfilled the requirements of law.

Aside from the idea expressed above that Idaho Code § 49-1301 simply does not apply to single vehicle collisions with personal property, to prove a violation of Idaho Code § 49-1301, the State must prove each of the elements of that statute.

In this case the record is entirely devoid of any evidence that the street sign was either on public property or on private property open to the public.

The record of this case is also conclusive that the accident in issue did not result in

damage only to a vehicle.

Idaho Code § 49-1302 is illustrative as to whether the statutory phrase "an accident resulting in damage to any vehicle which is driven or attended by any person" refers to the driver involved in a single vehicle accident, or only to an accident involving at least a second vehicle.

Again, Idaho Code § 49-1302 provides in the relevant portion:

9-1302. DUTY TO GIVE INFORMATION IN ACCIDENT INVOLVING  
DAMAGE TO A VEHICLE

(1) The driver of any vehicle involved in an accident resulting in damage to any vehicle which is driven or attended by any person shall, at the scene of the accident, give his name, address and, if available, at the scene of the accident, he shall exhibit his driver's license, proof of registration and certificate or proof of liability insurance to the person struck or to the driver or person attending any vehicle collided with.

Construed together with Idaho Code § 49-1302, it is clear that the statutory language of Idaho Code § 49-1301 referring to "the driver of any vehicle involved in an accident resulting in damage to any vehicle which is driven or attended by any person" refers not to a driver involved in a single vehicle collision with personal property, but rather only to a driver of a second vehicle involved in the collision. The language of Idaho Code §§ 49-1301 and 49-1302 are identical in that regard, and the identical language in Idaho Code § 49-1302 clearly is restricted only to the driver of a second or other vehicle involved in the accident.

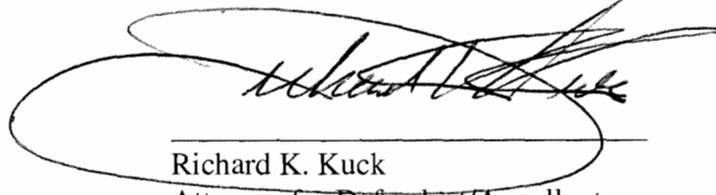
Finally, because the State failed to produce any evidence that the street sign was owned or the property of any person or entity, or was on public property or private property open to the public, even if Idaho Code § 49-1301 has any legal application to the facts of this case, no rational trier-of-fact could have concluded that the State had proved that Mr. Wright had any legal duty to remain at the scene of the accident.

CONCLUSION

For the reasons set forth above, the conviction of the Defendant, Richard W. Wright, for a violation of Idaho Code § 49-1301 should be set aside and the charge against him dismissed.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of June 2012.

RICHARD K. KUCK, PLLC

A handwritten signature in black ink, appearing to read "Richard K. Kuck", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Richard K. Kuck  
Attorney for Defendant/Appellant  
Richard W. Wright

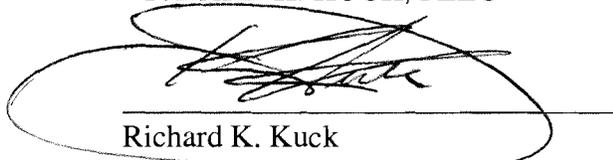
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18<sup>th</sup> day of June 2012 I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

Lawrence G. Wasden  
Jessica M. Lorello  
OFFICE OF THE ATTORNEY GENERAL  
P.O. Box 83720  
Boise, ID 83720-0010

- U.S. Mail, postage prepaid.  
 Fax transmission  
 Hand delivered.  
 Other

RICHARD K. KUCK, PLLC



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