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State v. Rainier Appellant's Brief Dckt. 42420

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff/Respondent, v. JACOB TAYLOR RAINIER Defendant/Appellant.	)	APPELLANT'S BRIEF SUPREME COURT NO. 42420 CR-14-00001571

APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE CHARLES HOSACK
District Judge
HONORABLE BENJAMIN SIMPSON
District Judge

JOHN M. ADAMS
Kootenai County Public Defender

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STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from a verdict and judgment of guilt after a jury trial. Prior to trial, the defendant had argued two pretrial Motions. First, the defendant argued that marijuana is not a Schedule I controlled substance. Then the defendant argued that he was not lawfully stopped, as the deputy had mistakenly believed the law requires one turn left into the left-most lane. The District Court denied both Motions. The defendant timely appealed the judgment.

B. Course of Proceedings & Statement of Facts

Deputy Bates of the Kootenai County Sheriff's Department stopped the defendant on January 22, 2014 at roughly 8:27 P.M. Tr. p. 18, L. 6-20. On May 7, 2014, the District Court took evidence and heard argument on the defendant's Motion to Dismiss the charge of Possession of a Controlled Substance with Intent to Deliver and his Motion to Suppress. Tr. p. 3, L. 1-25.

No evidence was taken for the Motion to Dismiss. After argument of the parties, the Court held:

> THE COURT: Well, it's a very interesting argument, and maybe if I were the Chief Justice in some circuit somewhere, it would be different. But this is a motion to dismiss with regard to basically finding that under the Court – asking the Court to find, because some states have recognized marijuana for medicinal purposes, that the Idaho classification is absurd.

And at the very least, it's not convincing, because the other argument would be that the states that have found that marijuana is – medicinal purposes are absurd, so those statutes should be set aside too.

And in essence, you just get into a matter that is far beyond the ability of a mere trial court in Kootenai County to get into reclassifying marijuana as – ignore the clear written rules of law of the state.

So I understand the argument, but it's – this Court simply can't – does not find that the statute is void for absurdity and that marijuana is stricken and is now legal in the state of Idaho.

Tr. p. 11, L. 6- 25, p. 12, L. 1. The defense requested clarification, and the Court further explained that it believed that a showing would need to be made as to whether marijuana had medicinal purposes before the Court could rule if the statute was absurd or if simply other states were being irrational. Tr. p. 12, L. 12-25.

The Court then took the testimony of Deputy Bates, who testified to pulling the defendant over for turning left into the right-most lane. Tr. p. 18, L. 14-25, p. 19, L. 1-7. The Deputy declared such turning was unsafe due to all the vehicles that might have turned right into the defendant's vehicle. Tr. p. 20, L. 1-4. On cross, the Deputy testified that the defendant was turning from a single lane. Tr. p. 33, L. 2-7. On re-direct, the Deputy would do a drawing and would be admitted as Plaintiff's Exhibit 1. Tr. p. 38-41.

The Court eventually denied the Motion to Suppress, holding:

THE COURT: Here the configuration of the highway's clear enough, and it's just -- whether the language of the statute is void for vagueness or – and I – while it may not –

the statute may not be a model of clarity, and I can understand how there can be different interpretations, I think that a reasonable interpretation is what basically tracks the – the rule that you're supposed to turn into the left hand – the first lane – as you go into a two-lane going westbound, you're supposed to turn into the left lane, or the fast lane, and not cross over and turn into the right hand lane or the slow lane.

Personally, I disagree with that. I think there's lots of time when that's not a good thing at all, and oyu' dbe far better getting over into the slow lane than turning into the fast lane.

So I have a personal opinion that I just – and you see people – I mean, you watch people going through intersections on Northwest Boulevard, and they all talk about people who – a rule that people don't follow because it doesn't make much sense, but that's the Court's personal view of, I think the way the statute's written. That's what it does require the driver to do.

And that's, frankly, a case where I really don't think the statute accomplishes much in the way of driver safety and maybe creates problems. But that is all neither here nor there.

The question is, does the statute – does the statute say what it says? And I think it does say – it does say you're supposed to turn into the left-hand lane or the fast lane. And so I think that the – the observed traffic violation is ground for the traffic stop.

Tr. p. 52, L. 23-25, p. 53, p. 54, L. 1-5.

On June 2, 2014, the Court held a trial in this matter. The state dismissed all counts but the Possession of a Controlled Substance with Intent to Deliver. The jury found the defendant guilty of that crime. On August 8, 2014, the Court entered its judgment of the defendant.

The defendant timely appealed from the District Court's judgment.

ISSUES ON APPEAL

I. Whether marijuana is a Schedule I controlled substance.

II. Whether the courts can impose punishment on the basis of arbitrary law.

III. Whether I.C. § 49-644 prohibits turning left into any lane but the left-most.

ARGUMENT

I.

A. Introduction

The District Court erred in denying the defendant's Motion to Dismiss. The Idaho Legislature placed marijuana in Schedule I. Marijuana has, since that time, failed to meet the requirements for that scheduling. Thus, courts may no longer allow defendants to be found guilty under I.C. § 37-2732(a)(1)(B) for possessing marijuana with intent to deliver.

B. Standard of Review

Constitutional questions are questions of law over which courts of appeal exercise free review. *Hernandez v. Hernandez*, 151 Idaho 882, 884 (2011). An appellate court presumes the constitutionality of challenged statutes and is obliged to seek an interpretation of the statute that upholds its constitutionality. *Id.* The party challenging the statute bears the burden of proving the statute unconstitutional. *Id.* "A party may challenge a statute as unconstitutional 'on its face' or 'as applied' to the party's conduct." *American Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 870 (2007) *quoting State v. Korsen*, 138 Idaho 706, 712, 69 P.3d 126, 132 (2003).

C. Marijuana cannot be a Schedule I substance.

The state of Idaho has adopted the definition of "drug" as substances listed in drug compendia. *See* I.C. § 54-1705. The federal Food and Drug Administration requires such a listing before it will recognize a drug. *See* 21 U.S.C.A. §§ 351, 352, 358. However, the Idaho Board of Pharmacy (hereinafter "the Board") acknowledges drugs listed in any drug compendia, while the federal government only recognizes the official United States Pharmacopoeia, the

official Homeopathic Pharmacopoeia of the United States, the official National Formulary, and their supplements. *Cf.* 21 U.S.C.A. § 321 *and* I.C. § 54-1705.

The drug known as cannabis or marijuana originally was listed in the U.S. Pharmacopoeia in 1850, and was not removed until 1941. Richard J. Bonnie & Charles H. Whitebread, The Marijuana Conviction 1974. The American Herbal Pharmacopoeia has released a monograph for marijuana, called the Cannabis Inflorescence & Leaf QC Revision. *See* Monographs, American Herbal Pharmacopoeia, available at http://www.herbal-ahp.org/order_online.htm (last visited December 31, 2014).

Thus, as a drug, cannabis is now within the authority of the board of pharmacy to regulate its sale and dispensation. *See* I.C. § 54-1719. Due to having been legally sold until 1941, cannabis avoids needing to meet the requirements for a new drug under I.C. § 37-128. The board requires that all drugs in Idaho go through the prescription system, and further, that prescribers comply with I.C. § 37-2725 when prescribing scheduled controlled substances. *See* IDAPA 27.01.01.209.

Cannabis is labeled a schedule I controlled substance. *See* I.C. § 37-2705. Thus, cannabis is classified as highly addictive *and* having no medicinal properties accepted in the United States *or* as too dangerous for use in treatment under medical supervision. *See* I.C. § 37-2704.

This classification is inaccurate. Cannabis is currently accepted for medical use in Alaska (AS § 17.37), Arizona (A.R.S. § 36-2801 *et seq.*), California (Cal.Health & Safety Code § 11352.7 *et seq.*), Colorado (C.R.S.A. § 18-18-406.3), Connecticut (C.G.S.A. § 21a-408h *et seq.*), the District of Columbia (DC ST § 7-1671.01), Delaware (16 De.C. § 4903A), Hawaii (HRS § 329-122), Illinois (410 ILCS 130/1 *et seq.*), Maine (22 M.R.S.A. 2421 *et seq.*), Maryland (MD

Health Gen § 13-3307 *et seq.*), Massachusetts (M.G.L.A. 94C App. § 1-1 *et seq.*), Michigan (M.C.L.A. 333.26421 *et seq.*), Minnesota (M.S.A. § 152.21 *et seq.*), Montana (MCA 50-46-301 *et seq.*), Nevada (N.R.S. 453A.200 *et seq.*), New Hampshire (N.H. Rev. Stat. § 126-X:1 *et seq.*), New Jersey (N.J.S.A. 24:61:1 *et seq.*), New Mexico (N.M.S.A. 1978, § 26-2B-1 *et seq.*), New York (NY Pub Health § 3362), Oregon (O.R.S. § 475.300 *et seq.*), Rhode Island (RI Stat. § 21-28.6-1), Vermont (18 V.S.A. § 4472 *et seq.*), and Washington (69 RCWA 69.51A.005 *et seq.*). No parsing of statutory language or rule of construction known to defense counsel would allow for a drug with twenty-three states and the District of Columbia recognizing its medicinal use to contemporaneously be said not to be accepted for said use in the United States. Looking then to the other requirement of the statute, the current classification would need rest upon the absurd notion that the combined populations of these states, some 140 million people (not to mention the populations of other nations where cannabis is available for medicinal and recreational purposes), are being subjected to something that the legislature or the board of pharmacy can legitimately call a treatment too dangerous to be used even under medical supervision.

This state of affairs is perhaps best explained by the fact that Schedule I was originally developed and passed into law by the legislature, and that the legislature included cannabis in the original Schedule I in 1971. (S.L. 1971, ch. 215, § 1). At that time, cannabis was not accepted in the United States for medicinal purposes. Authority to reschedule substances lies with the legislature and with the board. *See* I.C. § 37-2702. Despite the law being repeatedly amended over the years since its inception, the board and the legislature apparently never recognized the obvious discrepancy between the scheduling of cannabis and its actual attributes as those attributes changed, i.e., as more and more states accepted the medicinal uses of the substance.

This presents the issue of whether cannabis is legitimately a scheduled substance. If the legislature adopted a formulation for scheduling, which it did, and scheduled a substance, here cannabis, and the reasons for that scheduling later disappear, but no action is taken, what is the effect?

All laws attempt to regulate a world in flux. Generally legislatures are capable of keeping the law current, but certainly not always. After World War I, the United States legislature, for example, passed a law called the Trading with the Enemy Act. This law took property from enemy aliens that was in this country and vested the title in an Alien Property Custodian. Section 9(a) of that law allowed creditors to seek their claims against the enemy alien from that property, provided the debt existed prior to October 6, 1917. In 1928, the law was further amended to require that all claims be filed prior to March 10, 1928.

When the nation went to war again in 1941, the law continued to be in effect as before. Thus, when a lawyer named Cabell sought a debt from a now enemy alien due to the new war, he was denied by the Alien Property Custodian because he had not filed his claim prior to 1928 and the debt had not existed in 1917. Mr. Cabell sued, and the case eventually found its way to the Second Circuit and Chief Judge Learned Hand. C.J. Hand found the following in *Cabell v. Markham*, 148 F.2d 737, 739-40 (1945):

> It is at least arguable that the whole of subdivision (a) [of Section 9] is limited to seizures made during the first war. It begins with a provision that 'a citizen or subject of any nation which was associated with the United States in the prosecution of the war' may recover his property or collect his debt only in case that nation gave reciprocal rights to citizens of the United States. The use of the preterite is significant, particularly when coupled with the word, 'associate,' which it will be remembered was chosen during the last war in sedulous avoidance of any implication that we had 'allies.' If this be true, it would be indeed unreasonable not to confine the proviso similarly: that is, to read it

otherwise than as limited to seizures made during that war. If we do not so read it, the result is really nonsense, for the remedy given in subdivision (a), which is prospective, is completely defeated by subdivision (e). Nobody can seriously believe that a general plan designed to be successively suspended and revived, as peace and war should alternate, was meant to be permanently mutilated by a statute of limitation expressly made applicable to only the first of its phases. The defendants have no answer except to say that we are not free to depart from the literal meaning of the words, however transparent may be the resulting stultification of the scheme or plan as a whole.

Courts have not stood helpless in such situations; the decisions are legion in which they have refused to be bound by the letter, when it frustrates the patent purpose of the whole statute. We need cite no others than the more recent of those in the Supreme Court which have followed *Rector, etc., of Holy Trinity Church v. United States*, 143 U.S. 457 [1892]; *Pickett v. United States*, 216 U.S. 456, 461 [1910]; *American Security & Trust Co. v. District of Columbia*, 224 U.S. 491, 495 [1912]; *Takao Ozawa v. United States*, 260 U.S. 178, 194 [1922]; *United States v. Katz*, 271 U.S. 354, 362 [1926]; *Sorrells v. United States*, 287 U.S. 435, 446-448 [1932]. *See also United States v. Ryan*, 184 U.S. 167, 175 [1902]; *Armstrong Paint & Varnish Works v. NuEnamel Corporation*, 305 U.S. 315, 333 [1938]; and *United States v. American Trucking Association*, 310 U.S. 534, 544 [1940]. As Holmes, J., said in a much-quoted passage from *Johnson v. United States*, 163 F. 30, 32 [1st Cir.1908]: 'it is not an adequate discharge of duty for courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before.' *See also Van Beeck v. Sabine Towing Co.*, 300 U.S. 342, 351 [1937]; *Keifer & Keifer v. Reconstruction Finance Corporation*, 306 U.S. 381, 391 [1939]; *United States v. Hutcheson*, 312 U.S. 219, 235 [1941]. Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning. Since it is utterly apparent that the words of this proviso were intended to be limited to seizures made during the last war, and could not conceivably have been intended to apply to seizures made when another war revived the Act as a whole from its suspension, it does no undue violence to the language to assume that it was implicitly subject to that condition which alone made the Act as a whole practicable of administration.

Judgment reversed.

The Chief Judge's opinion was unanimously affirmed by the Supreme Court in *Markham v.*

Cabell, 326 U.S. 404 (1945).

The Uniform Controlled Substances Act is a similar statute. Passed long ago in a different time, administered by an agency that failed to reschedule cannabis as it ceased to meet the requirements laid out by the legislature, the Act has become, as it applies to cannabis, absurd. The Idaho Supreme Court will not change an absurd law to fit the times the way that the United States Supreme Court has done and continues to do. *Compare Markham*, 326 U.S. at 195-96; *and Logan v. U.S.*, 552 U.S. 23, 36 (2007); *with Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho 889, 895 (2011). Thus, the absurd butts up against the constitutional prohibition on irrational law. *See* U.S. CONST. amend. XIV, § 1; IDAHO CONST. art. I, § 13; *Idaho Dairymen's Ass'n, Inc. v. Gooding County*, 148 Idaho 653, 661 (2010).

So, while a court in Idaho cannot itself reschedule cannabis to schedule II, it also may not enforce a law that has no sense. As the scheduling of cannabis is irrational, it must be given no effect. As a consequence, cannabis can no longer be a substance triggering liability under I.C. § 37-2732(a), (b), (c), (d), (g), or (h) but may continue to do so under (e) and I.C. § 37-2732B(a)(1). Because the defendant in this matter was charged under I.C. § 37-2732(a), this case should have been dismissed.

The District Court's concern that perhaps it was the rest of the country that was being irrational was irrelevant to the issue. Schedule I does not classify on the basis of what is or is not good policy, but rather on whether no jurisdiction or health care provider would ever allow such a substance to be used for medicinal purposes under any circumstances. The Court and the state knew such was the no longer the case with marijuana. Both recognized that marijuana is accepted and used for treatment across the nation. It may be the rest of the county has gone mad, but I.C.

§ 37-2704 does not require this Court to sit in judgment of that. It only requires classification by its terms. That has failed to occur for marijuana.

This Court should reverse the District Court's decision and remand the case with instructions to dismiss the charge.

II.

A. Introduction

The District Court erred in denying the defendant's Motion to Suppress. While the Court recognized that a requirement that one turn left only into the left-most lane would be irrational and possibly dangerous to the public, the Court failed to recognize that I.C. § 49-644 did not create any such requirement. Because no other basis for the stop of the defendant's car was provided by the state, the Motion to Suppress should have been granted.

B. Standard of Review

This Court exercises free review over the application and construction of statutes. *State v. Reyes*, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (Ct.App.2003).

C. I.C. § 49-644 does not prohibit turning left into the right-most lane.

The Fourth Amendment to the United States Constitution guarantees every citizen the right to be free from unreasonable searches and seizures. *State v. Ramirez,* 145 Idaho 886, 888 (Ct.App. 2008); *State v. Salois,* 144 Idaho 344, 347 (Ct.App. 2007); *State v. Cerino,* 141 Idaho 736, 737 (Ct.App. 2005). Its purpose is "to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order to 'safeguard the privacy and security of individuals against arbitrary invasions.' " *Delaware v. Prouse,* 440 U.S. 648, 653-54 (1979) *quoting Marshall v. Barlows, Inc.,* 436 U.S. 307, 312

(1978).

The stop of a vehicle constitutes a seizure of its occupants and is therefore subject to Fourth Amendment restraints. *Prouse*, 440 U.S. at 653; *Ramirez,* 145 Idaho at 888; *State v. Aguirre*, 141 Idaho 560, 562 (Ct. App. 2005); *State v. Roark,* 140 Idaho 868, 870 (Ct.App.2004). Although a vehicle stop is limited in magnitude compared to other types of seizures, it is nonetheless a "constitutionally cognizable" intrusion and therefore may not be conducted "at the unbridled discretion of law enforcement officials." *State v. Grantham*, 146 Idaho 490, 496 (Ct. App. 2008) *quoting Prouse,* 440 U.S. at 661.

In this case, the parties agreed that the defendant had turned left from a lane specifically intended for such turns into the right-most lane. The state argued this violated statute. I.C. § 49-644 states:

> The driver of a vehicle intending to turn shall do so as follows:
>
> (1) Both the approach for a right turn and the right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.
>
> (2) The driver of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the vehicle. Whenever practicable the left turn shall be made to the left of the center of the intersection and so as to leave the intersection or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction on the highway being entered.
>
> (3) Where a special lane for making left turns by drivers proceeding in opposite directions has been indicated by traffic control devices:
>
> (a) A left turn shall not be made from any other lane;
>
> (b) A vehicle shall not be driven in the lane except when preparing for or making a left turn from or into the highway or when preparing for or making a U-turn when otherwise permitted by law.

Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction. *State v. Burnight*, 132 Idaho 654, 659 (1999); *State v. Escobar*, 134 Idaho 387, 389 (Ct.App.2000). The language of the statute is to be given its plain, obvious, and rational meaning. *Burnight*, 132 Idaho at 659. If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history, or rules of statutory interpretation. *Escobar*, 134 Idaho at 389. When this Court must engage in statutory construction because an ambiguity exists, it has the duty to ascertain the legislative intent and give effect to that intent. *State v. Beard*, 135 Idaho 641, 646 (Ct.App.2001). To ascertain the intent, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute, and its legislative history. *Id.* It is incumbent upon a court to give an ambiguous statute an interpretation that will not render it a nullity. *Id.* Constructions of an ambiguous statute that would lead to an absurd result are disfavored. *State v. Doe*, 140 Idaho 271, 275 (2004). If a criminal statute is ambiguous, the doctrine of lenity applies and the statute must be construed in favor of the accused. *State v. Bradshaw*, 155 Idaho 437, 440 (Ct.App.2013); *State v. Dewey*, 131 Idaho 846, 848 (Ct.App.1998); *State v. Martinez*, 126 Idaho 801, 803 (Ct.App.1995). But, when a review of the legislative history makes the meaning of the statute clear, the rule of lenity will not be applied. *Bradshaw*, 155 Idaho at 440, 313 P.3d at 768; *State v. Jones*, 151 Idaho 943, 947 (Ct.App.2011).

The issue before the Court is what is intended by the following:

> Whenever practicable the left turn shall be made to the left of the center of the intersection and so as to leave the intersection or other location **in** the extreme left-hand lane lawfully available to traffic moving in the same direction on the highway being entered. [emphasis added]

The District Court and the state read the sentence such that the word "in" (emphasized above) is an adverb, rather than as a preposition. The Court thought this would track the "rule" that one turn left into the left-most lane. It is not clear what rule the Court is referring to or its source, but the Court indicated it disapproved of the rule, thought the rule rather dangerous, and thought few people ever followed it. Tr. p. 53, L. 10-20.

The defendant is unaware of any rule of statutory construction that requires a court to read a statute awkwardly so as to preserve a common understanding. The reality is that the word "in" makes far more sense as a preposition, rather than as an adverb, due partly to the existence of the word "into" as a far more fitting adverb for the occasion, and partly to the following:

> so as to **leave** the intersection **or other location** in the extreme left-hand lane lawfully **available** to traffic moving in the same direction on the highway being entered. [emphasis added]

If the legislature was intending to require someone who intended to turn left to do so in a matter that would not interfere with traffic (by sitting in the intersection waiting to turn left and thereby blocking traffic already headed in the direction the left-turner is hoping to go), as the officer seemed to think during his testimony, then there is no requirement to go into the left-most lane. On the other hand, perhaps the legislature only intended to refer to leaving the intersection. But then, one has to wonder what "other location" it is referring to. How can one turn left without passing through an intersection? It makes sense to "leave" locations available to traffic open and not block them with one's vehicle. It makes no sense to leave anything but an intersection to enter a new lane after a left turn.

This Court should find as the District Court did that the statute is "not the model of

clarity" and therefore, as the Court of Appeals did in *State v. Neal*, 2014 WL 5151426 (Idaho Ct.App.2014), look at the purpose of the traffic laws:

> We can easily infer, from the substance of Idaho statutes describing moving violations, that the public policy undergirding Idaho traffic laws is safety. The laws were designed to reduce traffic accidents and the concomitant deaths, injuries, and property damage. *See, e.g.*, I.C. § 49–605 (prohibiting driving a car on the sidewalk); I.C. § 49–613 (prohibiting placing glass and other dangerous substances on the road; I.C. § 49–615 (requiring drivers use due care to avoid colliding with pedestrians); I.C. § 49–638 (prohibiting following too closely); I.C. 49–1401 (prohibiting reckless or inattentive driving). Plainly, the legislative purpose in drafting Section 49–637(1) was consistent with this general purpose. Accordingly, we conclude the statute should be construed to effectuate the legislative purpose of promoting safe driving. If it were permissible for people to drive on the line dividing lanes going the same direction, on the line demarcating bicycle lanes, or on the centerline dividing a lane from oncoming traffic, the risk of accidents will increase. Accordingly, we conclude that the statute requires that vehicles be driven *between* lane lines "as nearly as practicable."

By the same reasoning, this Court must side with the interpretation of I.C. § 49-644 that promotes safety. Reading the statute to require drivers not to pull into an intersection or in some way block traffic driving in the direction they would like to go promotes safety. Reading it to require people to turn left into the fast lane does not. Thus, the statute does not support the stop in this case.

Therefore, the stop in this case was made without reasonable and articuable suspicion of a law violation and the evidence and statements collected as a consequence of this violation of the Fourth Amendment and Article I § 17 should have been suppressed. This Court should reverse the ruling of the District Court and remand the case with instructions to grant the Motion to Suppress.

CONCLUSION

"The life of the law has not been logic; it has been experience." Of course, Justice Holmes was referring to the common law rather than statute when he wrote that famous sentence. Were the life of statutory law as flexible as to adjust to reality as the common law once could perhaps the issues in this case would never have presented themselves. In any case, stubborn insistence on the letter of the law has been both a blessing and curse for statutory law. This Court is asked to apply the law here and thereby recognize that charges of possessing a Schedule I substance can no longer include marijuana, and that turning left into the fast lane is not a natural or even safe reading of I.C. § 49-644.

DATED this 2 day of January, 2015.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: _____
JAY LOGSDON, ISB 8759
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that I have this 5 day of January, 2015, served a true and correct copy of the attached BRIEF SUPPORTING APPEAL via interoffice mail or as otherwise indicated upon the parties as follows:

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