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State v. Weeks Respondent's Brief Dckt. 42410

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, vs. JESSE JAY WEEKS, Defendant-Appellant.	)	No. 42410 Kootenai Co. Case No. CR-2013-12530

BRIEF OF RESPONDENT

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

HONORABLE FRED M. GIBLER
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Jesse Jay Weeks appeals from the judgment of conviction entered upon a jury verdict finding him guilty of burglary.

Statement of Facts and Course of Proceedings

In 2012, James Ha lived in a Coeur d'Alene residence with Dusty Dershem and another individual. (Tr., p.116, Ls.15-24.[1]) During that year, unbeknownst to his two roommates, Dershem allowed his cousin, Jesse Weeks, to sleep in a pop-up tent trailer that was located on the side of the residence. (Tr., p.140, L.10 – p.142, L.24.) In late 2012, Weeks entered the residence by himself while under the influence of Xanax and Oxycodone. (Tr., p.186, L.5 – p.187, L.20; p.200, L.17 – p.201, L.9.) While inside, he stole an iPad which belonged to Ha. (Tr., p.122, L.21 – p.125, L.12; p.187, L.13 – p.189, L.10.) Ha reported the theft to police. (Tr., p.125, Ls.13-15.) Weeks attempted to use the iPad to secure a loan from a local pawn shop. (Tr., p.160, Ls.11-14.) The pawn shop owner told Weeks that he would prefer to purchase the iPad, which he did for $185. (Tr., p.160, L.14 – p.162, L.6.) Sometime later, the pawn shop owner sold the iPad. (Tr., p.162, Ls.7-11.)

Coeur d'Alene police officer Jared Reneau conducted a pawn transaction search for the stolen iPad. (Tr., p.174, L.24 – p.175, L.12.) Based on the information obtained from the search, Officer Reneau interviewed Weeks about the theft. (Tr., p.175, L.13 – p.176, L.18; State's Exhibit 2.) Weeks initially denied

[1] Citations to "Tr." refer to the bound volume containing transcripts of the pretrial hearings, jury trial, and sentencing hearing.

stealing the iPad. (State's Exhibit 2, 1:34-10:35.) However, Weeks ultimately admitted to Officer Reneau that he stole the iPad and used the money he received from the pawn shop to buy drugs. (State's Exhibit 2, 11:15-13:15.)

The state charged Weeks with burglarly in two separate cases. In the first case, the state alleged that Weeks entered the Coeur d'Alene residence with the intent to commit theft by larceny. (See Tr., p.105, L.20 – p.106, L.3.) In the second case, the state alleged that Weeks entered the pawn shop with the intent to commit theft by disposing of stolen property. (R., pp.69-70.) The district court joined the two cases for trial. (R., pp.56-57.)

Prior to trial, Weeks filed a motion to dismiss the information containing the second burglary count on the ground the alleged conduct could not constitute burglary as a matter of law. (R., pp.43-50.) Specifically, Weeks argued that pursuant to the language of the burglary and theft statutes, he could not be convicted of burglary based upon an intent to dispose of an iPad that he himself stole. (Id.) After a hearing, the district court denied Weeks' motion to dismiss, and subsequent motion for reconsideration. (R., pp.71-79, 114-115; Tr., p.7, L.5 – p.26, L.20.)

The jury convicted Weeks of burglary with respect to count two, and to a lesser included offense of unlawful entry with respect to count one.[2] (R., p.168; Tr., p.265, L.19 – p.266, L.7.) The district court withheld judgment and placed Weeks on probation for two years. (R., pp.172-181; Tr., p.281, L.5 – p.282, L.21.) Weeks timely appealed. (R., pp.182-184.)

[2] Weeks does not challenge his conviction for unlawful entry on appeal. (Appellant's brief, p.2 n.1.)

ISSUES

Weeks states the issues on appeal as:

1. Whether the jury was improperly instructed and so convicted Mr. Weeks of a legally impossible crime.

2. Whether the district court erred when it denied Mr. Weeks' motion to dismiss the information.

3. Whether there was insufficient evidence to convict Mr. Weeks of burglarizing the pawn shop.

(Appellant's brief, p.7)

The state rephrases the issues on appeal as:

1. Has Weeks failed to demonstrate that the jury was improperly instructed with regard to the burglary charge in Count II?

2. Has Weeks failed to demonstrate that the district court erred when it denied his motion to dismiss the charging information?

3. Has Weeks failed to demonstrate that the evidence presented was insufficient to support his conviction for burglary?

ARGUMENT

I.
Weeks Has Failed To Demonstrate That The Jury Was Improperly Instructed With Regard To The Burglary Charge In Count II

A. Introduction

Weeks contends that the district court improperly instructed the jury with respect to the second burglarly charge. (Appellant's brief, pp.8-13.) Specifically, Weeks contends that the instructions were improper because they permitted the jury to find him guilty of burglary for entering the pawn shop with the intent of disposing of stolen property where the state asserted that Weeks himself initially stole the property. (Id.) Weeks' argument fails because the plain language of I.C. § 18-2403(4) proscribes the disposal of property an individual knows to be stolen, regardless of who stole the property.

B. Standard Of Review

Whether a jury was properly instructed is a question of law over which the appellate court exercises free review. State v. Draper, 151 Idaho 576, 587, 261 P.3d 853, 864-65 (2011); State v. Pina, 149 Idaho 140, 147, 233 P.3d 71, 78 (2010); State v. Young, 138 Idaho 370, 372, 64 P.3d 296, 298 (2002). "An erroneous instruction will not constitute reversible error unless the instructions as a whole misled the jury or prejudiced a party." Draper, 151 Idaho at 588, 261 P.3d at 865 (quoting State v. Shackelford, 150 Idaho 355, 373-74, 247 P.3d 582, 600-01 (2010)).

C. The Jury Was Properly Instructed On The Elements Of Burglary

It is axiomatic and long-established that a statute will be interpreted according to its plain language and that where the language is plain the court will not resort to principles of statutory construction. State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003); State v. McCoy, 128 Idaho 362, 365, 913 P.2d 578, 581 (1996). "When a statute is unambiguous, it must be interpreted in accordance with its language, courts must follow it as enacted, and a reviewing court may not apply rules of construction." State v. Wiedmeier, 121 Idaho 189, 191, 824 P.2d 120, 122 (1992) (citations omitted). In Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 894-896, 265 P.3d 502, 507-509 (2011), the Idaho Supreme Court held that Idaho appellate courts do not have the authority to modify unambiguous statutes even when construing the statute as written would produce "absurd results."

When a statute is ambiguous, it must be construed to mean what the legislature intended it to mean. State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). To determine that intent, the appellate court examines not only the literal words of the statute, but also the reasonableness of the proposed constructions, the public policy behind the statute, and its legislative history. Id. In determining the ordinary meaning of a statute "effect must give given to all the words of the statute if possible, so that none will be void, superfluous, or redundant." State v. Mercer, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006).

Idaho Code § 18-1401 defines burglary as follows:

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

Therefore, it is unlawful pursuant to I.C. § 18-1401 to enter any building with the intent to commit "any theft." Idaho Code § 18-2403 defines "theft" in numerous ways, including, relevant to this case, as follows:

> (4) A person commits theft when he knowingly receives, retains, conceals, obtains control over, possesses, or disposes of stolen property, knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen, and
>
> (a) Intends to deprive the owner permanently of the use or benefit of the property; or
>
> (b) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or
>
> (c) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

In this case, the jury was instructed with respect to the theft intent element of burglary, in relevant part, as follows:

> A person also commits theft when such person knowingly received, retains, conceals, obtains control over, possesses, or disposes of stolen property, knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen, and;
>
> (a) intends to deprive the owner permanently of the use or benefit of the property; or
>
> (b) knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or
>
> (c) uses, conceals or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

(R., p.156; Tr., p.233, L.17 – p.234, L.5.)

The language of the jury instruction thus substantially tracked the relevant language of I.C. § 18-2403(4). The instruction differed from I.C.J.I. 547, the

corresponding pattern jury instruction, in only one relevant respect. The pattern instruction provides that the state must prove that the defendant knew that the property was stolen "*by another* or under such circumstances as would reasonably induce the defendant to believe the property was stolen." I.C.J.I. 547 (emphasis added).

In this case, the district court elected to omit the "by another" language from the jury instruction because that phrase does not appear in the language of I.C. § 18-2403(4). (Tr., p.227, L.10 – p.228, L.17.) Weeks objected to the jury instruction on this ground. (Id.) Prior to the trial, Weeks also moved to dismiss the charging information on the ground that he could not lawfully be convicted of burglary for entering the pawn shop with the intent to dispose of stolen property where the state alleged that he himself stole the property. (R., pp.43-50.) Consistent with its later determination regarding the jury instruction, the district court denied this motion. (R., pp.71-79.)

Weeks has failed to demonstrate error in the district court's decision to omit "by another" language from the jury instruction. The Idaho Supreme Court "has recommended that the trial courts use the [I.C.J.I. model] instructions unless a different instruction would more adequately, accurately, or clearly state the law." State v. Cuevas-Hernandez, 140 Idaho 373, 376, 93 P.3d 704, 707 (Ct. App. 2004). Idaho courts have made clear, however, that reversible error exists only when an instruction misleads the jury or prejudices the party. State v. Hanson, 130 Idaho 842, 844, 949 P.2d 590, 592 (Ct. App. 1997).

While I.C. § 18-2403(4) formerly contained the phrase "by another," the legislature amended the statute to remove this phrase in 2001. 2001 Idaho Sess. Laws, Ch. 112, § 1, pp.401-403. The plain language of the current version of I.C. § 18-2403(4) does not contain this phrase, and therefore, the district court did not err by declining to include the phrase in its jury instruction. If the legislature wished to limit the application of I.C. § 18-2403(4) to individuals who obtained property from another individual, it easily could have done so. Because the plain language of I.C. § 18-2403(4) does not contain any requirement that the property be stolen "by another," Weeks cannot show error in the jury instruction, and no further analysis of the statute is required.

Further, even if I.C. § 18-2403(4) was somehow ambiguous, an analysis of the principles of statutory instruction reveals that Weeks has failed to demonstrate that application of the statute is limited to individuals who dispose of property stolen "by another." On appeal, Weeks points out that the legislature's stated intent in removing the "by another" phrase from I.C. § 18-2403(4) in 2001 was "to strike superfluous language and to make a technical correction." (Appellant's brief, pp.12-13 (citing 2001 Idaho Sess. Laws, Ch. 112, § 1, p.401).) Therefore, Weeks asserts, the pre-2001 version of the statute expressly required the property to be stolen "by another," and that the 2001 amendment did not constitute a substantive change to the law. (Id.)

Weeks' argument fails. A closer review of the pre-2001 version of I.C. § 18-2403(4) reveals that, even then, application of the statute was not as limited as Weeks asserts. Pursuant to this earlier version of the statute, an individual

committed theft where he disposed of property "knowing the property to have been stolen by another **or** under such circumstances as would reasonably induce him to believe that the property was stolen." 2001 Idaho Sess. Laws, Ch. 112, § 1, p.403 (emphasis added). Thus, the plain language of the pre-2001 version of the statute applied **either** where the individual knew the property was stolen by another, **or** under some other circumstances that would reasonably induce the individual into believing the property was stolen (such as, if the individual stole the property himself). Because the plain language of the pre-2001 version of I.C. § 18-2403(4) did not limit application of the statute to property stolen "by another," the continued inclusion of that phrase was, as the legislature stated, unnecessary and superfluous.

Appellate courts in numerous other jurisdictions have interpreted statutes proscribing the disposal of stolen property as applying to individuals who disposed of property that they themselves stole, when the plain language of the relevant statute contains no such language precluding such application. These courts have held that defendants could be convicted of *both* the direct theft of property, and the retention or disposal of same property, where both acts were proscribed by state law. See e.g., State v. Tapia, 549 P.2d 636, 636-638 (N.M. App. 1976); State v. Michielli, 937 P.2d 587, 590-591 (Wash. 1997); State v. Banks, 358 N.W.2d 133, 135-136 (Minn. Ct. App. 1985); see also Smith v. State, 739 So.2d 545, 546-549 (Ala. Crim. App. 1999) (holding that applicable statute permitted state to charge defendant with receiving stolen property that defendant himself stole.).

On appeal, Weeks cites Milanovich v. United States, 365 U.S. 551, 553-556 (1961), for the general proposition that "the original thief cannot be prosecuted under

[a statute proscribing receiving or disposing of stolen property] as a matter of law." (Appellant's brief, pp.8-11). Milanovich can be distinguished from the present case in several respects. First, in Milanovich, the United States Supreme Court analyzed the intent of Congress in drafting a federal statute without first expressly analyzing the plain meaning of the statute. Milanovich, 365 U.S. at 552-556. Further, the Supreme Court did not hold that a defendant who stole property could never be charged for receiving or disposing of the same property under the relevant federal statute. Instead, it held that, based upon its analysis of congressional intent, the defendant could not be convicted of *both* theft of property and the receipt of the same property. Id. Finally, there is a distinction between the "receiving" of stolen property theft offense charged in Milanovich and the "disposal" of stolen property offense at issue in the present case. Milanovich argued that Congress did not intend for a defendant to be charged with "receiving [stolen property] from himself." Id. In such an instance, the original theft of property and the receipt of that same property constitute essentially the same conduct. To the contrary, "disposal" of stolen property constitutes an entirely separate act from the original theft of the property. The Minnesota Court of Appeals drew a similar distinction in Banks between the "receiving" of property the defendant himself stole, and the "retaining" of the same property, recognizing that the latter offense involved an act distinct from the original theft. Banks, 358 N.W.2d at 135-136.

Weeks has failed to demonstrate that the district court improperly instructed the jury on the law as set forth by the relevant statutes. This Court should therefore affirm his conviction.

II.
Weeks Has Failed To Demonstrate That The District Court Erred When It Denied His Motion To Dismiss The Charging Information

A. Introduction

Weeks contends that the district court erred when it denied his motion to dismiss the information charging him with burglary for entering the pawn shop with the intent to dispose of stolen property. (Appellant's brief, pp.14-28.) Specifically, Weeks contends that the burglary statute did not apply to the conduct alleged by the state because Weeks' "entry" into the pawn shop was not "unlawful," and did not "intrude on the propriety interest" or the "privacy interest" of that space. (Id.) This Court should decline to consider this argument because Weeks failed to preserve it by raising it to the district court below. Even if this Court reaches the merits of this claim, Weeks' argument fails because the plain language of the burglary statute proscribes the conduct alleged by the state.

B. Standard Of Review

The meaning and effect of a statute is a question of law over which the appellate courts exercise free review. State v. Hart, 135 Idaho 827, 829, 25 P.3d 850, 852 (2001).

C. Weeks Failed To Preserve His Claim That The Facts Alleged By The State Did Not Constitute Burglary As A Matter Of Law

Generally, issues not raised below may not be considered for the first time on appeal. State v. Fodge, 121 Idaho 192, 195, 824 P.2d 123, 126 (1991). Further, "[a]n objection on one ground will not preserve a separate and different basis for excluding the evidence." State v. Vondenkamp, 141 Idaho 878, 885, 119 P.3d at

660, 653 (Ct. App. 2005) (citing State v. Norton, 134 Idaho 875, 880, 11 P.3d 494, 499 (Ct. App. 2000)).

In this case, while Weeks filed a motion to dismiss the information charging him with burglary, he did not raise the argument he now makes on appeal. (See R., pp.29-33, 43-50.) Instead, in his motion to dismiss, Weeks argued that the state failed to present evidence at the preliminary hearing establishing probable cause that he committed burglary by entering the pawn shop with the intent to dispose of stolen property pursuant to I.C. § 18-2403(4) because: (1) the state alleged that he stole the same property he disposed of; and (2) the evidence showed that he intended to attempt to secure a loan against the iPad, and thus, that he did not intend to "permanently deprive" the iPad's owner of that property.[3] (Id.)

Because Weeks did not give the district court the opportunity to consider his claim that the burglary statute did not apply to the conduct alleged by the state in manner he alleges on appeal, he has failed to preserve this issue, and this Court should decline to consider it.

D. Even If This Issue Were Preserved, Weeks Has Failed To Demonstrate That The District Court Erred In Denying His Motion To Dismiss The Charging Information

As discussed above, a statute will be interpreted according to its plain language and that where the language is plain the court will not resort to principles of statutory construction. Schwartz, 139 Idaho at 362, 79 P.3d at 721; McCoy, 128

[3] Weeks also alleged that the state failed to present sufficient evidence at the preliminary hearing to support its alternative charging theory that Weeks committed burglary by entering the pawn shop with the intent to possess controlled substances. (R., p.47.) In response to this argument, the state filed an amended information which excluded this theory. (R., p.69-70; Tr., p.9, Ls.11-18.)

Idaho at 365, 913 P.2d at 581. "When a statute is unambiguous, it must be interpreted in accordance with its language, courts must follow it as enacted, and a reviewing court may not apply rules of construction." Wiedmeier, 121 Idaho at 191, 824 P.2d at 122 (1992). In Verska, 151 Idaho at 894-896, 265 P.3d at 507-509, the Idaho Supreme Court held that Idaho appellate courts do not have the authority to modify unambiguous statutes even when construing the statute as writing would produce "absurd results."

When a statute is ambiguous, it must be construed to mean what the legislature intended it to mean. Doe, 147 Idaho at 328, 208 P.3d at 732. To determine that intent, the appellate court examines not only the literal words of the statute, but also the reasonableness of the proposed constructions, the public policy behind the statute, and its legislative history. Id. In determining the ordinary meaning of a statute "effect must give given to all the words of the statute if possible, so that none will be void, superfluous, or redundant." Mercer, 143 Idaho at 109, 138 P.3d at 309.

As discussed above, I.C. § 18-1401 defines burglary as follows:

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

Therefore, the plain language of the burglary statute requires only that the state prove that the defendant "enter[ed]" a building with the requisite intent. The language of the statute does not require that the entry be unlawful, or that it intrude on any propriety or privacy interest of the owner or occupier of the building. No Idaho appellate opinion has interpreted the term "enter" as used within I.C. § 18-

1401 as requiring something more than the physical entry into a building or vehicle. Likewise, the common-usage meaning of the term "enter" is not so narrow. See Merriam-Webster Online Dictionary 2015, http://www.merriam-webster.com/dictionary/enter (defining "enter" as "to go or come in"). If the legislature wished to require the state to prove more than a physical entry into a building or vehicle, it could easily done so by utilizing a different word or phrase.

In this case, the state presented evidence at the preliminary hearing and jury trial supporting its allegation that Weeks physically entered the pawn shop with the requisite intent. (Tr., p.160, Ls.11-18; Prelim Tr., p.6, Ls.6-20.) This was sufficient to satisfy the "enter" element of the burglary statute. Because the term "enter" as utilized by I.C. § 18-1401 is unambiguous, no further analysis is required.

Further, even if the term "enter" contained within I.C. § 18-1401 was somehow ambiguous, an analysis of the principles of statutory instruction reveals that Weeks has failed to demonstrate that application of that term required the state to prove that the entry was unlawful, or that it intruded upon a propriety or privacy interest of the pawn shop owner.

As Weeks notes on appeal, the criminal offense of burglary was defined by the common law "to be the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony." 3 Wayne R. LaFave, Substantive Criminal Law, § 21.1 (2d ed. 2012). "The offense was comprised of narrowly defined elements in order to meet the specific needs and reasons for the offense." Id. However, "across the intervening centuries these elements have been expanded or discarded to such an extent that the modern-day offense commonly known as

burglary bears little relation to its common-law ancestor." Id. "Most jurisdictions have enacted statutes which, by modifying or eliminating some of the elements essential to the composition of a common-law burglary, have extended the reach of the offense beyond its common-law limitations." 12A C.J.S. Burglary § 4 (June 2015).

Idaho is one such state which has extended the reach of its burglary statute beyond the offense's common law roots requiring an unlawful entry or some other intrusion upon propriety or privacy interests. In Matthews v. State, 113 Idaho 83, 86-87, 741 P.2d 370, 373-374 (Ct. App. 1987), the Idaho Court of Appeals described I.C. § 18-1401 as "remarkably broad," and held that it does not require a breaking or a trespass:

> [Idaho Code § 18-1401] establishes an offense based largely upon a state of mind - the intent to commit a crime upon entry. Thus, it gives prosecutors the power, in essence, to charge shoplifting as a felony if the defendant conceived of the crime before entering the premises. Many states do not make it a crime to enter places open to the public. *See, e.g.,* Fla.Stat. § 810.02(1) (1985); N.J.Stat.Ann. § 2C:18–2 (1983). It has been argued that persons in Idaho should not be convicted of a felony for entering a public place with bad thoughts. However, our Supreme Court long ago concluded that I.C. § 18–1401 encompasses just such situations. *See* State v. Bull, 47 Idaho 336, 276 P. 528 (1929).
>
> On the other hand, it may be argued that the sweeping statute is useful as a means of dealing effectively with a series of shoplifting incidents, such as those which evidently occurred in the instant case. In any event, it is the role of the Legislature to define crimes and to establish penalties. The Legislature apparently intended our burglary statute to have wide application. Absent any constitutional infirmity, which Matthews has not alleged, our duty is to enforce the statute as it exists. If reform is needed, the task must be left to the Legislature. Accordingly, we cannot sustain Matthews' challenge to the burglary statute.

Id.; see also State v. Carver, 94 Idaho 677, 681-682, 496 P.2d 676, 680-681 (1972) (holding that I.C. § 18–1401 does not require the state to "establish ownership of the

building or lack of consent to enter," and that instead, "the statute is concerned with the entering of a building for an unlawful purpose.").[4]

On appeal, Weeks cites Taylor v. United States, 495 U.S. 575 (1990), and Descamps v. United States, __ U.S. __, 133 S.Ct. 2276, 2292 (2013), in which the United States Supreme Court defined "burglary" as requiring an unlawful entry. (Appellant's brief, pp.17-18.) However, these cases have no controlling or persuasive application to the present case. The holdings of Taylor and Descamps were not based upon an analysis of any particular state burglary statute, let alone I.C. § 18–1401. Instead, both Taylor and Descamps analyzed a statutory federal sentencing enhancement which applied where a defendant was previously convicted of a "violent felony," including, by the terms of the enhancement statute, the offense of "burglary." Taylor, 495 U.S. at 577-597; Descamps, ___ U.S. at ___, 133 S.Ct. at 2281-2283. Both cases thus sought to determine the elements of "generic" burglary. Taylor, 495 U.S. at 577-597; Descamps, ___ U.S. at ___, 133 S.Ct. at 2281-2283. Both cases acknowledged that individual state statutes may define burglary more

[4] On appeal, Weeks argues that "[t]o the extent Idaho precedents hold to the contrary [of his argument regarding the meaning of the term "enter" as utilized by I.C. § 18–1401], they are manifestly wrong and unjust" and "should be overruled." (Appellant's brief, p.15 n. 6.) Idaho jurisprudence requires respect for its own precedent. The rule of *stare decisis* dictates that controlling precedent be followed "unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice." State v. Dana, 137 Idaho 6, 9, 43 P.3d 765, 768 (2002); State v. Humphreys, 134 Idaho 657, 660, 8 P.3d 652, 655 (2000) (quoting Houghland Farms, Inc. v. Johnson, 119 Idaho 72, 77, 803 P.2d 978, 983 (1990)). In this case, the plain meaning of the term "enter" has not evolved over time or in such a manner as to cast doubt upon the Idaho appellate courts' previous interpretations of that term. Weeks has therefore failed to demonstrate that these precedents should be overruled.

broadly than the corresponding "generic" offense. Taylor, 495 U.S. at 590-591; Descamps, ___ U.S. at ___, 133 S.Ct. at 2281.

The plain language of I.C. § 18–1401 requires only a physical "entry" into a building or vehicle with requisite intent to commit a felony or any theft. Even if the term "enter" in I.C. § 18–1401 is ambiguous, an application of the tools of statutory construction reveals that the legislature did not intend the burglary statute to apply only to those who commit an unlawful entry into a building or structure, or who otherwise intrude upon the propriety or privacy interest of the owner or occupier of a building or vehicle. Therefore, even if Weeks had preserved his claim that the district court erred by denying his motion dismiss the charging information on this ground, the claim fails, and this Court should affirm Weeks' conviction.

III.
Weeks Has Failed To Demonstrate That The Evidence Presented Was Insufficient To Support His Conviction For Burglary

An appellate court will not set aside a judgment of conviction entered upon a jury verdict if there is substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. App. 1997); State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992); State v. Hart, 112 Idaho 759, 761, 735 P.2d 1070, 1072 (Ct. App. 1987).

In this case, Weeks contends that his conviction for burglary was supported by insufficient evidence. (Appellant's brief, pp.28-29.) Specifically, Weeks contends that the state "failed to show the necessary unlawful entry" that, he asserts, is required by the language of the burglary statute. (Id.) In support of this proposition,

Weeks relies fully on the argument described in Section II, *supra,* regarding the meaning of the term "enter" contained within I.C. § 18–1401. (Id.) Likewise, in response to this argument, the state relies on its argument set forth in Section II, *supra*, that the plain language of the burglary statute did not require the state to prove that Weeks' entry into the pawn shop was somehow "unlawful," or that the entry intruded upon some propriety or privacy interest of the pawn shop's owner.

Sufficient competent evidence was presented at trial whereby a rational fact-finder could conclude beyond a reasonable doubt that Weeks committed burglary in the manner alleged by the state. This Court should therefore affirm Weeks' conviction.

CONCLUSION

The state respectfully requests that this Court affirm the judgment of conviction entered upon the jury verdict finding Weeks guilty of burglary.

DATED this 2nd day of October, 2015.

MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of October, 2015, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BRIAN R. DICKSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

MARK W. OLSON
Deputy Attorney General

MWO/dd