

7-6-2017

## State v. Rubio Appellant's Brief Dckt. 44633

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)	
	)	<b>NO. 44633</b>
<b>Plaintiff-Respondent,</b>	)	
	)	<b>KOOTENAI CO. NO. CR 2015-20847</b>
<b>v.</b>	)	
	)	
<b>JOSEPH ROMAN RUBIO,</b>	)	<b>APPELLANT'S BRIEF</b>
	)	
<b>Defendant-Appellant.</b>	)	
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**BRIEF OF APPELLANT**

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

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**HONORABLE CYNTHIA K.C. MEYER  
District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

While on misdemeanor probation, Joseph Roman Rubio was ordered to perform community service as a condition of DUI court. Mr. Rubio allegedly forged his community service timecard before turning it in to the community service desk in Kootenai County. Instead of filing a motion for a probation violation, however, the State charged Mr. Rubio with a felony for filing a false instrument in violation of Idaho Code section 18-3203. Mr. Rubio contended from the start of the proceedings that there was insufficient evidence to prosecute him under the statute. After a jury trial, however, Mr. Rubio was found guilty. On appeal, he asserts that the district court erred when it denied his motion to dismiss the information, and when it denied his motion for a judgment of acquittal. He also asserts the district court erred when it incorrectly instructed the jury.

### Statement of the Facts and Course of Proceedings

In September of 2015, Mr. Rubio was ordered to complete 56 hours of community service as a condition of DUI Court. (R., p.22.) Mr. Rubio performed his community service at the St. Vincent De Paul Thrift Store in Coeur d'Alene. (R., p.23.) In December of 2015, however, the State filed a complaint alleging that Mr. Rubio had committed the crime of filing a false instrument, under I.C. § 18-3203, by submitting a false or forged community service timecard. (R., pp.26-27.)

At the preliminary hearing, Lacy Lovejoy—the volunteer coordinator at St. Vincent's—testified, along with Kim Hushman, who was a “float clerk” in the district court and filled in as needed at the community service desk. (4/1/16 Tr., p.6, Ls.2-10, p.32, L.7 – p.33, L.1.) Based on their testimony, the magistrate court admitted Plaintiffs Exhibits 1 and 2, which were



respectively copies of the timecard in question, and the “blue sheet”—the Kootenai County Community Service desk internal document that contained Mr. Rubio’s name, case number, how many hours he was assigned to work, and the deadline for completing those hours. (Plaintiff’s Exhibits 1 and 2; 4/1/16 Tr., p.19, L.6 – p.39, L.7.) The “blue sheet” was based on the judgment in the case.<sup>1</sup> (4/1/16 Tr., p.34, L.15 – p.35, L.12.)

At the close of testimony, Mr. Rubio’s counsel argued that there was insufficient evidence to show that Mr. Rubio could be prosecuted under the statute. The statute provides:

Every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this state, which instrument, if genuine, might be filed, or registered, or recorded under any law of this state, or of the United States, is guilty of a felony.

I.C. § 18-3203. Counsel argued that the evidence did not establish probable cause that the elements of the statute were violated because Mr. Rubio’s community service timecard was not an instrument that would be filed in a public office under any law. (4/1/16 Tr., p.54, L.25 – p.57, L.1.) He argued that the timecard did not meet the definition of an “instrument” because that term identified formal legal documents such as deeds or marriage certificates, and there was no support in the Idaho Code for labeling the timecard an instrument as that term was used in the statute. (4/1/16 Tr., p.54, L.25 – p.55, L.10.) He also argued that the use of the terms “registered or recorded” indicated “what the framers of this statute thought would be an instrument.” (4/1/16 Tr., p.55, Ls.11-16.) He went on to argue that Mr. Rubio did not “file” the timecard as

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<sup>1</sup> At the trial, Ms. Hushman confirmed that the judgment in this case was the court order for community service. (7/18/16 Tr. Vol. I, p.88, Ls.9-13.) These same documents were in evidence at the trial. However, there were two sides to the timecard, and the front side of the timecard was not admitted until the trial. (4/1/16 Tr., p.30, L.21 – p.31, L.8.) The date and time stamps on the respective documents show this. (Plaintiff’s Exhibits 1 and 2).

that term is legally defined but simply turned in his community service hours. (4/1/16 Tr., p.56, Ls.7-16.) He also asked the magistrate court what law, code, or statute the timecard would be filed under. (4/1/16 Tr., p.56, Ls.17-21.) He acknowledged that there was a court order regarding the community service, but argued there was a difference between a court order and a law, and there was no law under which Mr. Rubio would have filed his timecard. (4/1/16 Tr., p.56, L.17 – p.57, L.15.)

At the end of the hearing, the magistrate court stated, “I do recognize those issues raised as to some of the *not defined terms; that is, instrument filed and also the operation of under the law*. However, I would see in the commonsense understanding that this would meet the commonsense definitions.” (4/1/16 Tr., p.59, Ls.1-5 (emphasis added).) Thus, it bound the case over to district court. (4/1/16 Tr., p.59, Ls.6-9; R., p.45.) The State then filed an information charging Mr. Rubio with filing a false instrument. (R., pp.46-47.) Mr. Rubio pleaded not guilty. (R., p.53, 4/20/16 Tr., p.10, Ls.6-24.)

Prior to trial, Mr. Rubio filed a motion to dismiss the information pursuant to I.C. § 19-815A and I.C.R. 5.1. (R., pp.67-73.) In that motion, he argued that the timecard was not an instrument that was required to be filed, registered, or recorded under any law, and he was ordered by the court to complete community service “as a means of punishment, not as part of a contractual obligation.” (R., p.67.) He acknowledged that he signed a Kootenai County District Court Community Service Contract, which stated he would maintain a record of the hours he worked and report them to the community service office but argued that the statute did not apply because a community service timecard was not an “instrument,” and Mr. Rubio was not required to file the timecard under any law. (R., pp.69-72.)

At the hearing on the motion, Mr. Rubio’s counsel asked the district court to take judicial notice of the transcript from the preliminary hearing. (6/28/16 Tr., p.4, L.22 – p.5, L.1.) She further developed the argument as to why the timecard was not an instrument, and she argued that there was no law under which Mr. Rubio would file his timecard. (6/28/16 Tr., p.5, Ls.2-24, p.21, Ls.21-24.) She pointed out that the definitions of these terms would be an issue at trial also and asserted the State had failed to prove there was probable cause to establish the required elements at the preliminary hearing, and thus the district court should dismiss. (6/28/16 Tr., p.22, Ls.1-7.)

The district court denied the motion but did not issue a written order. (6/28/16 Tr., p.22, Ls.8-11.) It held that there was “nothing magic about a filing stamp,” and a time and date stamp was not required for something to be considered “filed.” (6/28/16 Tr., p.22, Ls.19-22.) It went on to state, “I think a reasonable interpretation of the word ‘filed’ is that if you submit something to really any deputy clerk here in this building, you have filed—with the intent for it to be used in your case . . . you’ve filed something.” (6/28/16 Tr., p.22, L.25 – p.23, L.4.) It also held that the community service desk was a public office. (6/28/16 Tr., p.23, Ls.5-13.) Notably, when discussing this, the district court said, “The legal significance is . . . Mr. Rubio’s assertion that he’s doing what he’s required by law, by court order to do . . . .” (6/28/16 Tr., p.23, Ls.13-15.)

Counsel for Mr. Rubio asked the district court to reconsider denying the motion because, at the preliminary hearing, the State did not prove the timecard was an “instrument” that was to be “filed, registered, or recorded” under the statute. (6/28/16 Tr., p.24, Ls.6-16.) The district court held that the community service timecard met the definition of an instrument. (6/28/16 Tr., p.24, Ls.17-19.) It stated, “An instrument defines rights, duties, entitlements or liabilities such as contract, will, promissory note or share certificate, and obviously this time card is not a

contract, will, promissory note or share certificate, but those aren't listed in exclusion; those are only examples.”<sup>2</sup> (6/28/16 Tr., p.24, L.19 – p.25, L1.) It went on to say,

This [timecard] is an instrument that defines rights, duties, entitlements or liabilities. Your client had a duty, a liability if you want to phrase it that way, to do his community service, and he is presenting allegedly . . . a document that he's purporting demonstrates he performed part of that community service and allegedly that was forged, so I don't know how this can be interpreted as anything other than an instrument. It deals with Mr. Rubio's rights, duties, entitlements, liabilities vis-à-vis the State of Idaho and the court order.

(6/28/16 Tr., p.25, Ls.2-12.)

At that point, Mr. Rubio's counsel said, “I'm just . . . further raising the issue that the State didn't prove that there's any law that required that time card to be registered,<sup>3</sup> and if it's going to be an argument that the court ordered it . . . there's different remedies for that.”

(6/28/16 Tr., p.25, Ls.13-19.) The district court said, “Well, *I'm not exactly understanding what you're saying*, but the motion to reconsider is denied.” (6/28/16 Tr., p.25, Ls.20-22 (emphasis added).)

At the trial,<sup>4</sup> the State called Ms. Lovejoy and Ms. Hushman again, along with one of Mr. Rubio's employers, and the police officer who investigated the alleged crime. (*See* 7/18/16 Tr., Vols. I and II generally.)<sup>5</sup> Much like the preliminary hearing, the testimony of Ms. Lovejoy and Ms. Hushman focused on what happened to make them suspect that Mr. Rubio had forged

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<sup>2</sup> The district court used the definition from *Steel Farms, Inc. v. Croft & Reed, Inc.* 154 Idaho 259, 265 (2012). There, this Court cited to the Black's Law Dictionary definition of the term.

<sup>3</sup> It appears counsel intended to say “filed, registered, or recorded” as that was the argument in the motion to dismiss. (R., p.72.)

<sup>4</sup> Judge Mitchell presided over the motion to dismiss hearing, but Judge Simpson presided over the trial.

<sup>5</sup> The trial took place over two days: July 18, 2016 and July 19, 2016. Undersigned counsel received two bound volumes of the transcript for the first day. The first volume contained the proceedings prior to the lunch recess; the second contained the proceedings after lunch. As such, they will be referred to as “Vol. I” and “Vol. II.”

his timecard, and the process by which community service hours were recorded. (7/18/16 Tr. Vol. I, p.83, L.9 – p.122, L.8, 7/18/16 Tr. Vol II, p.5, L.18 – p.31, L.24.) Mr. Rubio’s employer, Mr. Leedy, testified regarding when he recalled working with Mr. Rubio because some of the dates on his community service timecard were allegedly dates Mr. Rubio had worked with Mr. Leedy. (7/18/16 Tr. Vol. II, p.32, L.9 – p.45, L.11.) Coeur d’Alene Police Officer Knoll also testified about his interrogation of Mr. Rubio. (7/18/16 Tr. Vol. II, p.46, L.1 – p.57, L.3.) Officer Knoll interrogated Mr. Rubio on video, and the jury watched the video. (Plaintiff’s Exhibit 3; 6/28/16 Tr. Vol. II, p.50, L.16 – p.51, L.7.) Mr. Rubio also testified. (7/18/16 Tr. Vol. II, p.65, L.18 – p.85, L.23.)

After the State rested, Mr. Rubio’s counsel moved for a judgment of acquittal pursuant to Idaho Criminal Rule 29. (7/18/16 Tr. Vol. II, p.59, Ls.1-5.) She argued that the State had not met its burden to prove the timecard was an instrument, and there was no testimony or evidence presented to that effect. (7/18/16 Tr. Vol. II, p.59, Ls.11-22.) She also argued that the State had not met its burden to prove that the timecard was false or forged, or that the community service office was a public office within the meaning of the statute. (7/18/16 Tr. Vol. II, p.59, L.23 – p.60, L.13.) Finally, she pointed out that the State had not presented any evidence—in the form of a statute or otherwise—to prove that the timecard itself was required to be filed under any law. (7/18/16 Tr. Vol. II, p.60, L.14 – p.61, L.13.)

The State argued that, because Judge Mitchell held—in deciding the motion to dismiss—that the timecard was an instrument that could be filed under the law of the State of Idaho, and the community service desk was a public office, those issues were “matters for the jury to be instructed on” as they were “legal matters.” (7/18/16 Tr. Vol. II, p.61, L.17 – p.62, L.1.) The State also argued that the statute did not indicate that the timecard was “required to be filed”

because the statute said, “might be filed, registered, and recorded.” (7/18/16 Tr. Vol. II, p.62, Ls.22-25.) Based on this language, the State argued that this was “not an element.” (7/18/16 Tr. Vol. II, p.62, L.24.)

In response to the State’s comment regarding “legal matters,” Mr. Rubio’s counsel pointed out that, even in a controlled substance case, the State needs to prove that the substance is controlled and illegal under the laws of Idaho. (7/18/16 Tr. Vol. II, p.63, Ls.13-18.) The district court said,

I’m at somewhat of a disadvantage having not been there at the hearing, but I did review the minutes of the decision by Judge Mitchell. And he specifically found . . . that the community service office is a public office. Once you deliver a document to the deputy clerk, you know it will be used. He further found that [the] community service card was an instrument that defines a liability and duty to do community service.

(7/18/16 Tr. Vol. II, p.64, Ls.12-20.) With no further analysis, the district court denied the Rule 29 motion. (7/18/16 Tr. Vol. II, p.64, L.21.)

At the jury instruction conference, Mr. Rubio’s counsel strenuously objected to the State’s proposed instruction that read, “Under Idaho law, a community Service timecard, when filed in a court case, is an instrument.” (R., p.93; 7/18/16 Tr. Vol. II, p.91, Ls.4-25.) She argued that no law supported that, but the district court said, because Judge Mitchell found that to be true, “It makes it the law of the case for record, and *all of our hands are tied.*” (7/18/16 Tr. Vol. II, p.92, Ls.2-5 (emphasis added).) Counsel pointed out that her requested instruction on the issue gave the jury the definition of an instrument from Black’s Law Dictionary, so the jury could determine whether it met that definition.<sup>6</sup> (7/18/16 Tr., p.91, Ls.14-18.) Counsel also

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<sup>6</sup> Defense counsel’s proposed instructions were apparently not made a part of the record. Undersigned counsel requested a copy of those instructions from the district court on June 22, 2017, and again on July 5, 2017, but the district court has not provided them as of yet. However, defense counsel’s arguments on the record are sufficient to show the nature of her requests.

objected to the State’s proposed jury instructions that read, “Under Idaho law, the Kootenai County community service desk is a public office” and “Under Idaho law, proof of completion of community service, when such service is done pursuant to a court order, may be filed under the law of the State of Idaho.” (R., pp.94-95; 7/18/16 Tr., p.92, L.18 – p.93, L.11.) Despite counsel’s objections, and her renewed objections the following day, the district court gave those jury instructions. (R., pp.144-46; 7/19/16 Tr., p.9, Ls.11-18.) It stated, “Basically the court’s position is I’m constrained by the law of the case, prior rulings by Judge Mitchell as to 16, 17, and 18.” (7/19/16 Tr., p.4, Ls.5-10.)

Subsequently, the jury found Mr. Rubio guilty. (R., p.156.) The district court imposed a sentence of three years, with one and one-half years fixed, but retained jurisdiction. (R., pp.167-68.) Mr. Rubio filed a Notice of Appeal timely from the district court’s judgment of conviction. (R., pp.170-73.)

## ISSUES

1. Did the district court err in denying Mr. Rubio's motion to dismiss because a community service timecard is not an instrument that might be filed under any law; therefore, there was no probable cause to believe Mr. Rubio committed the crime of offering a false or forged instrument for record?
2. Did the district court err when it denied Mr. Rubio's Rule 29 motion for judgment of acquittal?
3. Did the district court err by incorrectly instructing the jury and reducing the State's burden of proof to prove all the elements?



## ARGUMENT

### I.

#### The District Court Erred In Denying Mr. Rubio's Motion To Dismiss Because A Community Service Timecard Is Not An Instrument That Might Be Filed Under Any Law; Therefore, There Was No Probable Cause To Believe Mr. Rubio Committed The Crime Of Filing A False Instrument

##### A. Introduction

There was insufficient evidence to show that Mr. Rubio committed the crime of offering a false or forged instrument as defined in I.C. § 18-3203 by allegedly filing a forged community service timecard. Therefore, the district court erred when it denied Mr. Rubio's motion to dismiss.

##### B. There Was Not Substantial Evidence Upon Every Element To Establish Probable Cause That Mr. Rubio Committed The Crime Of Offering False Or Forged Instrument For Record Under I.C. § 18-3203

A defendant held to answer a criminal charge after a preliminary hearing may challenge that finding by filing a motion to dismiss in the district court. I.C. § 19-815A. The purpose of a preliminary hearing is to "determine if an offense has been committed, and further if there is probable cause to believe that the crime was committed by the accused." *State v. Schall*, 157 Idaho 488, 491 (2014) (citation omitted). A finding of probable cause to bind the case over to the district court must "be based upon substantial evidence upon every material element of the offense charged." I.C.R. 5.1(b) The interpretation of a statute is a question of law subject to *de novo* review. *State v. Schulz*, 151 Idaho 863, 865 (2011).

##### 1. The District Court Erred In Finding That The Timecard Was An Instrument

In finding that Mr. Rubio's community service timecard was an instrument, the district court failed to follow this Court's definition of "instrument," defied the plain meaning of

“instrument,” and failed to follow this Court’s rules for proper statutory construction. This Court applies the following principles of statutory interpretation:

The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

*Id.* at 866-67 (citation omitted).

a. The Timecard Was Not An Instrument Because It Did Not “Define Any Rights, Duties, Entitlements, Or Liabilities,” Which Is The Plain Meaning Of The Term “Instrument” Used By This Court

The district court’s holding that Mr. Rubio’s community service timecard was an “instrument” as intended by the legislature in Idaho Code § 18-3203 was error because it does not meet the plain, usual, and ordinary meaning of “instrument.” This Court, in *Steel Farms, Inc. v. Croft & Reed, Inc.*, 154 Idaho 259, 265 (2012), has already adopted the Black’s Law Dictionary definition of the term, and the district court failed to follow that definition.

Idaho Code § 18-3203 is entitled “Offering false or forged instrument for record” and reads as follows: “Every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this state, which instrument, if genuine, might be filed, or registered, or recorded under any law of this state, or of the United States, is guilty of a felony.” Thus the State had the burden to prove beyond a reasonable doubt that Mr. Rubio’s timecard was an “instrument.”

There is no definition of the term “instrument” in the statute. “Where the legislature has not provided a definition in the statute, terms in the statute are given their common, everyday

meanings.” *State v. Yzaguirre*, 144 Idaho 471, 477–78 (2007) (citation omitted). The relevant ordinary definition of the term “instrument” is “a formal legal document (such as a deed, bond, or agreement).” Merriam-Webster, <https://www.merriam-webster.com/dictionary/instrument> (last visited June 24, 2017).

This Court has adopted the legal dictionary definition of “instrument,” as a “written legal document that defines rights, duties, entitlements, or liabilities such as a contract, will, promissory note, or share certificate.” *Steel Farms, Inc.*, 154 Idaho at 265 (citing BLACK’S LAW DICTIONARY). Mr. Rubio’s timecard could not reasonably be construed to meet this definition.

The district court stated that the timecard “*deals with* Mr. Rubio’s rights, duties, entitlements, liabilities vis-à-vis the State of Idaho and the court order.” (6/28/16 Tr., p.25, Ls.9-12) (emphasis added). But this Court’s definition specifies that an instrument is a legal document that “defines” such duties and liabilities, not as any writing that simply “deals with” duties and liabilities. *Id.*

Mr. Rubio’s timecard was not a formal legal document, and it was nothing like a deed, bond, contract, will, promissory note, or share certificate. It did not even have his name on it. It also did not define anything. Nothing on the timecard outlined any duty or liability of Mr. Rubio. The timecard was simply used to track his hours; it did not define what those hours should be. The timecard was simply a form --- a grid, with columns for “Date,” “Hours,” “Sign.,” and “Agency,” and places for the supervisor’s name and telephone number. (Plaintiff’s Exhibit 1.)

To qualify as an “instrument,” a document must be something more than simply a piece of writing. If, for example, a contract requires one party to provide receipts in exchange for reimbursement of expenses, the contract is the instrument—not the receipts. The contract defines

the parties' rights and duties and is therefore an "instrument" contemplated by the statute at issue here, "Offering false or forged instrument for record," I.C. § 18-3203.

Nevertheless, here the district court found:

This is an instrument that defines rights, duties, entitlements or liabilities. Your client had a duty, a liability if you want to phrase it that way, to do his community service, and he is presenting allegedly . . . a document that he's purporting demonstrates he performed part of that community service . . . so I don't know how this can be interpreted as anything other than an instrument.

(6/28/16 Tr., p.25, Ls.2-9.) This holding was in error. The timecard did not define Mr. Rubio's duties or liabilities. As such, the timecard was not an "instrument."

- b. Even If The Term "Instrument" Is Ambiguous, The Other Words Used In The Statute, As Well As The Legislative History Of The Statute, Make It Clear That Turning In An Allegedly False Or Forged Timecard Is Not Subject To Prosecution Under I.C. § 18-3203

Even if this Court finds that the term "instrument" is ambiguous, the timecard does not meet any properly construed definition of the term. There is very little precedent regarding I.C. § 18-3203. The only appellate case to address it in any detail was *State v. Callaghan*, 143 Idaho 856 (Ct. App. 2006). There, the Idaho Court of Appeals noted that it was enacted in 1887. *Id.* at 859.

The language "filed, registered, or recorded" makes it clear that when the legislature enacted the statute, it was focused on issues of property ownership and the filing, recording, or registration that may be necessary for transactions or proving ownership. The definition of the verb form of "record" is, "To deposit, (an original or authentic official copy of a document) with an authority." BLACK'S LAW DICTIONARY 1388 (9th ed. 2009). As an example, the dictionary uses the following: "she recorded the deed in the county property office." *Id.* Similarly, the definition of the verb form of "register" is, "To enter in a public registry" such as when one

registers a new car. BLACK'S LAW DICTIONARY 1396 (9th ed. 2009). Both of these acts would obviously be done under a law of the State of Idaho. For example, people are required to register cars under I.C. § 49-401A.

Also, when the statute was enacted in 1887, the language was the same as California Penal Code Section 115(a), which was enacted in 1872. Thus, it is highly likely that, like many other statutes at the time, it was adopted directly from California. *See e.g. State v. Gutke*, 139 P. 346, 347 (1914) (“This statute appears to have been adopted from California by the 1872 Codes, and it was first introduced into the Idaho statutes in the 1887 Revised Statutes.”). In interpreting the California statute, Penal Code Section 115(a), the First District Court of Appeal of California defined an instrument as follows: “With reference to writings the term “instrument” as employed in our statutes has been defined to mean an agreement expressed in writing, signed and delivered by one person to another, transferring the title to or creating a lien on real property, or giving a right to a debt or duty.” *People v. Frazer*, 137 P. 276, 277 (Cal. Ct. App. 1913.) Notably, it also said, “every paper writing is not necessarily an instrument within the settled statutory definition of the term.” *Id.*

Although some California courts have more recently expanded that definition, the *Frazer* court’s definition should be followed in this case because it is the original interpretation and there has been no further Idaho legislative changes to the statute. “This [C]ourt has consistently held that ‘(a) statute which is adopted from another jurisdiction . . . will be presumed to be adopted with the prior construction placed upon it by the courts of such other jurisdiction.’” *Odenwalt v. Zaring*, 102 Idaho 1, 5 (1980) (quoting *Nixon v. Triber*, 100 Idaho 198, 200 (1979) (other citations omitted)). The Court went on to hold, “Therefore, in the absence of some other legislation which would clearly suggest a different result, we should follow the interpretation

which the Wisconsin Supreme Court had placed upon their comparative negligence statute prior to 1971.” *Id.* (footnote omitted). There has been no other legislation to further define the term “instrument” in Idaho.

The only Idaho appellate court precedent where the defendant was ultimately convicted under the statute at issue here was an unpublished decision in which the Court of Appeals affirmed the defendant’s conviction for submitting false documents that purported to convey an interest in real property to the Nez Perce County Recorder’s Office. *State v. Wright*, 2011 WL 11048164, at \*1 (Idaho Ct. App. Oct. 17, 2011). This is clearly the kind of act the statute was intended to prohibit.

Finally, under the doctrine of lenity, this Court should find that turning in an allegedly false community service timecard is not subject to prosecution for filing a false instrument under I.C. § 18-3203. “The rule of lenity states that criminal statutes must be strictly construed in favor of defendants.” *State v. Barnes*, 124 Idaho 379, 380 (1993) (overruled on other grounds). When a statute is ambiguous, the doctrine of lenity requires courts to construe the statute in favor of the defendant. *State v. Wees*, 138 Idaho 119, 124 (Ct. App. 2002). Mr. Rubio asserts that this Court should hold that I.C. § 18-3203 does not allow prosecution where, pursuant to a court order, a defendant files an allegedly forged community service timecard. If the statute is ambiguous regarding the term “instrument,” this Court should apply the rule of lenity, construe the statute strictly against the State, and find that the district court erred in denying Mr. Rubio’s Motion to Dismiss because neither the plain language nor the legislative history of the statute indicates that Mr. Rubio was subject to prosecution under I.C. § 18-3203.

2. Mr. Rubio's Timecard Could Not Be "Filed Under Any Law"

In addition to the requirement that the timecard be an "instrument," the statute also requires the timecard be an instrument that "might be filed, registered, or recorded under any law of this state, or of the United States." I.C. § 18-3203. The district court relied on no authority when it issued its order denying the motion to dismiss. (6/28/16 Tr., p.22, L.8 – p.25, L.22.) In fact, it admitted that it did not understand the argument regarding the requirement that the instrument might be filed, registered, or recorded under a law.

Further, the State never provided any evidence of any law under which Mr. Rubio's timecard might have been filed. Indeed, the district court's only reference to this element of the statute is the following statement: "The legal significance is Mr. Rubio's assertion that he's doing what he's required by law, by court order to do . . . ." (6/28/16 Tr., p.23, Ls.13-15.) There was no law under which it might have been filed. There was a court order, but that is not a law. And when counsel asked the district court to reconsider because the State had not proven that the timecard might be filed under any law, the district court said, "Well, I'm not exactly understanding what you're saying, but the motion to reconsider is denied." (6/28/16 Tr., p.25, Ls.13-22.) This was error for several reasons.

First, this Court recently commented on the difference between a law and a court order in *State v. Herren*, 157 Idaho 722 (2014). There, one of the issues was whether Mr. Herren could be found guilty of violating a statute prohibiting violation of a no-contact order. *Id.* at 724-25. The no-contact order stated, *inter alia*, that Mr. Herren could not contact or knowingly remain within 100 feet of a Mr. McDermott. *Id.* at 724. At a subsequent HOA meeting, Mr. Herren realized Mr. McDermott was in attendance and therefore moved to the back of the room, but the magistrate court found Mr. Herren guilty of violating the no-contact order. *Id.* On appeal, the

district court held that there was substantial evidence to support the conviction because he had knowingly remained within 100 feet of Mr. McDermott. *Id.* The Idaho Court of Appeals subsequently reversed, and the Idaho Supreme Court granted review. *Id.* at 725.

The State argued that because “distance restrictions are explicitly contemplated as being part of a no contact order, and the rule explicitly indicates that any violation of the order itself is a separate crime, that ‘contact’ in violation of the order is defined by the no contact order.” *Id.* Mr. Herren argued that it was the legislature’s role to define crimes, and the term “contact” should thus be given its ordinary meaning. *Id.* This Court ultimately reversed Mr. Herren’s conviction because the statute at issue prohibited “contact,” and there was no actual contact. *Id.* at 726. It stated, “Although Herren violated the terms of the no-contact order by remaining within 100 feet of McDermott, this was not “contact with the stated person in violation of an order” in violation of Idaho Code section 18–920(2).” *Id.* at 726.

In a footnote, this Court said that if it were to accept the State’s interpretation of the statute, it would “be holding that a judge issuing a no contact order has the power to define conduct by a particular individual which would constitute a crime other than contempt.” *Id.* at 726 n.1. It went on to state, “We express doubt that the Legislature intended to delegate the power to promulgate criminal laws to individual judges as courts do not have the power to define crimes.” *Id.* The same reasoning applies here. There was no law under which Mr. Rubio’s timecard might have been filed. Therefore, the district court relied on the fact that there was a court order to define the alleged crime. But the court order was not a law. Thus, because all the elements of I.C. § 18-3203 were not met, Mr. Rubio should not have been charged with this crime. The district court ignored the “under any law” requirement.



Further, contrary to the State's characterization that this was actually not an element because the statute uses the word "might" (7/18/16 Tr. Vol. II, p.62, Ls.22-25), the Idaho Court of Appeals has made it clear that this is indeed an element. In *Callaghan*, the defendant was convicted under I.C. § 18-3203 in relation to automobile insurance fraud. 143 Idaho at 857-58. However, the Court of Appeals held that the district court erred when it denied the defendant's motion to dismiss because another statute governed the defendant's actions, and I.C. § 18-3203 was not "an alternative enforcement mechanism." *Id.* at 859. With respect to the "under any law" element in I.C. § 18-3203, the court stated, "We further note that the parties have offered no law, other than Title 49 [the motor vehicle statute], that could be construed in this case as fulfilling the 'under any law' requirement of I.C. § 18-3203 . . . ." *Id.* at 859, n.4. Therefore, the court wrote, "Without any law outside the bounds of Title 49, we are directed by I.C. § 18-3203's 'under any law' requirement back to I.C. § 49-1430 . . . ." *Id.* Here, the "under any law" requirement was not fulfilled at all. Unlike *Callaghan*, there was no law under which Mr. Rubio might have submitted his timecard.

Finally, the district court erred when it denied the motion to dismiss because it did not specifically find that there was substantial evidence to prove this element. In fact, it denied Mr. Rubio's motion despite the fact that if *did not understand* counsel's argument regarding this element; but instead of asking counsel to clarify, it simply denied the motion. (6/28/16 Tr., p.25, Ls.13-22.) Therefore, there was no possible way it could have found that there was substantial evidence on each element to support the information.

## II.

### The District Court Erred When It Denied Mr. Rubio’s Rule 29 Motion For Judgment Of Acquittal

#### A. Introduction

The State failed to present sufficient evidence to support the jury’s verdict for filing a false instrument. Specifically, no rational trier of fact could have found the essential elements of the crime: that the community service timecard was an “instrument,” that, “if genuine, might have been filed under any law of the State of Idaho or the United States.” Because the State failed to prove these elements, the district court should have granted Mr. Rubio’s motion for judgment of acquittal on this offense.<sup>7</sup>

#### B. The District Court Erred When It Denied Mr. Rubio’s Motion For A Judgment Of Acquittal Because It Failed To Analyze Whether The Elements Had Been Proven Beyond A Reasonable Doubt, Relying Instead Only On Judge Mitchell’s Pretrial Order Denying The Motion To Dismiss

Idaho Criminal Rule 29(a) requires that the trial court “shall order the entry of judgment of acquittal” on any charged offense if, “after the evidence on either side is closed . . . the evidence is insufficient to sustain a conviction of such offense . . . .” I.C.R. 29(a).

That is because 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.”

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<sup>7</sup> Judge Simpson presided over the trial and thus heard this motion. As Judge Simpson relied on some of Judge Mitchell’s prior findings on the motion to dismiss, the two judges are identified by name in this section as necessary for the purpose of clarity.

*State v. Eliassen*, 158 Idaho 542, 545 (2015) (quoting *State v. Goggin*, 157 Idaho 1, 5 (2014)). The State has the burden to prove the essential elements of the offense beyond a reasonable doubt. *Id.* at 546. Here, the State did not prove at least two of the essential elements.

When reviewing the district court’s denial of a Rule 29 motion, this Court asks 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.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); *State v. Adamcik*, 152 Idaho 445, 460 (2012)).

Based on the same reasons as argued in Section I, Mr. Rubio asserts that the district court should have granted the Rule 29 motion because no rational trier of fact could have found the timecard was an “instrument” that, if genuine, might have been filed under any law. Under I.C. § 18-3203, the State had to prove not only that Mr. Rubio filed a false or forged instrument but that the instrument, if genuine, might have been filed under any law of this State, or of the United States.

The district court, however, did not consider whether any rational trier of fact could have found each of the elements beyond a reasonable doubt. Instead, after detailed arguments on the issues of whether the timecard was an instrument within the meaning of the statute and whether the “under any law” element had been met (7/18/16 Tr. Vol. II, p.59, L.3 – p.64, L.9), the district court did not make its own decision but simply deferred to Judge Mitchell’s holding. Indeed, after the arguments from counsel on the Rule 29 motion, Judge Simpson simply said,

I’m at somewhat of a disadvantage having not been there at the hearing, but I did review the minutes of the decision by Judge Mitchell. And he specifically found on 6/28/16 that the community service office is a public office. Once you deliver a document to the deputy clerk, you know it will be used. He further found that [the] community service card was an instrument that defines liability and duty to do community service.

(7/18/16 Tr. Vol. II, p.64, Ls.12-20.) Based on this, and without any discussion of whether the timecard could be filed under any law, or any analysis of its own whatsoever, the district court denied the motion. (7/18/16 Tr. Vol. II, p.64, L.21.)

This was error. Indeed, there is no indication that Judge Simpson applied the proper analysis in deciding the motion. He never held that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. And he did not need to be at the pretrial hearing on the motion to dismiss in order to decide the Rule 29 motion because the Rule 29 motion was filed *after a trial over which he presided*. Therefore, he had all the necessary information to decide whether all the elements had been proven beyond a reasonable doubt. However, given his reliance on Judge Mitchell's prior holdings, it is not evident that he did so. The order on the motion to dismiss was irrelevant at this stage because a trial had taken place and arguments about the elements were made to him, so it was for him to decide the motion. Also, like Judge Mitchell, he failed to specifically address the "under any law" element of the statute.

It is not clear, but given Judge Simpson's reliance on the "law of the case doctrine" with respect to the jury instructions—as discussed below—this was apparently his justification for following Judge Mitchell's holdings. However, this was not a proper application of that doctrine, and he was not bound by it as he seemed to believe.

Like stare decisis, the law of the case doctrine "protects against relitigation of settled issues and assures obedience of inferior courts to superior courts." *Frazier v. Neilsen & Co.*, 118 Idaho 104, 106 (Ct. App. 1990) (quoting *NAACP, Detroit Branch v. Police Officers Ass'n*, 676 F.Supp. 790, 791 (E.D.Mich.1988)). The doctrine provides that "upon an appeal, the Supreme Court, in deciding a case presented states in its opinion a principle or rule of law necessary to the decision, such pronouncement becomes the law of the case, and must be adhered to throughout

its subsequent progress, both in the trial court and upon subsequent appeal...” *Stuart v. State*, 136 Idaho 490, 495 (2001) (quoting *Swanson v. Swanson*, 134 Idaho 512, 515 (2000)) (other citation omitted). Thus, the doctrine is focused on preventing relitigation of issues that have been decided by a higher court. However, as the *Stuart* Court noted, the law of the case doctrine “directs a court’s discretion, it does not limit the tribunal’s power.” *Id.* (quoting *Arizona v. California*, 460 U.S. 605 (1983)).

In *Arizona v. California*, the Supreme Court explained that “[u]nlike the more precise requirements of res judicata, law of the case is an amorphous concept.” 460 U.S. at 618. The Court went on to state, “As most commonly defined, the doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *Id.* However, in a footnote it stated, “Under law of the case doctrine, as now most commonly understood, it is not improper for a court to depart from a prior holding if convinced that it is clearly erroneous and would work a manifest injustice.” *Id.* at 618 n.8. (citation omitted). Similarly, the Seventh Circuit Court of Appeals has held,

The authority of a district judge to reconsider a previous ruling in the same litigation, whether a ruling made by him or by a district judge previously presiding in the case, including (because the case has been transferred) a judge of a different court, is governed by the doctrine of the law of the case, which authorizes such reconsideration if there is a compelling reason, such as a change in, or clarification of, law that makes clear that the earlier ruling was erroneous.

*Santamarina v. Sears, Roebuck & Co.*, 466 F.3d 570, 571–72 (7th Cir. 2006) (citations omitted).

In this case, Judge Simpson was not constrained by Judge Mitchell’s prior findings. His duty in deciding the Rule 29 motion was to analyze the evidence presented at the trial and determine whether the State had proved the essential elements beyond a reasonable doubt. If he found that Judge Mitchell’s findings regarding the motion to dismiss were clearly erroneous, he

could have granted the Rule 29 motion, but he did not analyze those findings, he simply followed them.

This was error not only because he was not bound to follow Judge Mitchell's holdings but, more importantly, because of the different standard of proof on a Rule 29 motion. At the motion to dismiss hearing, Judge Mitchell was only deciding if there was probable cause to bind the case over based on a finding of substantial evidence on each element. (I.C.R. 5.1(b); 6/28/16 Tr., p.23, Ls.16-19.) By contrast, in deciding the Rule 29 motion, Judge Simpson needed to determine whether the State had proved every element such that any rational trier of fact could have found the essential elements of the crime *beyond a reasonable doubt*. As such, the law of the case doctrine was inapposite here. Indeed, taken to its logical conclusion, if a district court's findings when deciding a pretrial motion to dismiss were required to be followed after a trial, there would be no reason to go to trial as all the elements would have already been "proven" in deciding the motion to dismiss. Therefore, Judge Simpson should have performed an independent analysis on each element. And even if the law of the case doctrine applied, the precedent makes clear that he could have arrived at different conclusions. At this stage, the district court should have held that Judge Mitchell's holding that the timecard was an "instrument" was clearly erroneous because the timecard did not define anything. Further, the court should have held that the State did not prove there was any law under which the timecard might be filed.

### III.

#### The District Court Erred By Incorrectly Instructing The Jury And Reducing The State's Burden Of Proof To Prove All The Elements

##### A. Introduction

The jury was incorrectly instructed on the elements of the alleged crime—the jury was instructed that, “Under Idaho law, a community service timecard, when filed in a court case, is an instrument.” (R., p.144.) Because the jury was informed that a community service timecard was actually an instrument, this removed the requirement that the State prove that the timecard was in fact an instrument. This violated Mr. Rubio’s right to due process. Similarly, the jury was instructed that, “Under Idaho Law, proof of completion of community service, when such is done pursuant to a court order, may be filed under the law of the State of Idaho.” (R., p.146.) Not only did this instruction remove the requirement that the State prove there was a law under which the timecard might be filed, it was simply wrong. Judge Mitchell did not hold that it could be filed under a law of the State of Idaho. He held that Mr. Rubio could file the timecard pursuant to a court order.

##### B. The District Court Erred By Incorrectly Instructing The Jury On The Elements Of Offering A False Or Forged Instrument For Record

“A trial court has the duty to properly instruct the jury on the law applicable to the case before it.” *Weinstein v. Prudential Prop. & Cas. Ins. Co.*, 149 Idaho 299, 313 (2010) (citations omitted). Whether the jury was properly instructed is a question of law over which this Court exercises free review. *State v. Severson*, 147 Idaho 694, 710 (2009) (citation omitted). An error in jury instructions constitutes reversible error when the instruction misleads the jury or prejudices the party challenging the instruction. *Id.* (citing *State v. Row*, 131 Idaho 303, 310 (1998)).

In this case, Jury Instruction 15 informed the jury that “The state must prove each of the following” and then outlined six elements of required proof.<sup>8</sup> (R., p.143.) Instruction 15 then also informed the jury “If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty.” Instructions 16, 17, and 18 then immediately took three of those outlined elements away from the jury. (R., pp.144-46.) Instruction 16 told the jury that “under Idaho law,” the timecard is an instrument, Instruction 17 told the jury that “under Idaho law” the community service desk is a public office, and Instruction 18 told the jury that “under Idaho law” filing proof of community service performed pursuant to court order is filing under any law of Idaho. (R., pp.144-46.)

These instructions both misled the jury and prejudiced Mr. Rubio. They misled the jury in that they were internally inconsistent—having just been told that it is to decide whether the State proved each of the six elements listed, the jury is immediately then told that half of those elements do not actually need to be proven. Mr. Rubio was prejudiced because his due process rights to be convicted of a felony only upon proof beyond a reasonable doubt of each element were violated. Finally, instructions 16, 17, and 18 are simply wrong. No Idaho law states that a timecard is an instrument, the community service office is a public office, or that filing a document pursuant to a court order is filing “under any law of Idaho.” Because it misstated the law and provided instructions that misled the jury and prejudiced Mr. Rubio, the district court committed reversible error.

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<sup>8</sup> Specifically, the jury was instructed that the state must prove each of the following: “1. On or about November 20, 2015, 2. In the County of Kootenai, State of Idaho 3. The defendant, JOSEPH ROMAN RUBIO, knowingly procured or offered, 4. A false and/or forged instrument, 5. To be filed in any public office within the state, 6. Which instrument, if genuine, might be filed, or registered, or recorded under any law of this state, or of the United States.”



Jury instructions may not invade the province of the jury. “If a jury instruction lightens the prosecution’s burden of proof by creating conclusive presumptions of guilt as to an element of an offense and requires the accused to come forward with evidence to rebut that presumption, it is a violation of due process.” *State v. Randles*, 117 Idaho 344, 348 (1990) *overruled on other grounds by State v. Humpherys*, 134 Idaho 657 (2000); *Morissette v. United States*, 342 U.S. 246 (1952); *Mullaney v. Wilbur*, 421 U.S. 684 (1975). The United States Supreme Court has explained that, “a conclusive presumption . . . would ‘conflict with the overriding presumption of innocence with which the law endows the accused and which extends to every element of the crime,’ and would ‘invade [the] factfinding function’ which in a criminal case the law assigns solely to the jury.” *Sandstrom v. Montana*, 442 U.S. 510, 523 (1979) (reversing defendant’s conviction, finding that a reasonable juror could believe the instruction either created a conclusive presumption regarding intent, or that it placed a burden on the accused to prove lack of intent and a reasonable juror could easily have viewed such an instruction as mandatory).

Conclusive presumptions in jury instructions violate the Fourteenth Amendment’s requirement that the State prove every element of a criminal offense beyond a reasonable doubt. *See id.* In *State v. Anderson*, 144 Idaho 743, 749-750 (2007), the Idaho Supreme Court reversed and remanded for a new trial, finding that the jury instructions constituted non-harmless fundamental error where the instructions omitted one of the elements of the offense. The Court found that it could not “conclude beyond a reasonable doubt that the jury would have reached the same conclusion had it faced all of the statutory elements.” *Id.* at 749. The *Anderson* Court stated, “The United States Supreme Court has held that in criminal trials “the State must prove every element of the offense, and a jury instruction violates due process if it fails to give effect to that requirement.” *Id.* (citation omitted).

In *In re Winship*, 397 U.S. 358, 364 (1970), the United States Supreme Court stated, “Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of *every* fact necessary to constitute the crime with which he is charged.” (Emphasis in original.) Further, the Idaho Court of Appeals has recognized that “[a] statutory presumption that is mandatory, i.e., that is conclusive proof of an element of the crime or that requires the accused to present rebuttal evidence thereby shifting the burden of proof, is unconstitutional.” *State v. Hebner*, 108 Idaho 196, 200 (Ct. App. 1985).

Here, the jurors could reasonably have concluded that they were directed to find Mr. Rubio guilty of filing a false instrument if they found only that the timecard was falsified. The jury was not allowed to decide whether the document was an instrument that might be filed under a law. This deprived Mr. Rubio of his right to the due process of law.

When defense counsel objected to the State’s proposed instruction that the timecard was an instrument, Judge Simpson again relied on Judge Mitchell’s holding at the motion to dismiss hearing. (7/18/16 Tr. Vol. II, p.91, L.4 – p.92, L.2.) He said, “It makes it the law of the case for record, and all our hands are tied.” (7/18/16 Tr. Vol. II, p.92, Ls.4-5.) Similarly, when defense counsel objected to the State’s proposed jury instruction that read, “Under Idaho Law, proof of completion of community service, when such service is done pursuant to a court order, may be filed under the law of the State of Idaho,” the district court said, “But Judge Mitchell found it to be so, did he not?” (7/18/16 Tr. Vol. II, p.93, Ls.6-13.)<sup>9</sup>

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<sup>9</sup> As support for both of these proposed jury instructions, the State cited to “Court’s Oral Decision on Motion to Dismiss; modeled after ICJI 422.” (R., pp.93, 95.) ICJI 422 reads as follows: “Under Idaho law, [name of substance(s)] [is a] [are] controlled substance[s].” In the comment, the Court noted that this issue is determined by whether the substance is listed in the “[Uniform Controlled Substances] Act as a controlled substance” and would therefore be a

As discussed above in Section II, Judge Simpson's hands were actually not tied. *Arizona v. California*, 460 U.S. 605, 618 n.8 (1983) ("it is not improper for a court to depart from a prior holding if convinced that it is clearly erroneous and would work a manifest injustice"). And indeed, his decision to rely on Judge Mitchell's order denying the motion to dismiss resulted in manifest injustice in the form of due process violations.

Whether the timecard might be filed under any law was also an element of the crime. Therefore, it was the jury's province whether the timecard was filed under a law, or simply under a court order. The State had the burden to prove that there was a law under which the timecard might be filed. It did not do so. And no statute or appellate court decision was cited in support of its proposed instruction that the district court gave to the jury. (R., pp.95, 146.)

Whether the timecard met the definition of an instrument was also a question for the jury. The jury should have been given the definition of an instrument that defense counsel requested. (7/18/16 Tr. Vol. II, p.93, L.25 – p.94, L.1.) This was the law of Idaho. *Steel Farms, Inc.*, 154 Idaho at 265. Once provided with that definition, the jury should have decided whether the timecard met that definition. As such, these instructions removed the burden from the State of proving that the timecard was an instrument that, if genuine, might be filed under any law. The definition of an element is question of law, but whether the facts of the case fit within that definition is a question for the jury. *State v. Yermola*, 367 P.3d 180, 183 (2016) ("When a jury decides whether the elements of a crime or civil cause of action have been proved, it is not

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question of law for the court to decide. Thus, such an instruction is supported by Idaho Law. I.C. § 37-2705. Judge Mitchell's holding was not "Idaho Law." Law is created by the legislature. *Mead v. Arnell*, 117 Idaho 660, 664 (1990). Judge Mitchell's order denying the motion to dismiss was not a statute, and it was not an appellate court decision that could support the State's argument.

determining what those elements should be. It is only deciding whether those elements have been proved.”)

Inconsistently, Judge Simpson—despite Judge Mitchell’s holding that Mr. Rubio had “filed” the timecard—did give the definition of the term “filing” to the jury. (R., p.147.) This was the proper approach. Jury Instructions 16, 17, and 18, however, were conclusive presumptions and took these decisions away from the jury. (R., pp.144-46.) Thus, the jury instructions violated Mr. Rubio’s right to due process.

### CONCLUSION

Mr. Rubio respectfully requests that this Court vacate his judgment of conviction and remand this case to the district court with instructions to enter a judgment of acquittal for the offense, or remand for a new trial.

DATED this 6<sup>th</sup> day of July, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
REED P. ANDERSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6<sup>th</sup> day of July, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JOSEPH ROMAN RUBIO  
INMATE #113193  
CAPP  
15505 S PLEASANT VALLEY ROAD  
KUNA ID 83634

CYNTHIA K C MEYER  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

JEANNE M HOWE  
KOOTENAI COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

RPA/eas