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**IN THE SUPREME COUR OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)		
	)	<b>CASE NUMBER</b>	<b>CR28-19-0014260</b>
Plaintiff,	)		<b>Misd</b>
	)		
V.	)		
	)	<b>APPELLATE BRIEF</b>	
<b>SHELLEY KIMBERLY ELWOOD,</b>	)	SUPREME COURT NO. 48235-2020	
	)	CR28-19-14260	
	)		
Defendant.	)		
_____	)		

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APPELLANT'S BRIEF

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

---

HONORABLE JOHN STEGNER  
District Judge

---

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CONSTITUTIONAL PROVISIONS

None.

## STATEMENT OF THE CASE

### A. Nature of the case

This appeal originates from a conditional plea under I.C.R. 11. The state alleged that he defendant was in possession of drug paraphernalia. The defendant moved to suppress the any and all evidence gathered at the traffic stop on the basis that the officer lack reasonable articulable suspicion for the stop and that therefore the stop was a violation of defendant's constitutional rights. On November 25, 2019 the Trial court in the Magistrate's division found that there was reasonable articulable suspicion for the stop and denied defendant's motion.

The Defendant then entered a conditional plea of guilty while reserving her right to appeal the court's rulings. The Defendant appealed to the District Court in a timely manner and presented oral argument. The District Court found that the Trial Court did not error in its decision and denied the appeal. The defendant now appeals the findings and order of the District Court.

### B. Course of Proceedings &statement of Facts

On August 23, 2019, Shelley Elwood was stopped by Coeur d'Alene Police Officer Knoll for a traffic Violation of Idaho Code §49-625, Operation of vehicle on approach of authorized emergency or police vehicles. Officer Knoll Testified he was "stopped in the parking lot of the Super 8 Motel in Coeur d'Alene, on Appleway Avenue just to the west of Highway 95." Tr. p 6, L.7-9. Officer Knoll observed a police vehicle traveling westbound on Appleway and had its emergency lights activated. Tr. p 6, L. 14-18. Officer Knoll also testified he observed a blue truck that was traveling eastbound on Appleway and continue to drive without pulling over as the police vehicle passed. Tr. p 6, L. 14 - 24. Officer Hutchison testified he was driving an undercover police vehicle with the emergency lights activated at that location and approximate

time on August 23, 2019. Tr. p 28, L. 19 – p 29, L. 14. Officer Hutchison stated other vehicles yielded to his emergency lights. Tr. p 31, L.21 – p 32, L.4. Hutchison further testified, however, that he did not notice any vehicle failing to yield to him. Tr. p 32, L. 9-11. Officer Knoll then followed Ms. Elwood’s truck and effectuated a traffic stop. Elwood denied seeing any emergency vehicle. Tr. p 19, L.2-5.

Appleway Avenue at that location is five lanes wide, two in each direction and a left turn lane in the middle. Tr. p 7, L. 5-7. Officer Knoll testified that the defendant’s vehicle was in the rightmost curb side lane. Tr. p 25, L. 10-16. Ms. Elwood also testified that she turned eastbound in rightmost curb lane. Tr. p 35, L. 4-8.

For purposes of the Motion to Suppress, the defendant stipulated that the lights of undercover police vehicle, if activated, would satisfy the requirements of §49-623 Idaho Code. Tr. p 21, L.20 – p 22, L-24. Elwood did however testify that she did not notice any vehicles activate their emergency lights. Tr. p 36, L. 5-7. Elwood did admit seeing one or two vehicles westbound on Appleway but none of them had lights. Tr. p 41, L.22- p 42, L.2.

The Trial Court reviewed the parties briefs, heard the facts as presented at the Motion to Suppress hearing, and reviewed a video recording of the stop. The Magistrate found that Officer Knoll was on duty and was paying attention to traffic. Tr. p 61, L.23 - p 62, L.2. Officer Knoll testified he heard radio traffic of another officer responding to another call and was able to see the police vehicle with emergency lights activated approaching from the east going westbound on Appleway. Officer Knoll observed other vehicles on Appleway yield in some fashion to the police vehicle. Tr. p 62, L-2-18. Officer Knoll saw Elwood's truck fail to yield Tr. p 62, L.19-20. The Magistrate found that Officer Hutchison's testimony matched the description of the

incident. Tr. p 63, L.3-8. He also found that Elwood entered Appleway safely, did not see any red and blue lights, and presumably saw Officer Knoll in the parking lot across Appleway. Tr. p 63, L. 9-24.

The Court found, based on the testimony of all the witnesses, that while it was after 8 p.m. due to the number of businesses still open that it was not completely dark at that time of night. Tr. p 64, L.2-22. The Magistrate found Officer Knoll's testimony credible as it was confirmed by Officer Hutchison's testimony. "I do find that by the evidence presented that my belief as to the evidence is that, in fact, the lights were being operated prior to the time when the vehicle passed by Ms. Elwood, that it did pass by Ms. Elwood and that she did not yield to the vehicle as contemplated by the statute. Tr. p 65, L22 – p 66, L.3. The Magistrate next applied the facts with the duty to yield under the statute, finding that Elwood had a duty to yield to the approaching emergency vehicle. The court included "there is also the description of yielding the right of way and immediately drive to a position parallel to and as close as possible to the nearest edge or curb on the right side of the highway and clear of any intersection and stop and remain in that position until the authorized emergency or police vehicle has passed." Tr. p 66, L.14-21.

Defendant entered a conditional guilty plea and timely appealed to the District Court. Upon review of the case, Judge Haynes found that I.C. §49-625 was not ambiguous and that the Trial Court did not err when interpreting the statute. The District court further found that the Trial Court did not err in applying the statute to the facts of the case. The defendant then timely filed the present appeal.

## ISSUES ON APPEAL

- I. Whether the courts erred in his interpretation of I.C. §49-625.
- II. Whether the courts were clearly erroneous in the application of the findings of fact by finding that the approaching vehicle was immediate and that the requirements to yield the right of way and immediately drive to a position parallel to and as close as possible to the nearest edge or curb on the right side of the highway applied under these circumstances.



## ARGUMENT

### I.

#### A. Introduction

The Magistrate Court erred in its interpretation of I.C. §49-625 by failing to recognize the need for immediacy of an approaching police vehicle. The District court then certified that decision and found that all vehicles need to yield the right-of-way and pull to the side of the road at approach of a police vehicle without the need for the approach to be immediate.

#### B. Standard of Review

An appellate court exercises free review over questions of law. *Idaho v. Button*, 134 Idaho 814 (Ct.App.2000); *Powell v. Sellers*, 130 Idaho 122, 125 (Ct. App. 1997).

#### C. I.C. §49-625 requires a finding of immediacy in the approach of a police vehicle with the statutorily indicated audio or visual signal.

§49-625 of the Idaho code states that “upon the immediate approach of an authorized emergency or police vehicle making use of an audible or visible signal ... the driver of every other vehicle shall yield the right-of-way.” Where the language of a statute is plain and unambiguous, the 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 such 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 which 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).

Here the statute is plain and not ambiguous. The District Court determined in its order on appeal, “here, the statute is not ambiguous. It clearly directs all traffic the duty to yield to approaching emergency vehicles that have audible or visual signals activated.” Order on appeal, p 6. The clear unambiguous interpretation of the statute indicates the statute applies when:

1. There is an immediate approach of,
2. An authorized emergency or police vehicle,
3. That is making use of a statutorily defined audible or visible signal.

A driver of a vehicle found in these circumstances shall yield the-right-of-way.

In order for I.C. §49-625 to apply to a driver there must be an Immediate approach. Black’s Law dictionary defines *immediate* as:

1. Occurring without delay; instant.
2. Not separated by other person or things.
3. Having a direct impact; without an intervening agency.

*11<sup>th</sup> ed. 2019.* If there is an immediate approach of a police vehicle and that vehicle is producing the correct audible or visible signal then that driver must then yield the right-of-way in the manner described by the statute.

While the parties stipulated that Officer Hutchison’s vehicle met the statutory requirements for the audio and visual signal, the evidence presented at the motion to suppress does not support any immediate approach by Officer Hutchison’s vehicle. In this case there were five lanes of traffic

when Officer Hutchison passed the Ms. Elwood. Tr. p 7, L. 5-7. Ms. Elwood was traveling in the rightmost eastbound lane. Tr. p 35, L. 4-8. Officer Hutchison's westbound vehicle was at minimum separated by 3 lanes when he passed Ms. Elwood. Furthermore testimony provided by Officer Hutchison shows that he did not recall Ms. Elwood's vehicle or any vehicle failing to yield to him that night. Tr. p 32, L. 5-11. These facts support that there was both separation and a lack of direct impact identified as definitions for immediate.

Trial Court did not address immediacy in their reasoning of the applicability of the statute to the case. It merely found that the right of way did apply under the circumstances. Tr. p 66, L. 4-8. The District Court found that the statute directs all traffic the duty to yield to approaching emergency vehicles and specifically omits the requirement of an immediate approach. Order on appeal, p 6. In determining the ordinary meaning of a statute, effect must be given to all the words of the statute. *Hillside Landscape Const., Inc. v. City of Lewiston*, 151 Idaho 749, 753, 264 P.3d 388, 392 (2011). Both the Trial Court and the District court erred in their interpretation by not finding the word "immediate" modified the approach of a police vehicle.

## II.

### A. Introduction

The magistrate's decision finding that the right-of-way as defined by I.C. §49-119 applied in the case where defendant and the police vehicle were separated by at minimum two other lanes of traffic, and that the Officer's testimony stated he did not see any vehicles fail to yield to him, is clearly erroneous.

### B. Standard of Review

The trial court's finding will be set aside if they are clearly erroneous. *State v. Jonson*,

131 Idaho 808, 809, 964 P. 2d 675, 676 (Ct. App. 1998).

C. The conclusion that the courts found of the Right-of-way as defined in I.C. §49-119 is not supported by the evidence and is clearly erroneous.

The “Right of way,” is defined in I.C. §49-119 as:

The right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.”

I.C. §49-119 is also unambiguous and requires preference to another vehicle approaching under circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other. The Trial Judge found that even on a five lane road there were locations that the officer could have turned into and crossed the defendant’s path. Tr. p 66, L. 4-13. This was affirmed by the District Court. Order on appeal, p 7. The Trial Court went on to conclude that there was an additional provision besides yielding the right of way. Tr. p 66, L. 11-13. When interpreting a statute, a statute should be construed according to generally accepted principles of English grammar. *State v. Troughton*, 126 Idaho 406, 411, 884 P.2d 419, 424 (Ct. App., 1994). The provisions of the statute identified by the Trial Court, namely yielding the right-of-way and immediately drive to a position parallel to the side of the road, are connected by the word “and”. In its common generally accepted usage, “and” conjoins the two identified provisions into one requirement under the law. Based on a plain reading of the text and the generally accepted principles of English grammar, there can be no situation in which a vehicle not required to yield the right-of-way would be required to drive to a position parallel the right side of the highway.

There is no indication that the defendant’s truck traveling in the opposite lane of traffic inhibited the police vehicle or caused such unit under circumstances of direction, speed and

proximity to give rise to the danger of collision. Officer Hutchison specifically testified that he was unaware of any vehicle not yielding to him. Tr. p 32, L. 5-11. Furthermore the defendant's vehicle was in the rightmost eastbound lane. Tr. p 35, L. 4-8. The approaching police vehicle was traveling westbound. Tr. p 6, L. 16. At the location on Appleway where the two vehicles passed each other there are five lanes of traffic, two lanes in each direction and a left turning lane. Tr. p 7, L. 5-7. This means that there were at least two lanes of traffic between the police vehicle and the Ms. Elwood's truck. The physical distance between the vehicles coupled with Officer Hutchison's testimony clearly indicate that there was no circumstances of direction, speed, and proximity to give rise to the danger of a collision. To find otherwise would be in defiance of the evidence presented to the Trial Court and is clearly erroneous. A vehicle cannot yield the right of way when there is no circumstances of direction, speed, and proximity that allow them to do so.

The Trial Court's conclusion that the right of way does apply under the circumstances, and therefore the requirement for the defendant to immediately drive to a position parallel to and as close as possible to the nearest edge or curb on the right side of the highway, was that there were locations where the officer could have possibly been responding that would have brought the police vehicle into a circumstance where it could give rise to the danger of collision. Tr. p 66, L. 4-11. This hypothetical raised by the courts is not supported by the facts laid out at the hearing. Firstly, Officer Hutchison gave no testimony other than he was traveling west. At no point did he testify that he showed any indication that he could possibly make a left turn into the path of the defendant, and in actuality he continued westbound past the defendant. Secondly, even if the police vehicle could have or did make a left turn, the police vehicle would have to leave its lane, travel across two lanes of traffic, and then enter the defendant's lane. Given the distance between the vehicles there would still be adequate time to avoid any danger of collision.

As the decision stands, the Trial Court and the District Court misinterpreted and failed to correctly apply to the situation, plain statutory language that defines the scope of when the statute applies to the motoring public. By not requiring immediacy or ignoring circumstances to which the right away applies, the Courts' two decisions grant unfettered discretion to law enforcement whenever the correct audio or visual signal is given to initiate traffic stops to any vehicle within sight and/or sound of the signal that does not immediately pull over.

CONCLUSION

The Magistrate Court erred in its interpretation and application of the statutes and the District court erred in affirming the Trial court's decision.

DATED this 20 day of November, 2020.

THE LAW OFFICE OF THE PUBLIC  
DEFENDER OF KOOTENAI COUNTY

BY:

  
\_\_\_\_\_  
SAMUEL YOUNG GEDDES  
DEPUTY PUBLIC DEFENDER

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have on this 20<sup>th</sup> day of November 2020, served a true and correct copy of the foregoing BRIEF OF APPELLANT to the attorney listed below:

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