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## State v. McKie Respondent's Brief Dckt. 45239

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

STATE OF IDAHO, )  
 ) No. 45239  
 Plaintiff-Respondent, )  
 ) Ada County Case No.  
 v. ) CR-MD-2015-12139  
 )  
 CHAD CHRISTOPHER MCKIE, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

\_\_\_\_\_  
**HONORABLE GERALD F. SCHROEDER**  
**District Judge**  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Chad C. McKie appeals from the district court's appellate opinion affirming the magistrate's holding that it would instruct the jury that for purposes of DUI a motor vehicle was a self-propelled vehicle.

### Statement Of The Facts And Course Of The Proceedings

The state charged McKie with DUI, with an excessive BAC. (R., pp. 10, 58-59; 6/28/16 Audio, at 3:13-3:54.) McKie filed a motion to dismiss, claiming that he had been driving a moped, which was "not a motor vehicle as defined" by Idaho statutes, and therefore the court did "not have subject matter jurisdiction." (R., pp. 18-19.) The magistrate denied the motion on timeliness grounds, finding the issue was not jurisdictional. (2/8/16 Audio, at 2:10-2:45; R., pp. 24, 231.) The court ruled, however, that the issue of whether McKie was driving a motor vehicle would have to be addressed at trial, and the judge ruled that the jury would be instructed that a motor vehicle is one that is self-propelled. (2/8/16 Audio, at 2:45-4:30.)

McKie filed a "Motion to Reconsider Definition of Motor Vehicle within Jury Instructions." (R., pp. 26-41.) He also filed a "Requested Inclusion of Motor Vehicle Definitions, and Exclusions, within Jury Instructions." (R., pp. 43-54.) In these motions he requested that the jury be instructed on the definitions of "motor vehicle" as contained in I.C. § 49-123(2)(h) and "moped" as defined in I.C. § 49-114(9). (R., pp. 26-41.) No ruling on these motions appears in the record. (See, generally R.)

McKie entered a conditional guilty plea to the charge, preserving the right to appeal the court's "ruling on February 8, that the vehicle in question here is a motor vehicle."

(6/28/16 Audio, at 3:54-4:24; R., p. 56; Tr., p. 2, Ls. 3-8.) The magistrate entered judgment, from which McKie appealed. (R., pp. 63-68.)

The district court affirmed the magistrate's ruling. (R., pp. 233-35.) The district court also rejected the argument that the statute is unconstitutional because it was not raised to the trial court. (R., pp. 235-36.) McKie filed a notice of appeal timely from entry of the district court's appellate opinion. (R., pp. 238-42.)

## ISSUE

McKie states the issue on appeal as:

Whether the District Court erred when declaring a “moped” to be a “motor vehicle” for purposes of the DUI laws, disregarding the amendments made by the Idaho Legislature in 2008 to Title 49, Statutes of the State of Idaho, exempting a “moped” from titling requirements, and excluding that mode of movement from a “motor vehicle” under Idaho law.

(Appellant’s brief, p. 19.)

The state rephrases the issue as:

Has McKie failed to show error in the district court’s appellate opinion affirming the magistrate’s decision to instruct the jury on the definition of the term “motor vehicle”?

## ARGUMENT

### McKie Has Failed To Show Error In The District Court's Appellate Opinion

#### A. Introduction

McKie pled guilty to driving a moped on a city street with a BAC of .253. (R., pp. 57-62.) On appeal he claims that the district court erred by affirming the magistrate's decision that a "motor vehicle" does not automatically exclude mopeds, and therefore would be submitted to a properly instructed jury. (Appellant's brief, pp. 19-47.) Review shows no error. To the contrary, the plain language of the statute provides that self-propelled vehicles are motor vehicles, with certain exceptions that do not include mopeds.

#### B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision to determine whether it correctly decided the issues presented to it on appeal." Borely v. Smith, 149 Idaho 171, 176, 233 P.3d 102, 107 (2010) (citing Idaho Dept. of Health and Welfare v. Doe, 148 Idaho 124, 126, 219 P.3d 448, 450 (2009)); see also Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008).

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Barnes, 133 Idaho 378, 380, 987 P.2d 290, 292 (1999).

#### C. The Statute Does Not Exempt Mopeds From The Definition Of Motor Vehicle

The objective of statutory interpretation is to give effect to legislative intent. State v. Pina, 149 Idaho 140, 144, 233 P.3d 71, 75 (2010); Robison v. Bateman-Hall, Inc., 139



Idaho 207, 210, 76 P.3d 951, 954 (2003). Because “the best guide to legislative intent” is the words of the statute, the interpretation of a statute must begin with the literal words of the statute. State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). Where the statutory language is unambiguous, a court does not construe it but simply follows the law as written. McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 813, 135 P.3d 756, 759 (2006); see also State v. Locke, 149 Idaho 641, 642, 239 P.3d 34, 35 (Ct. App. 2010) (where language of statute is plain and unambiguous, appellate court must give effect to statute as written, without engaging in construction). Thus, if the plain language of a statute is capable of only one reasonable interpretation, it is the Court’s duty to give the statute that interpretation. Verska v. St. Alphonsus Regional Medical Center, 151 Idaho 889, 895-96, 265 P.3d 502, 508-09 (2011) (disavowing cases with language that Court might not give effect to unambiguous language of statute if such was “palpably absurd”).

Idaho’s DUI statute applies to any person under the influence and “in actual physical control of a motor vehicle within this state.” I.C. § 18-8004(1)(a). The Idaho Supreme Court has indicated that the statutory definition of the term “motor vehicle” as set forth in Title 49 applies to the DUI statutes. State v. Barnes, 133 Idaho 378, 381, 987 P.2d 290, 293 (1999). That title, in turn, provides the following definition of “motor vehicle”:

Every vehicle which is self-propelled, and for the purpose of titling and registration meets federal motor vehicle safety standards as defined in section 49-107, Idaho Code. Motor vehicle does not include vehicles moved solely by human power, electric personal assistive mobility devices and motorized wheelchairs or other such vehicles that are specifically exempt from titling or registration requirements under title 49, Idaho Code.

I.C. § 49-123(2)(g). Under this plain language, a motor vehicle is broadly defined as one that “is self-propelled.” *Id.* For the “purpose of titling and registration” a motor vehicle is one that “meets federal motor vehicle safety standards as defined in section 49-107, Idaho

Code.” *Id.* Excluded from the definition are “[1] vehicles moved solely by human power, [2] electric personal assistive mobility devices and [3] motorized wheelchairs or other such vehicles that are specifically exempt from titling or registration requirements under title 49, Idaho Code.” *Id.*

“The plain language of I.C. § 49–123(2)(g) continues to define motor vehicles as every vehicle which is self-propelled.” State v. Trusdall, 155 Idaho 965, 969, 318 P.3d 955, 959 (Ct. App. 2014). In Trusdall, the Idaho Court of Appeals rejected the argument that because Trusdall’s UTV did not meet the federal motor vehicle safety standards, it was not a “motor vehicle” for purposes of the DUI statute. *Id.* at 969-70, 318 P.3d at 959-60. The Court of Appeals reasoned that to so read the statute would render language in the statute superfluous, and thus contradict the directive that all words and provisions of the statute are to be given effect. *Id.*

The same analysis applies here to McKie’s argument that lack of titling or registration requirements exempts his moped from being considered a motor vehicle for purposes of the DUI statute. Because the moped McKie was driving under the influence was self-propelled (see R., p. 61), it fits the definition of motor vehicle unless excluded. The first category of excluded vehicles is “vehicles moved solely by human power.” I.C. § 49-123(2)(g). The moped is not within this exclusion as it was propelled by an engine. (R., p. 61.) The second category of vehicles excluded is “electric personal assistive mobility devices.” I.C. § 49-123(2)(g). Again, the moped was not with in this exclusion for several reasons, including that its motor was not electric. (R., p. 61.)

The third and final excluded category is “motorized wheelchairs or other such vehicles that are specifically exempt from titling or registration requirements under title

49, Idaho Code.” I.C. § 49-123(2)(g). Title 49, by operation of two statutes, excludes from registration requirements “self-propelled wheelchairs, three-wheeled bicycles, wheelchair conveyances, golf carts, lawn mowers, and scooters operated by persons who by reason of physical disability are otherwise unable to move about as pedestrians.” I.C. § 49-401A(1) (excluding vehicles exempted under section 426); I.C. § 49-426(2) (listing the exempted vehicles and containing the quote set forth). These statutes, therefore, read together, provide a broad list of “motorized wheelchairs or other such vehicles” exempted from the definition of “motor vehicle.” The list is not so broad, however, as to include McKie’s moped. (R., p. 61.) Because the moped is self-propelled and does not fit within any of the exceptions, it is a motor vehicle.

McKie argues the phrase “or other such vehicles that are specifically exempt from titling or registration requirements” excludes his moped from the definition of motor vehicle because mopeds need not be titled. (Appellant’s brief, pp. 34-35.) This argument fails grammatically because the list of exceptions, as argued above, is a list of three conjunctive things (“[1] vehicles moved solely by human power, [2] electric personal assistive mobility devices and [3] motorized wheelchairs or other such vehicles that are specifically exempt from titling or registration requirements”), not a disjunctive list (“[1] vehicles moved solely by human power, [2] electric personal assistive mobility devices and motorized wheelchairs[,] or [3] other such vehicles that are specifically exempt from titling or registration requirements”<sup>1</sup>) as argued by McKie. The phrase starting “or other vehicles”

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<sup>1</sup> The state has here inserted the comma necessary for McKie’s interpretation of the statute to be grammatically correct. The absence of the comma in the actual text of the statute undercuts his argument, as he must rely on a grammatically incorrect reading of the language.

merely modifies the preceding phrase regarding “motorized wheelchairs,” and is not an exclusion from the definition of motor vehicles in its own right.

Even if “other such vehicles that are specifically exempt from titling or registration requirements” were a category unto itself, McKie’s argument still fails because it ignores the language, “other such.” Indeed, if the legislature meant to exclude all vehicles that did not require both titling and registration, it would have said just that and would not have included the “vehicles moved solely by human power, electric personal assistive mobility devices and motorized wheelchairs” language. The language listing the three specifically exempted vehicles that require no titling or title or registration is thus rendered superfluous by McKie’s reading.<sup>2</sup>

Motor vehicle is generally defined as every vehicle which is self-propelled. I.C. § 49-123(2)(g). The plain language of the statute excludes from this definition only “vehicles moved solely by human power, electric personal assistive mobility devices and motorized wheelchairs or other such vehicles that are specifically exempt from titling or registration requirements.” *Id.* A moped is not moved solely by human power; is not an electric personal assistive mobility device; and is not a motorized wheelchair or other such vehicle. The argument for excluding mopeds is basically the same as the one for excluding utility type vehicles rejected in Trusdall, 155 Idaho at 969-70, 318 P.3d at 959-60. McKie has therefore failed to show error by the district court when it affirmed that the jury would decide if a moped was a motor vehicle under correct instruction.

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<sup>2</sup> The state further notes that if McKie’s reading of the statute were adopted it would not be illegal to drive a myriad of cars or other vehicles while intoxicated, including, for example: government vehicles, farm vehicles generally (including motorcycles, motorbikes and utility type vehicles used in agriculture), many construction vehicles, street sweepers, and forestry equipment. I.C. §§ 49-401A, 49-426.

CONCLUSION

The state respectfully requests this Court to affirm the district court's appellate opinion affirming the magistrate's ruling.

DATED this 15th day of December, 2017.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 15th day of December, 2017, served two true and correct paper copies of the foregoing BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

VERNON K. SMITH  
ATTORNEY AT LAW  
1900 W. MAIN ST.  
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/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd