2-12-2021

State v. Elwood Respondent's Brief Dckt. 48235

Electronically Filed
2/12/2021 12:20 PM
Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 48235-2020**
Plaintiff-Respondent,	)	
	)	**Kootenai County Case No.**
v.	)	**CR28-19-14260**
	)	
SHELLEY KIMBERLY ELWOOD,	)	
	)	
Defendant-Appellant.	)	
	)	

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 LANSING L. HAYNES
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

ANDREW V. WAKE
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

ATTORNEYS FOR PLAINTIFF-RESPONDENT

SAMUEL Y. GEDDES
Kootenai County Public Defender's Office
P. O. Box 9000
Coeur d'Alene, Idaho 83816
(208) 446-1700
E-mail: pdfax@kcgov.us

ATTORNEY FOR DEFENDANT-APPELLANT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

Nature Of The Case 1

Statement Of The Facts And Course Of The Proceedings 1

ISSUES 4

ARGUMENT 5

I.C. § 49-625(1) Required Elwood To Pull To The Curb And Stop Her Vehicle While The Police Vehicle Passed 5

A. Introduction 5

B. Standard Of Review 6

C. The Officer Had Reasonable Suspicion To Stop Elwood Because, Under The Clear, Unambiguous Terms Of The Statute, Elwood Was Required To Pull To The Curb And Stop 6

D. Even If I.C. § 49-625(1) Is Ambiguous, This Court Should Reject Elwood's Proposed Construction Of The Statute 13

CONCLUSION 18

CERTIFICATE OF SERVICE 18

TABLE OF AUTHORITIES

CASES **PAGE**

Ada Cty. Highway Dist. v. Brooke View, Inc., 162 Idaho 138, 395 P.3d 357 (2017) 13

Arnold v. City of Stanley, 158 Idaho 218, 345 P.3d 1008 (2015) 8

Com. v. Busser, 56 A.3d 419 (Pa. 2012) 11, 12

Doe v. Boy Scouts of America, 148 Idaho 427, 224 P.3d 494 (2009) 13

Filer Mut. Tel. Co. v. Idaho State Tax Comm'n, 76 Idaho 256, 281 P.2d 478 (1955) 11

Robison v. Bateman-Hall, Inc., 139 Idaho 207, 76 P.3d 951 (2003) 7

State v. Barsness, 102 Idaho 210, 628 P.2d 1044 (1981) 9

State v. Bodenbach, 165 Idaho 577, 448 P.3d 1005 (2019) 8

State v. Brooks, 157 Idaho 890, 341 P.3d 1259 (Ct. App. 2014) 7

State v. Danney, 153 Idaho 405, 283 P.3d 722 (2012) 6

State v. Doe, 140 Idaho 271, 92 P.3d 521 (2004) 14

State v. Doe, 147 Idaho 326, 208 P.3d 730 (2009) 7

State v. Dorn, 140 Idaho 404, 94 P.3d 709 (Ct. App. 2004) 6

State v. Magsamen, 167 Idaho 655, 474 P.3d 1252 (Ct. App. 2020) 6

State v. Pina, 149 Idaho 140, 233 P.3d 71 (2010) 7

State v. Ray, 153 Idaho 564, 286 P.3d 1114 (2012) 14

State v. Schwartz, 139 Idaho 360, 79 P.3d 719 (2003) 7

State v. Thompson, 140 Idaho 796, 102 P.3d 1115 (2004) 6

Verska v. Saint Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011) 7

STATUTES **PAGE**

I.C. § 49-119(18) 12

I.C. § 49-623 5

I.C. § 49-625(1) ..... passim

I.C. § 49-625(1) (2017) 15

OTHER AUTHORITIES

2018 Idaho Sess. Laws Ch. 74 15

Black's Law Dictionary (11th ed. 2019) 9

H.B. 388, H. Trans. & Def. Comm. Audio, 64th Leg., (Feb. 14, 2018), https://legislature.idaho.gov/sessioninfo/2018/standingcommittees/HTRA/ 15

H.B. 388, S. Trans. Comm. Audio, 64th Leg., (Feb. 27, 2018), https://legislature.idaho.gov/sessioninfo/2018/standingcommittees/STRA/ 16

Merriam-Webster, https://www.merriam-webster.com/dictionary/immediate (last accessed February 4, 2021) 9

STATEMENT OF THE CASE

Nature Of The Case

Shelley Kimberly Elwood appeals from the district court's order on intermediate appeal affirming the magistrate court's denial of her motion to suppress following her conviction for misdemeanor possession of marijuana entered on a conditional guilty plea.

Statement Of The Facts And Course Of The Proceedings

Elwood was the driver of a vehicle travelling on a road with two westbound lanes, two eastbound lanes, and one center, left-turn lane. (R., pp. 65-66.[1]) As Elwood was travelling eastbound in the lane nearest the curb, an officer observed another police vehicle with emergency lights activated pass Elwood in one of the two westbound lanes. (Id.) While other drivers pulled over, Elwood did not. (Id.) Based on that observation, the officer initiated a traffic stop believing that Elwood had violated I.C. § 49-625. (Id.) That statute provides in relevant part that:

> Upon the immediate approach of an authorized emergency or police vehicle making use of an audible or visible signal, meeting the requirements of section 49-623, Idaho Code, the driver of every other vehicle shall 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 and clear of any intersection, and stop and remain in that position until the authorized emergency or police vehicle has passed, except when otherwise directed by a peace officer.

I.C. § 49-625(1). While interacting with Elwood the officer saw Elwood in possession of marijuana vapes. (State's Exhibit 1.)

The state charged Elwood with possession of marijuana. (R., p. 2.) In a motion to suppress, Elwood argued that she was illegally detained when the officer initiated the traffic stop.

[1] Citations are to the district court's recitation of the facts (R., pp. 65-68), which track the magistrate court's factual findings (Tr., p. 60, L. 23 – p. 66, L. 3), which are not challenged on appeal.

(R., pp. 10-11, 13-19.) She first denied that any police vehicle with a siren or emergency light activated had passed her (R., p. 16), but then argued that, even if one had, she was not obligated by I.C. § 49-625 to pull to the curb and stop because her vehicle did not present a risk of a collision or inhibit the police vehicle's travel (R., p. 16).

Following a hearing, the magistrate court denied the motion to suppress. (Tr., p. 60, L. 23 – p. 67, L. 5; R., p. 33.) The court held first that the evidence established that a police vehicle passed Elwood in the opposite direction of travel with its emergency lights activated.[2] (Tr., p. 65, L. 21 – p. 66, L. 3.) The court then rejected Elwood's argument that, because of the number of lanes between her vehicle and the police vehicle, and because the officer was travelling in the opposite direction, I.C. § 49-625 imposed no obligation on her to pull over. (Tr., p. 66, Ls. 4-21.) The court therefore held that the traffic stop was lawful and denied her motion to suppress. (Tr., p. 66, L. 22 – p. 67, L. 5.)

Elwood entered a conditional guilty plea to possession of marijuana, reserving the right to appeal the denial of her motion to suppress. (R., pp. 36-39.) The magistrate court entered judgment (R., p. 42) and Elwood filed a timely intermediate appeal to the district court (R., p. 43).

On intermediate appeal, Elwood did not challenge the magistrate court's factual finding that a police vehicle with emergency lights activated passed her in the opposite direction, but she continued to argue that because of the distance between her vehicle and the police vehicle, and

[2] Additionally, the court accepted the parties' stipulation that the police vehicle's emergency lights, if activated, would be a "visible signal, meeting the requirements of section 49-623, Idaho Code." (Tr., p. 21, L. 20 – p. 23, L. 2; p. 61, Ls. 14-22.)

because the vehicles were travelling in opposite directions, she was not required to pull to the side of the road. (R., pp. 47-53.)

The district court entered an order affirming the denial of Elwood's motion to suppress. (R., pp. 65-71.) The court held that the statute is "not ambiguous" and "clearly directs all traffic to yield to approaching emergency vehicles that have audible or visual signals activated." (R., p. 70.) "The duty of the motoring traffic is to stop and not block any of the driveways due to not knowing where the emergency vehicle is ultimately heading." (R., p. 71.)

Elwood timely filed a notice of appeal from the district court's order. (R., pp. 73-75.)

ISSUES

Elwood states the issues on appeal as:

> I. Whether the courts erred in his [sic] 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.

(Appellant's brief, p. 4.)

The state rephrases the issues as:

Whether I.C. § 49-625(1) requires a driver travelling on a four-lane road, with a center-turn lane, to pull over and stop their vehicle when an emergency vehicle travelling in the other direction approaches with lights and/or sirens activated?

ARGUMENT

I.C. § 49-625(1) Required Elwood To Pull To The Curb And Stop Her Vehicle While The Police Vehicle Passed

A. Introduction

Though Elwood frames this appeal as involving two issues, and phrases one of them in terms of a "finding" being "clearly erroneous," her appeal presents a narrow question of statutory interpretation. In relevant part, I.C. § 49-625 provides that:

> Upon the immediate approach of an authorized emergency or police vehicle making use of an audible or visible signal, meeting the requirements of section 49-623, Idaho Code, the driver of every other vehicle shall 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 and clear of any intersection, and stop and remain in that position until the authorized emergency or police vehicle has passed, except when otherwise directed by a peace officer.

I.C. § 49-625(1). The question is whether the officer had reasonable suspicion that Elwood violated this statute by failing to pull her car to the curb and stop under the undisputed facts here: where the relevant road had two westbound lanes, two eastbound lanes, and a center, left-turn lane; she was travelling eastbound in the lane nearest the curb; and a police vehicle with its emergency lights activated (which lights met the requirements of section 49-623) passed her while travelling in one of the two westbound lanes. (R., pp. 65-68; Tr., p. 60, L. 23 – p. 66, L. 3.) Elwood claims that the statute did not require her to pull over and stop because "at least two lanes" (one westbound lane and the center, left-turn lane) separated her from the police vehicle, and because the two vehicles were travelling in the opposite direction. (Appellant's brief, pp. 5-10.) As a result, she claims, the approach of the police vehicle was not "immediate," there was no right-of-way for her to yield, and so she had no obligation to stop near the curb while the police vehicle passed. (Id.)

As both the magistrate and district courts found, under the unambiguous terms of I.C. § 49-625(1), Elwood was obligated to pull to the curb and stop her vehicle as the police vehicle approached and passed. On the assumption that the statute is somehow ambiguous, the policy considerations motivating the statute and its legislative history support the same result.

B. Standard Of Review

In an appeal from the district court sitting as an intermediate appellate court, this Court directly reviews "the magistrate court record to determine whether there is substantial and competent evidence to support the magistrate court's findings of fact and whether the magistrate court's conclusions of law follow from those findings." State v. Magsamen, 167 Idaho 655, 474 P.3d 1252, 1254 (Ct. App. 2020). "However, as a matter of appellate procedure, [the Court's] disposition of the appeal will affirm or reverse the decision of the district court." Id. The Court therefore "review[s] the magistrate court's findings and conclusions, whether the district court affirmed or reversed the magistrate court and the basis therefore, and either affirm or reverse the district court." Id.

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. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

C. The Officer Had Reasonable Suspicion To Stop Elwood Because, Under The Clear, Unambiguous Terms Of The Statute, Elwood Was Required To Pull To The Curb And Stop

"Because a traffic stop is limited in scope and duration, it is analogous to an investigative detention and is analyzed under the principles set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968)." State v. Danney, 153 Idaho 405, 409, 283 P.3d 722, 726 (2012).

"Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws." State v. Brooks, 157 Idaho 890, 891, 341 P.3d 1259, 1260 (Ct. App. 2014). "The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. The reasonable suspicion standard requires less than probable cause but more than mere speculation or instinct on the part of the officer." Id. (citation omitted). "Observation of a traffic violation provides reasonable suspicion to justify a limited stop." Id. The officer's observation of Elwood failing to yield the right-of-way, pull over, and stop at the right hand curb when a police vehicle with its emergency lights activated approached and passed her travelling in the opposite direction provided reasonable suspicion that Elwood violated I.C. § 49-625(1).

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 wording of the statute itself, the interpretation of a statute must begin with its literal words. Verska v. Saint Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011); State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). The words of a statute "'must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.'" Verska, 151 Idaho at 893, 265 P.3d at 506 (quoting State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003)). "[W]here statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature." Id. "This Court often turns to dictionary definitions '[t]o ascertain the ordinary

meaning of an undefined term in a statute ....'" State v. Bodenbach, 165 Idaho 577, 586, 448 P.3d 1005, 1014 (2019) (quoting Arnold v. City of Stanley, 158 Idaho 218, 221, 345 P.3d 1008, 1011 (2015)).

As the magistrate and district courts found, Elwood was obligated by the clear unambiguous terms of I.C. § 49-625(1) to pull to the side of the road and stop because the police vehicle had its lights activated and it passed by Elwood on the same road, thereby making an "immediate approach." Elwood does not dispute any facts, but makes two arguments regarding the interpretation of the statute. Firs, she argues that the police vehicle's approach was not "immediate" because the police vehicle was westbound while Elwood was eastbound, and the police vehicle "was at minimum separated by 3 lanes when [it] passed Ms. Elwood." (Appellant's brief, pp. 6-7.) Second, she argues that she could not be obligated to pull to the side of the road and stop unless she was also obligated to yield the right-of-way, but she had no right-of-way to yield. (Appellant's brief, pp. 7-10.) Both arguments fail.

Regarding the first, and as an initial matter, there was no testimony below regarding which of the two westbound lanes the police vehicle was travelling in. So, it is incorrect to say that the vehicles were separated by at least three lanes. The vehicles were separated by at least two lanes: one of the eastbound lanes and the center, left-turn lane. Elsewhere in her brief, Elwood accurately states as much. (Appellant's brief, p. 9 ("This means that there were at least two lanes of traffic between the police vehicle and the Ms. Elwood's truck.").) They could have been separated by *at most* (not at least) three lanes.

More importantly, whether the vehicles were separated by two or three lanes, or travelling in opposite directions, is irrelevant to whether the police vehicle's approach was immediate. The only dictionary cited by Elwood supports that conclusion. It 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.

(Appellant's brief, p. 6 (quoting BLACK'S LAW DICTIONARY, 11th ed. 2019).) Thus, it distinguishes between a temporal notion of immediacy, a spatial notion of immediacy, and a causal notion of immediacy. See also Immediate, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/immediate (last accessed February 4, 2021). The causal notion of immediacy—exemplified by sentences like, "the immediate cause of death was a heart attack"—is clearly not at issue here. Whether a driver is obligated to pull to the side of the road has nothing to do with whether the police vehicle's approach caused anything, much less immediately. Both the spatial and temporal senses, though, do appear to be at issue. That is, the approach must be occurring immediately (without delay) and relatively near the vehicle obligated to pull over. Here, the police vehicle was proceeding without delay, it passed Elwood's vehicle, and it did so at a relatively close distance. Had the police vehicle been the same distance directly behind Elwood as it was to her side, for example, even Elwood would presumably acknowledge that she was required to pull over. Nor is it in any way relevant under either the temporal or spatial senses of "immediate" whether the vehicles were travelling in opposite directions. State v. Barsness, 102 Idaho 210, 211, 628 P.2d 1044, 1045 (1981) (holding that statute was violated where police vehicle was travelling on road in opposite direction from driver, and driver "did not drive as far as possible to the righthand side of the road nor did he stop until the emergency vehicle had passed"). Again, presumably even Elwood would acknowledge that had the vehicles been travelling in opposite directions but directly toward one another, the statute would require Elwood to pull over and stop. To the extent that Elwood is suggesting that immediacy in the

spatial sense was absent because there were things—lanes—separating the vehicles, that argument has no merit. A lane is just a region of space. If a police vehicle is directly behind another vehicle, it is obviously false to say that the approach is not immediate because there is a car-length separating them. Or, if the police vehicle had been in the other eastbound lane, it is obviously false to say that the approach is not immediate and there was no obligation to pull over because the lane markers separated the vehicles. For that matter, it is obviously false to suggest that a police vehicle's approach is not immediate, and there is no obligation to pull over, if there is actually a car between the police vehicle and the defendant's vehicle. The relevant notion of spatial immediacy is proximity.

Apart from the fact that two or three lanes separated the officer's vehicle from Elwood's, and that they were travelling in opposite direction, Elwood also points to testimony from the officer driving the vehicle that he did not notice Elwood fail to pull over. (Appellant's brief, p. 7.) Elwood does not explain how that testimony in any way, in any sense of "immediate," supports the proposition that the vehicle's approach was not immediate. Immediacy surely does not hinge on what the officer does or does not notice.

In any sense of "immediate" at issue, the police vehicle's approach was immediate.

Turning to Elwood's second argument, Elwood argues that I.C. § 49-625 imposed no obligation to pull to the side of the road because there was no right-of-way for her to yield. (Appellant's brief, pp. 7-10.) According to Elwood, because the statute imposes a conjunctive obligation—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 and clear of any intersection, and stop and remain in that position until the authorized emergency or police vehicle has passed," I.C. § 49-625(1) (emphasis added)—she had the obligation to stop only if she also

had the obligation to yield a right-of-way. She argues that there was no obligation to yield a right-of-way because there was no right-of-way to yield. There was no right-of-way to yield, she claims, because one can only yield a right-of-way when there is a danger of collision, which there allegedly was not here. So, because there was no obligation to yield a right-of-way, neither was there an obligation to pull to the side of the road and stop. This argument fails at every step.

First, where a statute imposes an obligation to do x *and* y under certain circumstances, the obligation to do x obviously remains even if the defendant has already done y or, for some reason, cannot do y. See Filer Mut. Tel. Co. v. Idaho State Tax Comm'n, 76 Idaho 256, 261, 281 P.2d 478, 480 (1955) ("Where two terms are used conjunctively in the same sentence of a statute, separate effect should be given to the terms if it may be done in reasonable construction."). Though not binding on this Court, the Pennsylvania Supreme Court's decision in Com. v. Busser, 56 A.3d 419 (Pa. 2012), is instructive. In Busser, the defendant was pulled over on reasonable suspicion of violating a statute with language relevantly identical to I.C. § 49-625(1), was then arrested for DUI, and filed a motion to suppress arguing that the initial stop was unlawful. Id. at 420-21. The defendant was travelling in one direction on a four-lane road while the emergency vehicle was travelling in the opposite direction, and the officer who initiated the stop testified that the defendant's "vehicle posed no danger to the approaching ambulance or otherwise obstructed its movement." Id. at 420. On appeal, the Pennsylvania Supreme Court rejected the conclusion by a lower court that the statute "does not require a motorist to pull over and stop at the curb when an ambulance approaching from the opposite direction has an open traffic lane on its own side of the road." Id. at 421. The court emphasized that the statute clearly and unambiguously imposes three distinct and independent obligations on "every vehicle" approached by an emergency vehicle with lights or sirens activated: "(1) yield the right-of-way,

and (2) pull to the curb, **and** (3) stop." Id. at 422 (emphasis original). Nothing in the statute, the court correctly concluded, suggests in any way that whether there is an obligation to pull to the curb and stop hinges on a *post hoc* evaluation of the "risk of collision," or whether the right-of-way can be or has already been yielded. Id. Likewise, under the clear terms of I.C. § 49-625(1), drivers have the obligation to pull to the curb and stop on the immediate approach of an emergency vehicle notwithstanding any *post hoc* evaluations of risk of collision, and whether or not there is a right-of-way to yield or the driver has already yielded it. The statute sets out independent obligations with which Elwood had to comply.

But neither is Elwood correct that there was no right-of-way to yield. Elwood's argument for that claim points to the definition of "Right-of-way" as:

> the right of one (1) 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(18). Relying on that definition, Elwood claims that "[a] vehicle cannot yield the right of way when there is no circumstances of direction, speed, and proximity that allow them to do so." (Appellant's brief, p. 9.) But that is not correct. The right-of-way is "a right to proceed in a lawful manner," even under circumstances of direction, speed and proximity as to give rise to danger of collision. While the right is defined partially in terms of a danger of collision, whether a vehicle has a right-of-way does not depend on there being a danger of collision. A driver with a green light at an intersection—without another vehicle, pedestrian, or dog in view—undoubtedly has the right-of-way to proceed through the intersection. To say that the driver has the right-of-way is to say that that right to proceed lawfully would persist even under circumstances of a danger of collision. Elwood does not appear to deny any of this, instead

claiming that one cannot *yield* the right-of-way unless there is a danger of collision. (Appellant's brief, p. 9.) But yielding the right-of-way is simply giving up the right to lawfully proceed, which can surely be done whether or not there was an actual risk of collision. As both courts below found, and as Elwood does not dispute, she was driving next to various businesses with entries directly off of the street on which she was driving. (R., p. 66; Tr., p. 66, Ls. 4-21.) Though she had the right-of-way to continue past those entrances, the statute clearly and unambiguously required that she yield the right-of-way. It is irrelevant that, as a matter of fact, knowable only in retrospect, the police vehicle was not attempting to drive to any of those businesses. And, as discussed in the next section, it makes perfect sense that the legislature would require drivers to yield the right-of-way even when it later turns out, as a *post hoc* inquiry, that there was in fact no risk of a collision.

Under the clear and unambiguous terms of I.C. § 49-625(1), Elwood was required to yield the right-of-way, stop, and pull to the curb. She did none of those things. The officer had reasonable suspicion she had violated I.C. § 49-625(1). The district court therefore correctly affirmed the magistrate court's order denying her motion to suppress.

D. Even If I.C. § 49-625(1) Is Ambiguous, This Court Should Reject Elwood's Proposed Construction Of The Statute

Where a statute's words "are subject to more than one meaning, it is ambiguous and this Court must construe the statute 'to mean what the legislature intended it to mean. To determine that intent, [this Court] examine[s] not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history.'" Ada Cty. Highway Dist. v. Brooke View, Inc., 162 Idaho 138, 142, 395 P.3d 357, 361 (2017) (quoting Doe v. Boy Scouts of America, 148 Idaho 427, 430, 224 P.3d 494, 497 (2009)).

Constructions of an ambiguous statute that would lead to an absurd result are disfavored. State v. Doe, 140 Idaho 271, 275, 92 P.3d 521, 525 (2004).

"The obvious purpose of requiring the driver to pull over and stop until the emergency or police vehicle has passed is to prevent the driver's vehicle from impeding the emergency or police vehicle." State v. Ray, 153 Idaho 564, 567, 286 P.3d 1114, 1117 (2012). That purpose is obviously undermined if, as Elwood contends, whether a driver has an obligation to yield the right-of-way, move to the right, and stop at the curb hinges on whether it *later* turns out that the there was no danger of collision or the driver did not impede the police vehicle. If the statute is read in the manner suggested by Elwood, drivers approached by a police vehicle with lights and sirens activated have no obligation at all if they do not represent a "danger of collision" or do not "inhibit[] the police vehicle." (Appellant's brief, p. 8.) So understood, a driver on a two-lane road, with one lane in either direction and multiple businesses on either side, can simply proceed on as normal if an officer approaches in the opposite lane and the driver is lucky enough to guess correctly that the officer will continue on rather than making a left turn into one of the businesses, and if the driver is lucky enough to guess correctly that the police vehicle will not need to deviate into the opposite lane of travel to continue on unimpeded. Elwood's view places the burden on the driver to make a judgment how to react in the moment based on where the driver thinks the police or emergency vehicle is heading and whether they view themselves as representing a danger of collision or of impeding the vehicle. That view is a recipe for ensuring that police and emergency vehicles are regularly impeded when drivers make incorrect judgments regarding where the police or emergency vehicle is going, and whether they represent a danger. As the district court correctly noted below, the categorical rule to yield the right-of-way, pull over, and stop at the right curb appropriately takes the driver's judgment out of the equation. (R.,

p. 71; see also Tr., p. 66, Ls. 4-21 (magistrate court discussion, noting that there were locations on the right side of the road to which the officer could have been responding).)

During hearings on the most recent amendment to I.C. § 49-625(1), the discussion in the hearings focused extensively on the need to provide a clear, categorical rule regarding what drivers should do on the approach of an emergency vehicle that would take the judgment of individual drivers out of the equation. Before the statute was amended in 2018, it provided, in relevant part, that:

> the driver of every other vehicle shall yield the right-of-way and immediately drive to a position parallel to, and as close as possible to, the nearest edge or curb of the highway lawful for parking and clear of any intersection, and stop and remain in that position until the authorized emergency or police vehicle has passed, except when otherwise directed by a peace officer.

I.C. § 49-625(1) (2017). In the 2018 legislative session, through H.B. 388, the legislature deleted the phrase "lawful for parking" and included the phrase "on the right side," so that the statute reads, in relevant part: ". . . nearest edge or curb on the right side of the highway and clear of any intersection . . . ." Ch. 74, § 1, 2018 Idaho Sess. Laws at 169-70. In the House Transportation and Defense Committee, a Boise police officer testified in support of the bill on behalf of the bill's sponsor, who was the chairman of the committee. H.B. 388, H. Trans. & Def. Comm. Audio, 64th Leg., 12:50 – 19:06 (Feb. 14, 2018), *available at* https://legislature.idaho.gov/sessioninfo/2018/standingcommittees/HTRA/. He explained that the bill was necessary to clarify what drivers should do when approached by a police or emergency vehicle with lights or sirens activated because:

> vehicles continue to move on the road and not pull over for those [emergency] vehicles or yield, especially in the opposing direction. The public doesn't know where an emergency vehicle is going, especially if they are responding to an emergency call, and they may think to themselves that, well, because the emergency vehicle is going the opposite direction I don't need to pull over to the

> right and stop. Whereas that emergency vehicle may be making a right-hand turn into that area or a vehicle making a left-hand turn across traffic.

Id. at 15:22 – 16:05. He further explained that officers are trained to always pass on the left, even when that means driving across a solid-yellow line and into the opposing lane of traffic, making it extremely important that drivers move to the right and stop to clear the roadway for the police or emergency vehicle. Id. at 16:05 – 16:30. Finally, the officer noted that the statute, as then phrased, seems to inappropriately allow drivers to exercise judgment regarding how to respond and where to park (and, in particular, what constituted a place "lawful for parking") when encountering a police or emergency vehicle with lights or sirens activated. Id. at 17:00 – 17:12. The same officer testified in support of the bill before the Senate Transportation Committee. H.B. 388, S. Trans. Comm. Audio, 64th Leg., 24:28 – 40:30 (Feb. 27, 2018), *available at* https://legislature.idaho.gov/sessioninfo/2018/standingcommittees/STRA/. He emphasized that the bill was intended to address a "confusion" in the public regarding what to do when approached by an emergency vehicle, whether approached from the front or behind. Id. at 25:38 – 26:50. He expressed concern that the statute as then codified improperly put the burden on drivers to determine where and when to pull over. Id. at 27:42 – 28:00. The amendment makes clear that the driver should immediately and always move to the right hand curb and stop. Id. at 28:00 – 29:00. "The whole purpose of this, the intent, or the spirt of the law, . . . is to get people to move over to the right hand side and stop immediately." Id. at 29:00 – 29:09. The problem is that people are just "doing their own thing," rather than following a categorical rule of moving to the right and stopping. Id. at 29:51 – 31:03.

What that discussion suggests is exactly what the district court and magistrate court recognized: the purpose of the statute is served only by a clear, bright-line rule that removes—as

much as possible—the variation in response to a police or emergency vehicle that comes with drivers making individualized judgments as to how they should respond. A rule according to which the statute imposes an obligation only if there is an actual "risk of collision" or the driver's vehicle is actually impeding the officer—as judged by where the police or emergency vehicle eventually goes—will guarantee that drivers do not respond uniformly and will guarantee that emergency vehicles are frequently impeded. Elwood's view undermines the purpose of the statute and is inconsistent with its legislative history.

Importantly, such a categorical rule entirely eliminates the need for or relevance of any evidence that the police vehicle in this case was actually going to respond to one of the businesses the entrances to which Elwood continued to pass as the police vehicle approached. It is simply irrelevant that, for example, the officer driving the police vehicle "gave no testimony other than he was traveling west," that "in actuality he continued westbound past the defendant," or that, in Elwood's judgment, she could have avoided the police vehicle if it had instead turned left into one of the businesses. (Appellant's brief, p. 9.) A driver's obligation to yield the right-of-way, pull over, and stop at the right-hand curb does not depend on where the officer later testifies he was in fact driving, where he actually drove, or the driver's personal judgment about whether she presents a risk.

Elwood's reading of I.C. § 49-625(1) is contrary to its plain, unambiguous language, undermines the purpose of the statute, and is contrary to its legislative history. She has identified no ambiguity, much less one that would render the officer's suspicion she violated I.C. § 49-625(1) unreasonable.

CONCLUSION

The state respectfully requests this Court to affirm the order of the district court on intermediate appeal affirming the magistrate court's denial of Elwood's motion to suppress.

DATED this 12th day of February, 2021.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of February, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

SAMUEL Y. GEDDES
KOOTENAI COUNTY PUBLIC DEFENDER'S OFFICE
pdfax@kcgov.us

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

AVW/dd