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State v. Kraly Appellant's Reply Brief Dckt. 44892

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent. vs. SHANE KRALY, Defendant-Appellant,	S.Ct. No. 44892 Boundary Co. No. CR-2016-334

REPLY BRIEF OF APPELLANT

Appeal from the District Court of the First Judicial District of the State of Idaho
In and For the County of Boundary

HONORABLE BARBARA A. BUCHANAN
Presiding Judge

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II. ARGUMENT IN REPLY

A. *The Plain Meaning of the Statute*

The state makes the remarkable argument that seventeen-year-old M.M. was in the "care or custody" of Mr. Kraly when he was in her bedroom, after being invited in, and while parked on the side of the road, after she voluntarily got into his truck in order to skip school. This argument, however, is contrary to the plain meaning of the Injury to Child statute and must be rejected by this Court.

In fact, it has already been partially rejected by this Court in *State v. Morales*, 146 Idaho 264, 192 P.3d 1088 (Ct. App. 2008). There, the Court wrote that "'Care' is defined as 'CHARGE, SUPERVISION, MANAGEMENT: responsibility for or attention to safety and well-being.'" 146 Idaho at 267, 192 P.3d at 1091, *quoting* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 338 (1993). Plainly, Mr. Kraly did not have the "care" of M.M., under this definition, and the state does not argue otherwise.

The state does argue that Mr. Kraly "had custody over M.M. insofar as he was exerting his control over [her] and control over the situation" State's Brief, pg. 11. But this argument misconstrues the meaning of "custody." According to the same edition of the same dictionary used by the *Morales* Court, "custody" does not mean control. It means "the act or duty of guarding and preserving (as by duly authorized person or agency): SAFEKEEPING." *Id.*, pg. 559. Mr. Kraly did not assume any duty to guard and preserve M.M., nor was such a duty imposed upon

him by some authorized person or agency.

B. *The Beers Case Shows Mr. Kraly did not Have the Care or Custody of M.M.*

Beers v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints, 155 Idaho 680, 691, 316 P.3d 92, 103 (2013), supports Mr. Kraly's position. Indeed, the state concedes that the *Beers* Court "concluded there were two potential bases for finding 'an affirmative duty of care': 1) a special relationship between the individual defendants and [the child], or 2) an assumed duty towards [her]." State's Brief, pg. 8, citing *Beers*, 155 Idaho at 686, 316 P.2d at 98. The state continues that "[b]ecause the Court previously found no special relationship or assumed duty, there was likewise no 'care or custody' at issue, and I.C. § 18-1501(2) likewise 'imposed no duties.'" State's Brief, pg. 11, citing *Beers*, 155 Idaho at 692, 316 P.3d at 105. Similarly, there was no special relationship between M.M. and Mr. Kraly nor was there an assumed duty by Mr. Kraly toward M.M. in this case. Thus, she was not in the "care or custody" of Mr. Kraly. *Beers*, *supra.*

C. *The Out-of-State Cases are Irrelevant.*

Given the *Beers* Court's construction of "care or custody" language in I.C. § 18-1501(2), the out-of-state cases cited by the state are of no import. Moreover, *State v. Anspach,* 627 N.W. 227, 234 (Iowa 2001), interpreted the word "control," not "care or custody" and has no bearing on this case. The same is true as to the other Iowa cases cited. *State v. Friend,* 630 N.W.2d 843, 845 (Iowa Ct. App. 2001) (defining "control") and *State v. Johnson*, 528 N.W.2d 638, 641 (Iowa 1995) (same). *Compare*

Beers, 155 Idaho at 692, 316 P.3d at 104 ("{T]he statute does not impose a duty upon the general public to act in such a way as to protect children from injury or exposure to dangerous conditions.").

Snow v. Commonwealth, 33 Va. App. 766, 772-73, 537 S.E.2d 6, 9 (2000), is also not apposite. There, the Virginia Court found that the term "custodial or supervisory relationship" applied to close relatives of children, including uncles, as well as those with a temporary, custodial relationship with a child, such as, teachers, athletic instructors and baby-sitters. While those might be examples of the "special relationship" or the "assumed duty" required by *Beers*, none of those relationships are present here.

Applying the ordinary meanings of the words "care" and "custody" and the interpretation of I.C. § 18-1501(2) in *Beers*, Mr. Kraly did not have the care or custody of M.M. Accordingly, the conviction for Count II violates the due process clauses of the state and federal constitutions. *State v. Morales*, 146 Idaho 264, 266, 192 P.3d 1088, 1090 (Ct. App. 2008); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

III. CONCLUSION

In light of the above, Mr. Kraly asks the Court to vacate the judgment and sentence on Count II of the Amended Information.

Respectfully submitted this 8th day of February, 2018.

/s/ Dennis Benjamin
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CERTIFICATE OF COMPLIANCE AND SERVICE

The undersigned does hereby certify that the electronic brief submitted is in compliance with all of the requirements set out in I.A.R. 34.1, and that an electronic copy was served on each party at the following email address(es): Idaho State

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Dated and certified this 8th day of February, 2018.

/s/Dennis Benjamin
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