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State v. Amstad Clerk's Record Dckt. 45707

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Vol. 1 of 1

IN THE SUPREME COURT
OF THE
STATE OF IDAHO

STATE OF IDAHO,
Plaintiff / Appellant,

vs.

DANIEL C. AMSTAD,
Defendant / Respondent.

Appealed from the District Court of the Second
Judicial District of the State of Idaho, in
and for the County of Latah

HONORABLE JOHN R. STEGNER, DISTRICT JUDGE

KENNETH K. JORGENSEN
Deputy Attorney General

ATTORNEY FOR APPELLANT

ANDREA S. HUNTER

ATTORNEY FOR RESPONDENT

Filed this ___ day of _____, 20__.

STEPHEN W. KENYON, CLERK

By _____
Deputy

SUPREME COURT CASE NO. 45707

VOLUME I OF I VOLUME

45707

FILED - COPY
MAR 15 2018
Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
)
 Plaintiff-Appellant,) SUPREME COURT NO. 45707
)
 vs.)
)
 DANIEL C. AMSTAD,)
)
 Defendant-Respondent,)
 _____)

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Second Judicial District of the State of Idaho,
in and for the County of Latah

HONORABLE JOHN R. STEGNER
District Judge

KENNETH K. JORGENSEN
ATTORNEY GENERAL
PO BOX 83720
BOISE, ID 83720-0010

ANDREA S. HUNTER
PO BOX 9408
MOSCOW, ID 83843

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

000001

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State of Idaho vs. Daniel C Amstad

Date	Code	User	Judge
1/31/2017	NEWI	IMPORT	New Case Filed, Citation Import
	PROS	TONYA	Prosecutor assigned Erin E. Tomlin
2/15/2017	ARRN	CHARLOTTE	Arraignment / First Appearance
	APNG	CHARLOTTE	Appear & Plead Not Guilty
	ORPD	CHARLOTTE	Defendant: Amstad, Daniel C Order Appointing Public Defender Public defender Latah Co. Pub. Def. --D. Ray Barker
		CHARLOTTE	Order Appointing Public Defender
	PLEA	CHARLOTTE	A Plea is entered for charge: - NG (I37-2732(d) Controlled Substance-Frequenting Place where Used, Manufactured, Cultivated, Held, Delivered, Given)
	HRSC	CHARLOTTE	Hearing Scheduled (Pretrial Conference 03/07/2017 03:00 PM)
	HRSC	CHARLOTTE	Hearing Scheduled (Attention 06/15/2017 05:00 PM) SPEEDY TRIAL ISSUE - Arraigned on 2/15/2017
2/16/2017	RSRD	JAN	Response To Request For Discovery
2/17/2017	RQDS	TONYA	Request For Discovery
3/7/2017	CONT	TONYA	Continued (Pretrial Conference 03/28/2017 03:00 PM)
3/28/2017	MOTN	JAN	MOTION TO DISMISS
	CONT	CHARLOTTE	Hearing result for Pretrial Conference scheduled on 03/28/2017 03:00 PM: Continued
	HRSC	CHARLOTTE	Hearing Scheduled (Pretrial Conference 04/04/2017 03:00 PM)
3/30/2017	HRSC	JAN	Hearing Scheduled (Motion to Dismiss 04/27/2017 03:00 PM)
	HRSC	JAN	Hearing Scheduled (Attention 04/24/2017 05:00 PM) Motion to dismiss filed, hearing set for 4/27/17
		JAN	Notice Of Hearing
4/21/2017	HRHD	JAN	Hearing result for Pretrial Conference scheduled on 04/04/2017 03:00 PM: Hearing Held
	SUBR	JAN	Subpoena Returned - CHRISTOPHER HUGHES
	SUBR	JAN	Subpoena Returned - NOAH A SHARP
4/24/2017	RSPN	JAN	RESPONSE TO DEFENDANT'S MOTION TO DISMISS
	SUPR	JAN	Supplemental Response To Defendant's Request For Discovery
4/25/2017	ATNH	JAN	Hearing result for Attention scheduled on 04/24/2017 05:00 PM: Attention Handled Motion to dismiss filed, hearing set for 4/27/17

000006

State of Idaho vs. Daniel C Amstad

Date	Code	User	Judge
4/27/2017	DSAT	MYRANDA	Hearing result for Motion to Dismiss scheduled on 04/27/2017 03:00 PM: Dismissal At Hearing
	CTMN	MYRANDA	Hearing result for Motion to Dismiss scheduled on 04/27/2017 03:00 PM: Court Minutes
	ATNV	MYRANDA	Hearing result for Attention scheduled on 06/15/2017 05:00 PM: Attention Vacated SPEEDY TRIAL ISSUE - Arraigned on 2/15/2017
	DSAT	MYRANDA	Dismissal At Hearing (I37-2732(d) Controlled Substance-Frequenting Place where Used, Manufactured, Cultivated, Held, Delivered, Given)
	FJDE	MYRANDA	Final Judgement, Order Or Decree Entered
	HRSC	MYRANDA	Hearing Scheduled (Attention 05/11/2017 05:00 PM) Order granting mtn & dismissing case filed?
4/28/2017	ATNH	JAN	Hearing result for Attention scheduled on 05/11/2017 05:00 PM: Attention Handled Order granting mtn & dismissing case filed?
	ORDR	JAN	ORDER DISMISSING CASE
5/5/2017	NSSC	JAN	Notice Of Substitution Of Counsel
	PROS	JAN	Prosecutor assigned William W. Thompson Jr.
5/10/2017	NAPL	BETH	Notice Of Appeal
6/8/2017	TRAN	TERRY	Transcript of Hearing of Motion to Dismiss
	NOTC	TERRY	Notice of Lodging of Transcript
	HRSC	TERRY	(Attention 06/29/2017 08:00 AM) Transcript is settled, prepare briefing schedule)
6/29/2017	HRSC	TERRY	Hearing Scheduled (Appellate Argument 10/30/2017 09:30 AM)
7/6/2017	ORDR	TERRY	Order Setting Briefing Schedule and Scheduling Oral Argument
8/7/2017	BREF	TONYA	Appellant's Brief

State of Idaho vs. Daniel C Amstad

Date	Code	User		Judge
9/5/2017	BREF	TONYA	Response to Appellant's Brief	John R. Stegner

10/30/2017	DCHH	TERRY	<p>Brief</p> <p>Hearing result for Appellate Argument scheduled on 10/30/2017 09:30 AM: District Court Hearing Held</p> <p>Court Reporter: Sheryl L. Engler</p> <p>Number of Transcript Pages for this hearing estimated: 35 pages</p>	John R. Stegner
	CTMN	TERRY	<p>Hearing result for Appellate Argument scheduled on 10/30/2017 09:30 AM: Court Minutes</p>	John R. Stegner
12/1/2017	MEMO	PEGGY	<p>Memorandum Opinion on Appeal</p>	John R. Stegner
12/19/2017	HRSC	PEGGY	<p>Hearing Scheduled (Attention 01/10/2018 08:00 AM) Terry Odenborg Reminder to prepare remittitur</p>	John R. Stegner
1/2/2018	NAPL	TONYA	<p>Notice Of Appeal</p>	John R. Stegner

000008

CR-2017-0000230

Daniel C Amstad

1-31-17 30

IDAHO UNIFORM CITATION

In the court designated below the undersigned certifies that he/she has just and reasonable grounds to believe and does believe that on:

CR0440605

Citation #: **CR0440605**

Date/Time: **01/30/2017 11:04 PM** DR#: **17-M01054**

CR-2017-0230

WITHIN THE JURISDICTION OF **MOSCOW**
IN THE DISTRICT COURT OF THE **2ND**
JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF **LATAH**, STATE OF IDAHO.

VIOLATOR

Last Name: **AMSTAD** MI: **C**
First Name: **DANIEL** DOB: [REDACTED]
Hm. Address: **1001 PARADISE CREEK #813** Hm. Phone: **2084842603**
City: **MOSCOW** State: **ID** Zip: **83843**
Height: **6'3"** Weight: **160** Sex: **M** Eyes: **BRO** Hair: **BRO**
DL#: [REDACTED] DL State: **ID** Lic. Expires:
SS#:
Bus.Name:
Bus.Addr.:
Bus.Phone:
Class:

REGISTRATION

No Veh: **N**
Yr. Veh: **1991** License Plate: **1A2B515** State: **ID**
Make: **HONDA** Model: **ACC**
Color: **SIL** Style: **4D**
VIN:
IPUC#: USDOT TK Census#:

LOCATION

Upon a Public Street or Highway or Other Location Namely:
1080 W. SIXTH ST. WALLACE COMPLEX LOT

Accident: **N**

VIOLATIONS

Did unlawfully commit the following Offense(s), in violation of State Statute,
Infraction Citation: **N** Misdemeanor Citation: **Y** Hazmat: **N**
GVWR 26001+: **N** 16+ Persons: **N** Comm. Veh.: **N**
Posted Speed: Observed Speed:

Date/Time: **01/30/2017 11:04 PM**

Violation #1: **CONTROLLED SUBSTANCE-FREQUENTING PLACE**
WHERE USED MANUFACTURED CULTIVATED HELD ~~OR~~ GIVEN

Violation #2:

Violation #3:

Violation #4:

Violation #5:

Serial# Addr.: Dept.:

COURT INFORMATION

MAGISTRATE COURT Fine#1: **\$ MUST APPEAR**
PO BOX 8068 Fine#2: **\$**
MOSCOW, ID 83843 Fine#3: **\$**
Court Date: **02/15/2017** Fine#4: **\$**
Court Time: **8:30 AM** Fine#5: **\$**

SIGNATURE

I hereby certify service upon the defendant personally on **01/30/2017**

Signature of Officer: _____
Officer name: **JOE SIEVERDING** Officer ID: **135**
Agency Name: **CITY OF MOSCOW POLICE DEPARTMENT**

Witnessing Officer: **150**
Department: Serial #:

000009

This is a MISDEMEANOR charge in which:

Note: If you fail to appear within the time allowed for your appearance, another charge of failure to appear may be filed and a warrant may be issued for your arrest.

1. You may be represented by a lawyer, which will be at your expense unless the judge finds you are indigent.
2. You are entitled to a trial by jury if requested by you.
3. PLEA OF NOT GUILTY: You may plead not guilty to the charge by appearing before the clerk of the court or the judge, within the time allowed for your appearance, at which time you will be given a trial date.
4. PLEA OF GUILTY: You may plead guilty to the charge by going to the clerk of the court, within the time allowed for your appearance, at which time you will be told if you can pay a fixed fine or whether it will be necessary for you to appear before the judge; OR you may have your fine determined by a judge at a time arranged with the clerk of the court, within the time allowed for your appearance.
5. If you plead guilty, you may still give an explanation to the judge.
6. You may call the clerk of the court to determine if you can sign a plea of guilty and pay the fine and costs by mail.

I plead guilty to the charges. _____
Defendant (if authorized by clerk of magistrate court)

IF this is a citation for failure to have insurance:

If you admit the charge or are found to have committed the charge, your driver's license will be suspended until you pay the fixed penalty, provide proof of insurance to the Driver's Services Bureau of the Department of Transportation and pay a reinstatement fee.

*** ALWAYS BRING THIS COPY OF THE CITATION TO ALL COURT APPEARANCES ***

010000

Officer Notes:

**AMSTAD WAS IN A PARKED VEHICLE GETTING READING TO
USE MARIJUANA FROM A BONG.**

000000

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

ABSTRACT OF COURT RECORD AND DOCKET

CITY OF Moscow Plaintiff

DISTRICT COURT CASE No. CB-2017-0280

Daniel Amstad Defendant

Offense Frey, place controlled sub I.C./City Code 37-2732(d) Amended Offense Amended Code

D.O.B. [redacted]

DISPOSITION BY COURT

1-31-17 Complaint Filed. Uniform Citation# CRC0440605 Signed by J. Sieverding
1-31-17 State County City of Moscow POE F & G
Criminal Complaint signed by before Judge
Bail set at \$ Warrant Issued () Summons Issued () Appearance Date
Probable cause hearing set for
Defendant failed to appear as directed in the summons; a verified complaint was filed and the Court issued a warrant of arrest for defendant. Bail was set at \$ ()
Defendant appeared before Magistrate Judge was informed of his rights and was read the charge.
Ray Banker appointed to represent defendant Repay No Repayment
retained by defendant

BAIL OF DEFENDANT:

Def. Committed bail posted. Bail set: \$ Defendant ROR.
\$ posted Cash Surety Bond No. Other:
\$ exonerated \$ refunded to

PLEA OF DEFENDANT:

Continued at request of defendant/court until at for plea.
Appearance made in writing by phone in person by defendant on behalf of defendant
and pled guilty not guilty. Pre-trial set for 3-7-17 3:00 o'clock P.M.
No contact order issued. Exp. Reissued Exp. Reissued Exp.

PRE-TRIAL AND TRIAL

3-7-17 Pre-Trial continued to 3-28-17 @ 3:00 at P.M. Pre-Trial continued to at .M.
3-28-17 Pre-Trial continued to 4-4-17 @ 3:00 at P.M. Pre-Trial continued to at .M.
Pre-Trial continued to at .M. Pre-Trial continued to at .M.
Pre-Trial:

Dismissed. Reason

Jury Pre-Trial Conference/Motions scheduled for at .M.
Jury Pre-Trial Conference continued at .M.
Motion Hearing scheduled for 4-27-2017 @ 3:00pm at .M.
Jury Trial continued to at .M.
Court Jury Trial scheduled for at .M.
Court Jury Trial held at .M. Defendant found Guilty Not Guilty

JUDGMENT:

Defendant to appear for sentencing/status on 4-27-17 at .M continued to .
Court ordered JUDGMENT WITHHELD. Defendant ordered to pay \$ in lieu of fine and costs by .
which \$ was suspended on conditions below; Serve days in jail; days suspended on conditions below
JUDGMENT was pronounced. Fine: \$ including \$ costs, Serve days in jail; \$ of
fine and days in jail suspended on conditions below.
Credit given for time already served days.
Fine and costs paid. Receipt. No.
\$ of bond applied to case.
Paid from Bond. \$ refunded to .
Defendant's driver license suspended for days from .
Defendant's Hunting/Fishing License suspended .
No Court License Suspension.

FINE DUE

CONDITIONS OF JUDGMENT OR WITHHELD JUDGMENT:

Defendant on unsupervised/supervised probation until .
Defendant shall not violate any laws excluding traffic infractions.
Send a letter to the Court each month that arrives by 5:00 p.m. on the first Monday of each month that is dated and signed and lists home and work addresses and telephone numbers and case number and states (a) if violated laws; (b) if consumed or possessed any alcohol; (c) if entered any bars or liquor stores.
The defendant shall not consume or possess any alcohol or controlled substances unless lawfully prescribed.
The defendant shall submit to searches of person, property, residence, vehicle as reasonably requested by probation officer.
The defendant shall not enter any bars or liquor stores.
The defendant is subject to testing to ensure compliance.
The defendant is not released from probation until performance has been reviewed.
Defendant ordered to pay restitution to in the amount of \$
If completes and provides proof to the Court by the Court will strike \$
(DATE COMPLETED) \$ STRICKEN)
If shows proof of damages being paid by strike \$ Date Stricken
If provides proof of a valid drivers license by strike \$ Date Stricken
Other Conditions or Proceedings:
4-27-17 case dismissed
5-10-2017 Latah County Prosecuting attorney appeal decision from the 4-27-17 hearing

Dated this day of 20

Clerk of Court By deputy

000012

Second Judicial District Court, State of Idaho
In and For the County of Latah
522 S. Adams
Moscow, Idaho 83843

CASE NO. _____
2017 FEB 15 AM 10:36

STATE OF IDAHO
Plaintiff,

vs.

Daniel C Amstad
1001 Paradise Creek #813
Moscow, ID 83843

Defendant.

CLERK OF DISTRICT COURT
LATAH COUNTY

BY _____ DEPUTY
Case No: CR-2017-0000230

ORDER APPOINTING PUBLIC DEFENDER

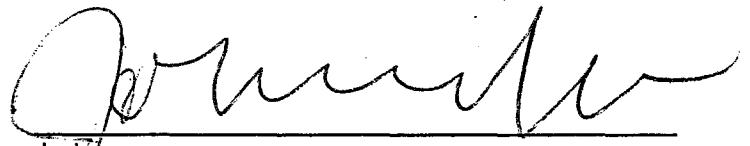
The Court being fully advised as to the application of Daniel C Amstad, and it appearing to be a proper case,
NOW, THEREFORE, IT IS ORDERED that an attorney be appointed through the:

Public Defender's Office
Latah Co. Pub. Def. --D. Ray Barker
P.O. Box 9408
Moscow ID 83843

Public Defender for the County of Latah, State of Idaho, a duly licensed attorney in the State of Idaho, is hereby appointed to represent said Defendant, Daniel C Amstad, in all proceedings in the above entitled case.

The Defendant is further advised that he/she may be required to reimburse the Court for all or part of the cost of court appointed counsel.

Date: 2/15/17




Judge

Copies to:

Public Defender

Prosecutor



Deputy Clerk

Erin E. Tomlin
Prosecuting Attorney
City of Moscow
P O Box 9203
Moscow, ID 83843
Phone: (208) 883-7003
Fax: (208) 883-7018
ISB #9035

CASE NO. CR-2017-230

2017 FEB 16 PM 2:50

CLERK OF DISTRICT COURT
LATAH COUNTY

BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
Plaintiff,)
) Case No. CR-2017-00230
V.)
) RESPONSE TO REQUEST
DANIEL C. AMSTAD,) FOR DISCOVERY
Defendant.)
_____)

TO: THE DEFENDANT, DANIEL C. AMSTAD,
and Counsel, D. Ray Barker;

COMES NOW, the State in the above-entitled matter, and submits the following Response to Request for Discovery.

The State has complied with such request by providing the following:

1. Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney, or the prosecuting attorney's agent have been disclosed or otherwise made available.
2. Any written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney, have been disclosed or otherwise made available.

3. Defendant's prior criminal record, if any, has been disclosed or otherwise made available.

4. Any books, papers, documents, photographs, tangible objects, buildings, or places, or copies or portions thereof, which are in the possession, custody, or control of the prosecuting attorney and which are material to the preparation of the defense or intended for use by the prosecutor as evidence at trial or obtained from or belonging to the Defendant have been disclosed or otherwise made available. In addition officers from the Moscow Police Department and other law enforcement agencies may record their law enforcement contacts via an audio recorder or audio/video recorder. Any audio and video recordings related to this matter are available for review and duplication on request, subject to the provisions of I.C.R. 16(b)(9). Pursuant to said subsection, and except as otherwise specified herein, any such digital media is unredacted and may contain protected information, thus further distribution is restricted by I.C.R. 16(b)(9)(A), unless the State provides express written consent or by the order of the Court.

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody, or control of the prosecuting attorney, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence have been disclosed or otherwise made available.

6. A written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at the trial has been or will be provided separately in accordance with I.C.R. 16(b)(6). Any record of prior felony convictions of any such persons which is within the knowledge of the prosecuting attorney and all statements made by the prosecution witnesses or prospective prosecution witnesses to the prosecuting attorney or the prosecuting attorney's agents or to any official involved in the investigatory process of the case have been disclosed or otherwise made available. Additionally, the State may call as witnesses anyone otherwise identified or referred to in reports, statements, or other documents referred to in this response.

7. Any written summary or report of any testimony that the state intends to introduce pursuant to Rule 702, 703 or 705 of the Idaho Rules of Evidence at trial or hearing, have been or will be disclosed or otherwise made available. This response does not necessarily include disclosure of expert witnesses, their opinions, the fact and data for those opinions, or the witness's

qualification, intended only to rebut evidence or theories that have not been disclosed under this rule prior to trial.

8. Any reports and memoranda in possession of the prosecuting attorney which were made by any police officer or investigator in connection with this investigation or prosecution of this case have been disclosed or otherwise made available.


9. All material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefore have been disclosed or otherwise made available. In addition, with regard to material or information which may be exculpatory as used or interpreted, the State requests that the defendant inform the State, in writing, of the defense which will be asserted in this case, so counsel for the State can determine if any additional material or information may be material to the defense, and thus fulfill its duty under I.C.R. 16(a) and *Brady v. Maryland*, 373 U.S. 83 (1963).

10. The State objects to requests by the Defendant for anything not addressed above on the grounds that such requests are outside the scope of I.C.R. 16.

11. Wherever this Response indicates that certain evidence or materials have been disclosed or otherwise made available, such indication should not be construed as confirmation that such evidence or materials exist, but simply as an indication that if such evidence or materials exist, they have been disclosed or made available to the Defendant.

12. Pursuant to I.C.R. 16(j), if the State subsequently discovers additional evidence or evidence of additional witnesses, or decides to use additional evidence or witnesses, the State will promptly notify the defendant and the Court.

DATED this 15 day of February, 2017.



Erin E. Tomlin, Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Response to Request for Discovery was:

mailed, United States mail, postage prepaid

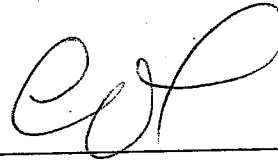
hand delivered

sent by facsimile, original by mail

to the following:

D. Ray Barker
Attorney for Defendant
Courthouse Mail
Moscow, ID 83843

Dated this 15th day of February, 2017.



CASE NO. CR-2017-0230

2017 FEB 17 PM 1:05

CLERK OF DISTRICT COURT
LATAH COUNTY

BY [Signature] DEPUTY

ANDREA S. HUNTER
Attorney at Law
D. Ray Barker Law Office
204 East First Street
P.O. Box 9408
Moscow, Idaho 83843-0118
(208) 882-6749
Idaho State Bar No. 9515

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,	)	Case No.	CR-2017-230
)		
Plaintiff,)		
	)	REQUEST FOR DISCOVERY	
vs.)		
)		
DANIEL C. AMSTAD,)		
)		
<u>Defendant.</u>)		

TO: Moscow City Prosecutor's Office

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16(b) of the Idaho Criminal Rules, requests discovery and inspection of information, evidence and materials as follows:

- a. That said defendant be permitted, in person and by his attorney, to inspect and copy or photograph any relevant written or recorded statement made by the defendant or copies thereof within the possession, custody, or control of the state, the existence of which is known or is available to the Prosecuting Attorney by the exercise of due diligence; and also the substance of any relevant oral statement made by the defendant, whether before or after arrest, to a peace officer, prosecutor or his agent or other representative of the state.
- b. That said defendant be permitted, in person and through his attorney, to be furnished with a copy of said defendant's prior criminal record, if any, as is now or may become available to the Prosecuting Attorney.
- c. That the defendant be permitted, in person and through his attorney, to inspect or copy or photograph books, papers, documents, photographs, tangible objects, buildings, or places, or copies of portions thereof, which are in the possession or control of the Prosecuting attorney

which are material to the preparation of a defense or intended for use by the Prosecuting Attorney as evidence at trial obtained from or belonging to the said defendant.

d. That the defendant be permitted, in person and through his attorney, to inspect and copy or photograph any result or reports of physical, psychological or psychiatric examinations and/or scientific tests or experiments made in connection with the above-entitled case, or copies thereof within the possession, custody or control of the Prosecuting Attorney, the existence of which is now known or is available to the Prosecuting Attorney by the exercise of due diligence.


e. That the said defendant be permitted, in person and through his attorney, to have made available to him a written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the state as witnesses at trial, together with any record of a prior felony conviction of any such person which is within the knowledge of the Prosecuting Attorney.

f. That if, subsequent to compliance with an order issued pursuant to this request and to Rule 16(b) of the Idaho Criminal Rules, and prior to or during trial, the state discovers additional evidence or the evidence of any additional witness or witnesses and such evidence is or may be subject to discovery and inspection under such prior order, the Prosecuting Attorney shall promptly notify the defendant, his attorney, and the court of the existence of additional evidence and/or the names of such additional witnesses or to allow the court to modify the pervious order or to allow the defendant to make an appropriate motion for additional discovery or inspection.

g. That the said defendant be permitted, in person and through his attorney, to have made available to her all statements made by the prosecution witnesses or prospective prosecution witnesses to the Prosecuting Attorney or his agents or to any official involved in the investigatory process of this case.

h. That the said defendant be permitted, in person and through his attorney, to have made available to him all reports and memoranda in the Prosecuting Attorney's possession which were made by a police officer or investigator in connection with the investigation or prosecution of this case.

DATED this 17 day of February, 2017.



Andrea S. Hunter
Attorney for Defendant

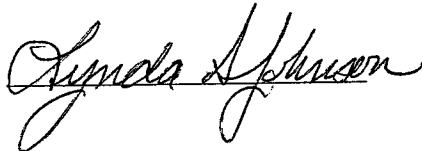
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of February, 2017, a true and correct copy of the foregoing documents was served, by first class mail, postage prepaid, and addressed to, or by personally delivering to or leaving with a person in charge of the office of or serving by facsimile:

Moscow City Prosecutor's Office
Moscow City Hall
P.O. Box 9203
Moscow, ID 83843

- First-class mail
 Hand-delivered
 Facsimile

By:



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,
PLAINTIFF,

VS.

DANIEL C. AMSTAD,

DEFENDANT.

CASE NO. CR-2017-00230 NO

PRE-TRIAL MOTION

2017 MAR -7 PM 3:24

CLERK OF DISTRICT COURT
LATAH COUNTY

BY _____ DEPUTY

(THE STATE) (CITY OF MOSCOW), AND THE DEFENDANT, MOVE THE COURT AS FOLLOWS:

1. SET THIS CASE ON March 28, 2017, AT 3:00 P.M. M. FOR:

- A. SET OR CONTINUE PRE-TRIAL / COURT TRIAL / SENTENCING / STATUS
 - B. SENTENCING, RECOMMENDATIONS BELOW**
 - C. COURT TRIAL
 - D. JURY TRIAL
- ANY WAIVER OF JURY TRIAL MUST BE DONE BY DEFENDANT ON THE RECORD.

2. DISMISS THIS CASE. REASON IS STATED BELOW**

3. AMEND THE CHARGE TO I.C. _____

4. RECOMMEND WITHHELD JUDGMENT. TERMS DETAILED BELOW**.

5. **OTHER time for D to file suppression motion

6. REIMBURSEMENT FOR PUBLIC DEFENDER - YES _____ NO _____ \$ _____

7. I UNDERSTAND THE CHARGE AGAINST ME AND THE POTENTIAL PENALTIES AND CONSEQUENCES OF PLEADING GUILTY. I UNDERSTAND MY RIGHTS AS AN ACCUSED PERSON AND I VOLUNTARILY WAIVE THOSE RIGHTS. IF I AM NOT REPRESENTED BY AN ATTORNEY, THEN I WAIVE MY RIGHT TO AN ATTORNEY PRIOR TO ENTERING THIS PLEA. I ADMIT THE CHARGE IS TRUE AND I PLEAD **GUILTY** TO THE CHARGE. I ALSO WAIVE MY RIGHT TO ENTER MY GUILTY PLEA ORALLY ON THE RECORD.

X _____ DEFENDANT'S SIGNATURE

DATED: 03-07-2017

[Signature]
PROSECUTOR

MOTION IS:

- APPROVED
- DENIED

[Signature]
DEFENDANT/DEFENDANT'S ATTORNEY

GUILTY PLEA ACCEPTED (SENTENCING RECOMMENDATIONS NOT ACCEPTED BY COURT UNLESS CHECKED HERE OR ACCEPTED IN COURT.)

THE DEFENDANT IS FOUND GUILTY; FINED \$ _____ INCLUDING COSTS.

MOTION HEARING _____

JURY PRE-TRIAL _____

JURY/COURT TRIAL _____

SENTENCING _____

John C. Judge

MAGISTRATE JUDGE

000021

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO, PLAINTIFF,

CASE NO. CR-2017-00230

PRE-TRIAL MOTION

2017 MAR 28 PM 2:50

VS.

CLERK OF DISTRICT COURT LATAH COUNTY

DANIEL C. AMSTAD,

BY _____ DEPUTY

DEFENDANT.

(THE STATE) (CITY OF MOSCOW), AND THE DEFENDANT, MOVE THE COURT AS FOLLOWS:

1. SET THIS CASE ON April 4, 2017, AT 3:00 P.M. FOR:

- A. SET OR CONTINUE PRE-TRIAL / COURT TRIAL / SENTENCING / STATUS
B. SENTENCING; RECOMMENDATIONS BELOW**
C. COURT TRIAL
D. JURY TRIAL

2. DISMISS THIS CASE. REASON IS STATED BELOW**

3. AMEND THE CHARGE TO I.C.

4. RECOMMEND WITHHELD JUDGMENT. TERMS DETAILED BELOW**.

5. **OTHER time to consider D's motion/meet before possible hearing

6. REIMBURSEMENT FOR PUBLIC DEFENDER - YES NO \$

7. I UNDERSTAND THE CHARGE AGAINST ME AND THE POTENTIAL PENALTIES AND CONSEQUENCES OF PLEADING GUILTY. I UNDERSTAND MY RIGHTS AS AN ACCUSED PERSON AND I VOLUNTARILY WAIVE THOSE RIGHTS. IF I AM NOT REPRESENTED BY AN ATTORNEY, THEN I WAIVE MY RIGHT TO AN ATTORNEY PRIOR TO ENTERING THIS PLEA. I ADMIT THE CHARGE IS TRUE AND I PLEAD GUILTY TO THE CHARGE. I ALSO WAIVE MY RIGHT TO ENTER MY GUILTY PLEA ORALLY ON THE RECORD.

X DEFENDANT'S SIGNATURE

DATED: 03-28-2017

Prosecutor signature
DEFENDANT/DEFENDANT'S ATTORNEY

MOTION IS:

- APPROVED
DENIED
GUILTY PLEA ACCEPTED (SENTENCING RECOMMENDATIONS NOT ACCEPTED BY COURT UNLESS CHECKED HERE OR ACCEPTED IN COURT.)

THE DEFENDANT IS FOUND GUILTY; FINED \$ INCLUDING COSTS.

MOTION HEARING

John C. Judge

JURY PRE-TRIAL


MAGISTRATE JUDGE

JURY/COURT TRIAL

SENTENCING

000022

D. RAY BARKER LAW OFFICE
 Andrea Hunter
 Attorney at Law
 P.O. Box 9408
 Moscow, Idaho 83843-0118
 Telephone: (208) 882-6749
 Facsimile: (208) 882-7604
 Idaho State Bar No. 9515

CR2017-230
 CASE NO. _____
 2017 MAR 28 AM 9:29
 CLERK OF DISTRICT COURT
 LATAH COUNTY
 BY  DEPUTY

Attorney for Defendant

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH**

STATE OF IDAHO,	)	CASE NO. CR- 16-0289
	)	17-230
Plaintiff,)	
	)	MOTION TO DISMISS
vs.)	
)	
DANIEL AMSTAD,)	
)	
Defendant.)	

COMES NOW, the Defendant, Daniel Amstad, and requests an order dismissing the above captioned case. This motion is based upon the grounds that, even if all the facts alleged by the State were proven beyond a reasonable doubt, those facts do not amount to the offense of "frequenting" as defined in Idaho Code § 37-2732(d).

I. FACTS

For the purposes of this motion only, Defendant concedes the following facts.¹ On January 30, 2017, at about 10:40 p.m., Officer Joe Sieverding approached a stopped Honda Accord in which Daniel Amstad was a passenger. Based on the smell of marijuana, Sieverding knocked on the window, and the driver, CH, turned over marijuana and a glass bong. Sieverding

¹ Defendant specifically reserves his right to a jury trial and the right to require the State to carry its burden at trial of establishing the facts outlined above beyond a reasonable doubt. Nothing in this motion should be taken as an admission

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searched the vehicle and found more marijuana and paraphernalia in the trunk. He cited both passengers, Amstad and Noah Sharp, for Frequenting, Idaho Code 37-2732(d), a misdemeanor defined by being present at a place where a person knows illegal drugs are used, manufactured, cultivated, or held.

II. LAW AND ARGUMENT

Even if all the facts above are true, Amstad cannot be guilty of "Frequenting" because one cannot "frequent" a vehicle. Idaho Code § 37-2732(d) states:

It shall be unlawful for any person to be **present at or on premises of any place** where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away." (emphasis added)

A vehicle is not a "premises of any place." When in a vehicle, one is not "present at or on premises of any place." Therefore, criminal liability does not attach under that statute when one is a passenger in a vehicle in which drugs are present.

Attached is a report from the Boise Community Ombudsman which address this very issue. (See pages 7-11.) After an in depth discussion regarding Idaho Code § 37-2732(d) and the language used therein, the report reaches the conclusion that "the 'premises of any place' does not include a 'mobile domain' such as a motor vehicle or a boat." *Id.* at 11. Defendant incorporates the analysis of the "frequenting" statute contained in the Ombudsman's report into this motion.

Although there is no appellate law addressing this issue in Idaho, Twin Falls County Magistrate Thomas D. Kershaw, Jr. addressed this specific issue in *State v. Traveller*, Twin Falls County Case No. CR-2008-215, and Judge Stephen Clark addressed this issue in *State v. Reid*, Bonneville County Case No. CR-2014-3601. Attached is a copy of Judge Kershaw's Memorandum

on the part of Defendant that any of the facts alleged by the State or Officer Sieverding are true.

Opinion Concerning Motion for Judgment of Acquittal and Motion to Suppress Evidence, and Judge Clark's Court's Order on Motion to Dismiss. Judge Kershaw and Judge Clark reached the same conclusion as the Boise Community Ombudsman. Defendant incorporates Judge Kershaw's and Judge Clark's analysis and reasoning into this motion.

III. CONCLUSION

The court must grant Amstad's Motion to Dismiss because one cannot "frequent" a vehicle. One traveling in a vehicle is not "at or on premises of any place." Therefore, Idaho Code § 37-2732(d) does not apply to the alleged conduct of Defendant and his case must be dismissed.

Dated this 27 day of March, 2017



Andrea Hunter
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28 day of March, 2017, I served a true and correct copy of the foregoing MOTION TO DISMISS on the party listed below, by fax and/or mailing with the correct postage thereon, or by causing the same to be hand-delivered, as indicated hereafter.

AGAR

PARTIES SERVED:

Moscow City Prosecutor's Office

SERVICE TYPE:

Courthouse Box

Walden

DISTRICT COURT
TWIN FALLS CO. IDAHO
FILED

2008 MAY -8 PM 1:50

BY _____ CLERK

DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

STATE OF IDAHO,

Plaintiff,

vs.

RILEY DEL TRAVELLER,

Defendant.

CASE NO. CR 2008-215

MEMORANDUM OPINION
CONCERNING MOTION FOR
JUDGMENT OF ACQUITTAL
AND MOTION TO SUPPRESS
EVIDENCE

This matter came before the court for trial on April 14, 2008. The defendant, Riley Traveller, had been accused by a uniform citation of "frequenting a place where drugs are being stored" in violation of *Idaho Code* §37-2732(d).

The defendant pled not guilty and requested a trial. Through counsel he filed a *Motion To Suppress Evidence*. It was agreed that the matter could be tried to the court and that the court would consider the suppression motion based upon the evidence produced at trial.

At the close of the state's evidence the defendant made a *Motion For Judgment Of Acquittal* pursuant to Rule 29, *Idaho Criminal Rules*, and also renewed his motion to suppress evidence.

COPY SENT TO	
NAME	DATE
Riley	5-9-08
	1
0000	7

I.

FACTS

On January 4, 2008 at about 10:00 p.m., Twin Falls Police Officer Justin Hendrickson was stationed in an alley watching a nearby house. The nature of his activities was described as a "drug interdiction." Also involved in the operation was Detective Steele.

Officer Hendrickson saw a vehicle pull into the parking lot of a nearby business at a high rate of speed. The business was closed. The lights on the vehicle were then turned off. Detective Steele approached the vehicle to check on a report concerning fireworks. He asked for assistance and Officer Hendrickson pulled his patrol vehicle across the street and walked over to the parked car. He looked into the now unoccupied vehicle and saw in plain view an opened can of beer and a plastic baggie containing a green leafy substance which he believed to be marijuana. He smelled the odor of green marijuana in the general area. He walked behind a nearby bar looking for the people who had left the vehicle. In a narrow space between the bar and an adjacent building he saw two people "hunkered down". He believed they were from the car. He had so much equipment on that he could not follow them into the narrow space, but he called to them and they both came. One of these people was the defendant. The other was an individual named Greenwood.

There was a conversation about the fireworks. Greenwood admitted that he was driving the vehicle. Greenwood admitted that he had marijuana in the car. He was arrested for possession of marijuana and for possession of alcohol by a minor.

After the arrest of Greenwood, the officer had a conversation with Mr. Traveller. It was raining hard and the defendant stood under an awning to keep dry. He was not under arrest but both officers were nearby. Officer Hendrickson testified that the defendant was not constantly watched, but that if he had tried to leave, the officer would have stopped him. The defendant was asked if he knew his friend had possession of alcohol and marijuana. The defendant reportedly said that he did know. He was then placed under arrest.

II.

MOTIONS

The defendant's motion to suppress is based primarily upon the failure of the police officer to inform him of his *Miranda* rights prior to questioning him about his knowledge of the drugs.

The defendant's *Rule 29 Motion for Acquittal* raises two arguments. First, no proof was presented that the material in the Greenwood car was marijuana. Second, the statute in question does not create criminal liability for "frequenting" a motor vehicle, even if there are drugs known to be in the vehicle.

III.

DISCUSSION

The court will consider the latter issue first. *I.C. §37-2732(d)* says:

It shall be unlawful for any person to be present at or on premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use or to be given away.

The defendant argues that the term "premises" in the statute refers to a fixed location, and therefore criminal liability under this statute cannot arise out of proximity to a movable motor vehicle. The state argues that the statute also refers to items being held for "transportation" and therefore being present at a vehicle being used to transport illegal drugs is "frequenting".

The court has consulted several dictionaries and agrees with the defendant that the term "premises" means lands and the buildings thereon. (*See for example: Black's Law Dictionary, Revised Fourth Edition, p. 1344*). However, in reviewing the statute, the court finds that the more significant term to be defined is "place". The unlawful act is "to be present at or on premises of any *place* . . .". Thus, if a person were present at a place, but not on the premises of such place, he could still be in violation of this statute. *Black's Law Dictionary* says that the word "place" is "a very indefinite term." The dictionary goes on to say that this word "is applied

to any locality, limited by boundaries, however large or however small . . . In its primary and most general sense [it] means locality, situation, or site, and it is also used to designate an occupied situation or building." (*Revised Fourth Edition*, p. 1307.)

A popular non-legal dictionary gives fourteen definitions for "place". Some of these are irrelevant to the current analysis, but in all relevant respects, the definitions relate to a particular location, region, building or point in space (See: *Webster's New World Dictionary*, Pocket Size Edition, 1975).

The court notes that the terminology in the statute supports the argument that the legislature intended a particular geographical location when using these terms. It is said to be unlawful "for any person to be present *at* or *on* premises of any place . . .". If the legislature had meant to include movable motor vehicles, presumably the words "in" or "near" would have been used. One is *at* a house or *on* land. One is *in* or *near* a car.

Regarding the state's argument about the term "transportation," the statute says that one has to be "present at or on premises of any place where he knows illegal controlled substances are being . . . held for . . . transportation . . .". It is therefore not the transportation which is illegal but the act of being present at a place where drugs are being held for transportation.

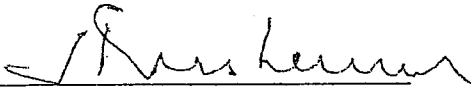
As the defendant points out, the statute is at the very least ambiguous as applied to people who are in proximity to illegal drugs in motor vehicles. Ambiguous criminal statutes must be strictly construed in favor of the accused. *State v. Martinez*, 126 Idaho 801, 891 P.2d 1061 (App. 1995).

For this reason, the court finds the statute inapplicable to this defendant's actions as described in the evidence, and therefore grants his motion for acquittal. The court finds that the evidence is insufficient to sustain a conviction for "frequenting". The court notes as an additional basis for this decision that other than the officer's visual inspection, no evidence was presented at the trial that the substance found in the Greenwood vehicle was an "illegal controlled substance".

It is unnecessary to rule on the *Motion To Suppress Evidence*.

It is therefore ORDERED that this case is dismissed.

DATED this 8 day of May, 2008.


Thomas D. Kershaw, Jr.
Magistrate Judge

CERTIFICATE OF SERVICE

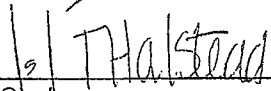
I hereby certify that on the 8 day of May, 2008, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Fritz Wonderlich
City Attorney
PO Box 1812
Twin Falls ID 83301

U.S. Mail
 Hand delivered
 Faxed
 Court Folder

Anthony Valdez
Attorney at Law
PO Box 366
Twin Falls ID 83301

U.S. Mail
 Hand delivered
 Faxed
 Court Folder


Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

MAGISTRATE DIVISION

2014 JUL 30 AM 11:29
DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY
IDAHO

STATE OF IDAHO,)

Plaintiff,)

vs.)

COURTNEY J. REID,)

Defendant,)

Case No. CR- 2014-3601

**COURT'S ORDER
ON MOTION TO DISMISS**

This matter came on for hearing on July 23, 2014 on the Defendant's motion to dismiss. The State was represented by Mr. Crowther and the Defense by Mr. Crane. The motion was predicated on the inapplicability of the term "premises" to a vehicle. Mr. Crane provided a rather extensive review of the statute from an ombudsman's report from 2006. He also appended to his motion an unpublished opinion from Twin Falls in support of his position. In that opinion the magistrate focused his attention on the term "place". Mr. Crowther argues that the definition of "premises" as argued by Mr. Crane was much too narrow. Not surprisingly, Mr. Crane argued that Mr. Crowther's response was much too broad as there would be virtually no limit as to what would constitute a "premises".

The Defendant conceded the facts as adopted by the state as being true for the purpose of his motion. That is, the defense conceded: that jurisdiction was proper; identification was not disputed; that there were controlled substances in the vehicle and that the defendant knew there were controlled substances in the vehicle in which she was traveling.

CONCLUSIONS OF LAW

Court's Order on Motion to Dismiss-Page 1

RECEIVED

JUL 30 2014

BONNEVILLE COUNTY
PUBLIC DEFENDER
CONFLICT COUNSEL

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As the defense has agreed that the facts are to be construed in favor of the state the Court will proceed accordingly. The Court views the issue as being made up of three parts. The parties focused their arguments on whether a vehicle constituted a "premises." The Court has reviewed the documents provided by the defendant and considered the arguments of counsel. Neither the ombudsman's report nor the Twin Falls case submitted in this matter by Mr. Crane is binding upon the Court. However, the court appreciates the reasoning employed by both sources. The discussion focusses around the statutory language, to-wit: "It shall be unlawful for any person to be present at or on the premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or be given away." (Emphasis added)

The legislative history indicates that the legislature has tried to cast as broad a net as possible in adopting this statute. Idaho Session Laws 1972, ch. 133, Section 6 p. 261 struck the language from the original statute which required a person to "knowingly frequent" such places to require that "he knows." The more expansive amendment followed in 1977 with Senate Bill 1109 substituting "be present at or on the premises" for "frequenting". The net effect was to eliminate the requirement of repeated conduct and to expose an individual to criminal charges for a single act. The general reference to this charge as "frequenting" is actually a misnomer, because with the changes a single action would now constitute a violation. The current iteration now suffers from the amendments as the attempt to broaden the statute without completely rewriting it or integrating the changes provides the opportunity to make the arguments presented in this case.

The term "premises" is used repeatedly through the Idaho Code. In most situations, when it is used in the statutes it is used conventionally. That is, the term generally references a specific location and usually land. Several statutes attempt to define, "premises". Idaho code Sections:

23-902, 48-703, and 48-602 all have definitions of "premises." In each case the definition seems to use the term as defining a set point rather than a mobile method of transportation. Where it is defined, it is never used to describe a car. At least one case did talk about the term in the context of construing a contract, Haines v. Continental Insurance, Co. 852 F. 2d 1289 (1988.) In that case the court interpreted the term "premises" as having to do with land. It would take a tortured reading of "premises" to expand it to include a car. A mobile home or trailer may be an exception to this definition.

That does not end the discussion as the Court in Twin Falls focused on the term "place" rather than "premises". This constitutes the second issue involving this statute. The language references at or on the premises of any place. It is informative to note that it does not say premises *or* any place, but rather the premises *of* any place. If the disjunctive was used then the court could find that although mobile, a car is a place. Given the language used the term "place" appears to be modified by the word "premises." The court is not free to insert terms into statutes when there is no ambiguity, Roe v. Hopper, 90 Idaho 22, 408 P.2d 1161 (1965) (Court construing the term "place,") There is one statutory definition of "place". Idaho code section 23-942 does define the term "place" where the sale of alcoholic beverages occurs. In that context it talks about any room of any premises. Once again we circle back around to a fixed physical location. "Place" is discussed in Sun Valley v. Sinclair, 123 Idaho 665, 851 P.2d 961 (1993) in regard to taxing issues. However, the decision does not assist the court in interpreting the statute at issue. Intermountain Health Care v. Blaine County, 109 Idaho 412, 707 P.2d 1051 (1985) discusses "place of domicile" for indigency purposes, but it again adds little. Lastly, Voyles v. City of Nampa, 97 Idaho 597, 548 P. 2d 1217 (1976) talks about a "public place", but again provides no benefit in solving this conundrum.

The third and final issue deals with what knowledge is necessary. To date the general understanding was that if the defendant had knowledge that a controlled substance was present; that was sufficient. Under most circumstances the burden is too easily met. (In thinking back over my years at Berkeley, its 30,000 plus student population would have provided substantial fodder for this statute if simple knowledge that someone possessed marijuana created criminal liability for frequenting.) However, the statute requires more than knowledge that controlled substances are present, "where he knows". The statute further requires knowledge that the controlled substances are present for: manufacture, cultivation, use, distribution, transportation, or being freely given away. To construe the statute to require only knowledge that the substance was present would virtually criminalize knowledge and open the door to a panoply of concerns. Is walking past a house where you know a controlled substance might be present sufficient to bring the statute into play? It would further potentially punish people who perhaps never had any intention to use or even touch the controlled substance. Circumstantially, once an individual is in a car, it would be hard to argue that the controlled substance was not being transported. There have been no challenges to the statute itself as being overly broad in either its application or in general.

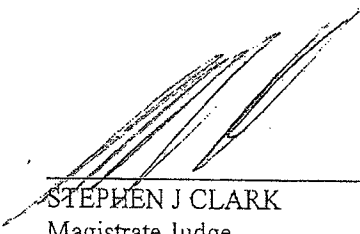
CONCLUSION

Both documents provided by the defense recognize that the concept of lenity requires the court to strictly construe criminal statutes against the state, State v. Martinez, 126 Idaho 801, 891 P. 2d 1061, (Ct of App 1995). There is no question that this is a criminal statute. As the court was considering this issue, it was put in mind of President Clinton's defense of, "it depends on what the definition of "is" is. Only in this profession would someone spend 4 pages dealing with the etymology and arcane definition of "premises" and "place". Be that as it may, the Court

concludes that a vehicle is neither a "premises" nor a "premises of any place". As a result the defendant cannot be "at" or "on" a "premises" or "premises of any place". Whether the defendant had knowledge that the controlled substances were being used, distributed, transported, or etc. is a jury question and would not provide a basis for dismissal.

Based upon the above the motion to suppress is GRANTED. The Court would encourage either party offended by this opinion to appeal the matter so that those more wise and learned can address the issue.

DATED this 30th day of July, 2014.



STEPHEN J CLARK
Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 30 day of July, 2014, a full, true and correct copy of the foregoing was personally delivered, by hand delivery or to the Courthouse Box, sent by facsimile or mailed by first class mail with prepaid postage as indicated below:

Tanner F. Crowther
Prosecutors Officer

Courthouse Box

John M. Ohman
Cox, Ohman & Brandstetter

Courthouse Box

Clerk of the District Court

By: _____
Deputy Clerk



OMBUDSMAN'S REPORT Complaint Investigation & Findings

OMB06/0028 - August 30, 2006

THE SITUATION

The Complainants in this case are Witness #1's parents. On September 7, 2005, two juveniles, Witness #1 and Witness #2, both students at School #1, left campus in Witness #2's car to have lunch. Witness #2 parked his car in a private parking lot of a business. Witness #3, an employee of the business, went to investigate and saw a bag of marijuana sitting on the seat. She contacted Officer #1 to report the possible controlled substance violation. While she and another employee waited for the police to arrive, they moved a different car in back of Witness #2's car to block it from exiting the parking space.

Officer #2 and Officer #3 were the first to arrive on the scene, followed by Officer #4. After brief questioning, Witness #2 admitted that the marijuana belonged to him and gave it to the officers. Officer #1 arrived a short time later and charged Witness #2 with the possession of marijuana. He also charged Witness #1 with the misdemeanor commonly referred to as "frequenting" for having knowingly been in the company of someone who was in possession of a controlled substance. After the boys left the scene, Officer #1, who still had his audio recorder on, questioned whether the frequenting charges applied, laughed, and described Witness #1 as a "lying little asshole." At the request of the State, a magistrate later dismissed the misdemeanor frequenting charge against Witness #1.

THE COMPLAINT

The Complainants are the parents of Witness #1. On September 7, 2005, Witness #1 and Witness #2 parked, without permission, in a private parking lot of a downtown business.

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Witness #3, an employee of the business, saw a baggie of marijuana on the seat of the car. She contacted the police; and four Boise Police officers detained Witness #1 and Witness #2. Witness #2 admitted that the marijuana belonged to him. Officer #1 charged Witness #2 with the possession of marijuana, and accused Witness #1 of having smoked marijuana with his friend. The Complainants state that Officer #1 spoke to Witness #1 in a belittling and unprofessional manner. They also state that Officer #1 filed a questionable "frequenting" charge against Witness #1. They feel that the charges were filed against Witness #1 in retaliation against him for having been, in the officer's words, a "little lying asshole" when he denied that he had used drugs. The Complainants filed a complaint with this office by hand-delivering a letter on February 28, 2006. The Complainants' allegations, if proven true, would be violations of the Boise Police Department's Policy § 11.03.02 Performance of Duty, § 11.01.07 Relationships with Others and Demeanor, and § 11.03.04 General Discharge of Duties.

THE COMPLAINT INVESTIGATION

The investigation into this complaint included a review of the dispatch records. It also included a review of the documents provided by the Complainants, including a transcript of Officer #1's audio recordings, Officer #1's report, the Petition charging Witness #1 with Frequenting, the Motion to Dismiss and supporting memorandum filed by the attorney for Witness #1, the Motion to Dismiss filed by the State, the Order to Dismiss signed by the court, a hand-drawn diagram by Officer #4, and an unsigned, undated letter from Witness #3. Four digital audio recordings made by officers during the incident were reviewed and analyzed for relevant evidence. Interviews of Officer #1, Officer #2, Officer #4, and Witness #1 were also conducted; and a conversation was held with an attorney in the prosecutorial agency that prosecuted, and ultimately dismissed, the frequenting charge.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on the preponderance of the evidence obtained and reviewed in the course of this investigation, I issued the following findings of fact.

1. Witness #1 and Witness #2 left School #1 to have lunch.
2. Witness #2 parked his car in the private parking lot of a business near the restaurant where Witness #1 and Witness #2 went to eat.
3. Witness #3 noted that the car did not belong in her employer's parking lot and went to investigate.
4. Witness #3 found a baggie of marijuana in plain view on the front seat of Witness #2's car and contacted the police.
5. Witness #3 and a co-worker blocked Witness #2's car from leaving the parking space.
6. While Witness #3 was waiting for the police to arrive, Witness #1 and Witness #2 returned from having lunch.
7. With Witness #3 still blocking the parking place in order to prevent Witness #1 and Witness #2 from leaving, Witness #1 opened the car door and removed the baggie of marijuana from the front seat, then walked toward a nearby dumpster and threw something in, which later turned out to be paper plates and pizza crusts.
8. Officer #2, Officer #3, and Officer #4 arrived at the scene and began conducting preliminary questioning of Witness #1 and Witness #2.
9. Witness #2 admitted he had marijuana and turned it over to Officer #2.
10. Witness #1 did not know that Witness #2 had marijuana in the car until they were already en route to the restaurant.
11. Officer #1 administered field sobriety tests to Witness #1 and concluded that Witness #1 was not under the influence of marijuana; however Officer #1 decided to charge Witness #1 with the misdemeanor frequenting a place where drugs were being held for use.
12. Officer #1 did not arrest Witness #1 and Witness #2 and allowed them to return to School #1.

13. After Witness #1 and Witness #2 had left, Officer #1 began discussing the matter with one of the other officers.
14. During the conversation, Officer #1 said that he thought the frequenting charges applied to Witness #1 and referred to Witness #1 as "a little lying asshole."
15. Officer #1 realized that his audio recorder was still on, laughed, and said that what he meant to say was that if Witness #1 was not being honest, he "should probably . . ." The tape then ends.
16. The State filed a Petition on December 19, 2005, charging Witness #1 with Frequenting, a misdemeanor, Idaho Code § 37-2732(d).
17. Witness #1 filed a Motion to Dismiss, accompanied by a supporting memorandum, on February 2, 2006.
18. The State also filed a Motion to Dismiss sometime in February 2006.
19. The State's Motion to Dismiss was based on the fact that Witness #1 claimed, and the State could not disprove, that he had no knowledge that the marijuana was present in the car at the time he got into the car.
20. The presiding magistrate granted one of the parties' motions and entered an Order to Dismiss.

OMBUDSMAN'S ANALYSIS AND FINDINGS

I. Performance of Duty.

A. The Frequenting Statute.

The Complainants' first claim is that Officer #1 pursued a questionable charge of frequenting against Witness #1. The Boise Police Department's policy (§ 11.03.02) Performance of Duty states, in relevant part:

An employee shall perform his/her duties in a manner which will maintain the highest standards of efficiency in carrying out the Department's functions and objectives. Satisfactory performance and competence is demonstrated by:

- *Adequate knowledge of the application of laws required to be enforced*

In this case, Officer #1 charged Witness #1 with the misdemeanor of frequenting as defined in Idaho Code § 37-2732(d):

It shall be unlawful for any person to be present at or on premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away. A violation of this section shall deem those persons guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars (\$300) and not more than ninety (90) days in the county jail, or both.

Idaho Code § 37-2732(d). The Complainants raise the question whether a charge of frequenting can be made against someone who is merely in the presence of a second person who is unlawfully in the possession of a controlled substance. In interviewing the officers involved, it became clear that there are key provisions of the statute that appear to be construed differently within the police department itself. Additional research indicates that law enforcement's interpretation of the statute may be inconsistent with the plain meaning of the statute.

B. The Statutory History.

Idaho Code § 37-2732 was originally enacted in 1971. IDAHO SESSION LAWS 1971, ch. 215, § 1 p. 939. The original statute included only subsections (a) through (c); it did not include subsection (d). The statute was amended in 1972 to add subsection (d); the original language of this subsection was:

It shall be unlawful for any person to knowingly frequent places where illegal controlled substances are being held for distribution, transportation, delivery, administration, use, or to be given away. A violation of this subsection shall deem those persons guilty of a petty misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) and not more than thirty (30) days in the county jail, or both.

IDAHO SESSION LAWS 1972, ch. 133, § 6 p. 261. Subsection (d) was amended that same year to delete the word, "knowingly," and substitute the phrase, "he knows," after the word "frequent." IDAHO SESSION LAWS 1972, ch. 409, § 1 p. 1195.

In 1977, the legislature modified subsection (d) to include the language present in the statute today. Senate Bill 1109 was introduced on February 2, 1977, and added subsection (f), which addressed a situation in which two or more persons conspired to commit any offense under the Uniform Controlled Substances Act. As noted in the minutes of the Senate Judiciary and Rules Committee, the purpose of the bill was to add the crime of conspiracy to sell drugs under the state's adoption of the Uniform Controlled Substances Act:

RS 1968 Controlled Substances, Conspiracy – prescribes offenses and penalties for conspiracy under the act. Senator Risch stated that this legislation provides for additional crime and penalty under the Uniform Controlled Substances Act applicable to those who conspire to sell or transport controlled substances.

Minutes of the Judiciary and Rules Committee, February 2, 1977, p.1. The Statement of Purpose for R.S. 1968, which was subsequently designated as Senate Bill 1109, explained:

This bill is an attempt to immobilize the top echelon financiers of drug trafficking by prescribing offenses and penalties for conspiracy under the Uniform Controlled Substance Act.

This bill is submitted at the request of the Idaho Department of Law Enforcement.

Statements of Purpose (1977), R.S. 1698, S.B. 1109.

While the Senate introduced a bill to create the crime of conspiracy under the Uniform Controlled Substances Act, the house introduced a separate bill, R.S. 1821, later designated House Bill 152, which amended the Uniform Controlled Substances Act in three respects. Its first proposed change, the one that is applicable to the present discussion, was to change the word, "frequenting," to the phrase "be present at or on the premises." The purpose of the change was to make the charge easier to prove; the minutes of the House Judiciary, Rules and Administration Committee state:

Mr. Hosack spoke in support of this bill [R.S. 1821, later designated House Bill 152], indicating that it was necessary to clear up some conflicts in the bill among other things. It would change the wording from "frequenting" a place where there is

marijuana to "be at or present". (sic). It is very difficult to prove "frequenting" but relatively easy to prove "at or present". (sic).

Minutes of the House Judiciary, Rules and Administration Committee, February 9, 1977, p.

1. The purpose of the proposed change was to make the law easier to enforce. Proving that someone is present a single time at a location is easier to prove than proving that someone is repeatedly or habitually present at a location. Lowering the threshold of activity that would result in criminal liability was clearly the object of the amendment. The changes House Bill 152 proposed eventually became the House Amendments to Senate Bill 1109, including the deletion of the word, "frequenting," and the insertion of the phrase, "be at or on the premises of any place." Senate Bill 1109, as amended by the House, was approved on March 30, 1977, and subsequently became law.

C. The Interpretation of the Term, "Premises of any Place."

The first question is what the term, "premises of any place," means as used in Idaho Code § 37-2732(d). The officers interpret the statute broadly, focusing on the object of the preposition, "any place." Officer #1, Officer #2, and Officer #3 all stated that a premises can be any place, including places open to the public, such as parks, as long as the person charged is in the company of a person who is in the possession of drugs, and that person knows that his or her companion has drugs. This interpretation implies that it is not only illegal to frequent a "place," it is illegal to frequent a "person."

Under this expansive interpretation, the concept of the "premises of any place" where drugs are known to be used or sold becomes peripatetic. Any location, including a street corner, a car, a parking lot, a restaurant, a public park, or any other place that a person has a legal right to be, has the potential to become an illegal venue, regardless of whether drugs are customarily known to be sold or used there or not. The place is a legal place to be, or not, depending on who is there. The only factor that determines the legality of a person's presence in that location is whether someone else in that location is in the possession of drugs and the person charged was aware of it.

A hypothetical example can help to illustrate the type of problem that can arise. If person "A" were attending a concert at a public concert house, and persons sitting near "A" began smoking marijuana cigarettes, under the interpretation put forward by the officer, "A" could be charged with frequenting. "A" probably paid for a ticket to enter the concert venue and would be disinclined to leave the concert simply because people in the vicinity were smoking marijuana. "A" may also find the marijuana smoke objectionable and disapprove of the activity. Nonetheless, under the interpretation put forth by the officers, "A" has a duty to leave the premises or risk being charged with frequenting. Under that interpretation, "A" does not have the right to remain in a place open to the public, even if "A" paid for the privilege of being there.

The above interpretation differs somewhat from the interpretation of Officer #5, who accompanied Officer #1 to the interview. Officer #5 conducts officer training; and he addresses the issue of frequenting in his training. Officer #5 has a more limited view of the meaning of "premises:" he explained that a person in a public venue, such as a park, would not be charged with frequenting. On the other hand, because a vehicle is a part of a person's domain, it is appropriate to charge someone with frequenting if the premises where the drugs are located is a vehicle.

In support of this interpretation, Officer #3 explained that many mobile methamphetamine labs are located in motor vehicles. The narcotics unit often uses the frequenting statute to charge persons who are in the vicinity of a vehicle where methamphetamine is being manufactured, even if those persons cannot be clearly tied to the manufacturing operation. Even though there is some variance between the officers' interpretation of the statute with respect to the question whether Idaho Code § 37-2732(d) applies to a public venue, there is no divergence in the interpretation of the statute when it comes to the question whether a "place" includes a vehicle. Clearly, according to the officers, a "place," for the purpose of Idaho Code § 37-2732(d), includes a vehicle.

The question whether the term, "premises," includes a person's vehicle was answered differently by the attorney who represented Witness #1. In his Memorandum in Support of Motion to Dismiss, the attorney argued that, in the applicable statute, Idaho Code § 37-2732(d), the term, "premises," does not include a vehicle:

In fact, the terms "premises" and "vehicle" are separate and distinct concepts. This point is evident throughout the Idaho Code where both of these terms are used frequently, but not interchangeably. Compare I.C. § 23-1001(g) (defining "premises" to include "the building and contiguous property" but not a motor vehicle.); and I.C. § 49-123(g) (defining "motor vehicle" to include "self-propelled" vehicles, but making no mention of premises, buildings or the like).

Had the legislature intended the statute to apply to motor vehicles, it would have said so. A search of the Idaho statutes utilizing the Westlaw database by the undersigned located 53 statutes where the Idaho legislature used the word "automobile," 970 statutes using "motor vehicle" and 1170 statutes which referred to "vehicle." Among these statutes is [Idaho Code § 37-2737A(2)] where the legislature expanded the common definition of "premises," in that statute only, to include motor vehicles:

As used *in this section*, premises means any:

- (a) motor vehicle or vessel;
- (b) dwelling or rental unit including, but not limited to, apartment, townhouse, condominium, mobile home, manufactured home, motel room or hotel room;
- (c) Dwelling house, its curtilage and any other outbuildings.

I.C. § 37-2737A(2) (emphasis added). [statute governing the manufacture or delivery of controlled substances where children are present].

Of course, no such expansive definition of premises is contained in the frequenting statute, Idaho Code § 37-2732(d), and no mention is made of the statute being applicable to motor vehicles. As the legislature has not specifically defined "premises" or "premises of any place" to include a motor vehicle, the ordinary definition applies which would exclude motor vehicles. To the extent this Court concludes that this statute is ambiguous, it must apply the doctrine of lenity and construe the statute in the favor of the accused. [*State v. Shanks*, 139 Idaho 152, 156, 75 P.3d 206, 210 (Ct. App. 203)].

Memorandum in Support of Motion to Dismiss, pp. 7-8. The legislature was able to define "premises" to include a motor vehicle when it wished to prohibit that manufacture or delivery of controlled substances in the presence of children. See Idaho Code § 37-

2737A(2). Idaho Code § 37-2737A(2) is in the same title and chapter as Idaho Code § 37-2732(d); yet the broader definition of "premises" is limited only to the application of Idaho Code § 37-2737A.

In analyzing this section, it is important to begin with the plain language of the statute. Generally, the words of a statute must be given their plain, usual, and ordinary meaning, and the statute must be construed as a whole. *See, e.g., State v. Hart*, 135 Idaho 827, 829, 25 P.3d 850 (2001). The statute states that it is "unlawful to be at or on the premises of any place" where illegal controlled substances are used, manufactured, or distributed. The prepositional phrase, "of any place" modifies the noun, "premises." Premises and place are not used in the disjunctive: the statute does not prohibit a person's presence at a premises or a place; it prohibits a person's presence on a premises.

Turning first to the meaning of the word, "place," it is noted that when used as a noun, the word, "place" has many meanings, including, for example, the indication of a particular passage or page in a book, such as to mark one's place; or the word "place" can mean the concept of position or standing, especially one of importance, such as to indicate a person's place in history. In the context of Idaho Code § 37-2732(d), the following definitions of "place" are applicable: "7. a residence; dwelling; house and grounds 8. a building or space devoted to a special purpose (a place of amusement). WEBSTER'S NEW WORLD DICTIONARY OF THE AMERICAN LANGUAGE (2nd college edition 1970), p. 1086-87. Looking at the plain language of the statute, the prepositional phrase, "of any place," means that premises is not limited to a house, but includes any residence, any building, and any space devoted to a special purpose, such as a business or an office. The phrase, "of any place," clarifies that the scope of the statute is not limited to a house or a residence, but includes a wide variety of fixed locations.

The statute prohibits a person's presence at or on the "premises of any place." The word "premises" is the focal point of the statutory prohibition. The Oxford English Dictionary defines "premises" as a "plural noun - a house or building, together with its land and

outbuildings, occupied by a business or considered in an official context.” The Merriam-Webster Online Dictionary defines “premises” as: “3 *plural* [from its being identified in the premises of the deed] a : a tract of land with the buildings thereon b : a building or part of a building usually with its appurtenances (as grounds).” Here again, the words used include the concept of a fixed location on a specific piece of ground. The plain, usual, and ordinary meaning of the word “premises” includes a permanent, fixed, stationary piece of land, and the buildings on that land. Looking at the plain meaning of the phrase, “premises of any place,” it means the buildings, outbuildings, and grounds of any fixed location, whether that location is a house, an apartment, a building, a business, a place of commerce, an office, or any other definite, permanent, established location. The “premises of any place” does not include a “mobile domain” such as a motor vehicle or a boat.

D. Knowledge of the Presence of Drugs.

All four of the officers in this case indicated that knowledge of drugs being present is a critical element of a charge for frequenting. This is substantiated by Idaho case law on the issue. In *State v. Crabb*, 107 Idaho 298, 688 P.2d 1203 ((1984), the defendant argued that even if a search warrant for his home was valid, the search of his person was not. He asked the trial court to suppress evidence that drugs were found on his person. The trial court denied the motion to suppress; and the Idaho Court of Appeals affirmed. The Court of Appeals noted that the law enforcement officers actually made two arrests, the first of which, an arrest for frequenting, was illegal. The officers made the first arrest when Crabb opened the door to the mobile home. The Court of Appeals stated:

As explained more fully below, there were actually two arrests. The first occurred before the police entered the mobile home. At that time, Crabb was told he was being arrested for “frequenting,” in reference to I.C. § 37-2732(d). This statute makes it a misdemeanor for a person to “frequent places where he knows illegal controlled substances are being held for distribution, transportation, delivery, administration, use, or to be given away.”

“A peace officer may . . . without a warrant, arrest a person: 1) For a public offense committed in his presence.” Idaho Code § 19-603. Therefore, the question is whether Crabb violated Idaho Code § 37-2732(d) in the presence

of the arresting officer. We cannot conclude that he did. The statute requires that a person "frequent a place where he *knows* illegal substances are being held for distribution," etc. (Emphasis added). The statute precludes the interpretation that a person violates the statute simply by his presence at a place where controlled substances are sold.

Crabb, 107 Idaho 298, 303. (Emphasis added). As discussed at length above, the legislature revised Idaho Code § 37-2732(d) to eliminate the requirement that the person be "frequenting" a place. While the revised statute makes a person's mere presence on a premises a criminal act, the requirement of knowledge remains the same. Presence must be coupled with knowledge. In *Crabb*, the Court of Appeals reasoned that the officers did not have reason to suspect that Crabb knew, at the time of the first arrest, that illegal substances were being held at that premises. The holding in *Crabb* underscores the fact that actual knowledge of the presence of illegal drugs is an element of the crime.

Knowledge of the presence of illegal drugs can become a critical issue. In this case, the question of when Witness #1 had knowledge that drugs were present becomes problematic. Witness #1 stated that he knew Witness #2 had marijuana at his home; however he did not know that Witness #2 had marijuana in his car until the car was moving and they were en route to lunch. The importance of knowledge of the presence of drugs is further illustrated by the prosecutorial agency's decision to dismiss the case. Witness #1 claimed, and the State could not disprove, that Witness #1 did not know that drugs were present when he entered the vehicle. Moreover, Witness #1 did not re-enter the vehicle after the marijuana was discovered.

At one point, Witness #1 asked one of the officers whether the law required him to jump out of the car as soon as he knew his friend had drugs. This question illustrates the problem of considering a vehicle, particularly a moving vehicle, to be "a premises of any place." Assuming that the officers' interpretation is correct, and that Idaho Code § 37-2732(d) places a duty on a person to leave the company of anyone known to be in the possession of drugs, it must be conceded that leaving a moving vehicle can be difficult.

Even if the car has stopped moving, it is questionable whether the law should require that a juvenile become abandoned somewhere without transportation because the person with whom the juvenile was riding turns out to be in the possession of drugs. Even assuming that a vehicle is a "premises," where there is no indication that Witness.#1 entered the car with knowledge of the presence of drugs, a legitimate question arises as to whether his subsequent presence in the car is sufficient to trigger criminal liability under Idaho Code § 37-2732(d). The prosecutorial agency apparently determined that it did not.

D. Conclusion.

Officer #1's interpretation of Idaho Code § 37-2732(d) is similar to other members of the department in terms of the statute's application to vehicles. The preponderance of the evidence indicates that it has been the long-time practice of the officers in the Boise Police Department to interpret Idaho Code § 37-2732(d) to include vehicles. In addition, some officers read the word, "premises," even more broadly to include, not only a vehicle, but any location, public or private. Looking at the statute through the lens of police department use and practice, Officer #1's interpretation of the statute appears to be a well-accepted departmental interpretation that is consistent with the training provided by other members of the department.

Officer #1 applied the statute in a manner consistent with department training and practice. His application of the law appears to be a department-wide interpretation; it was not a questionable interpretation by a single officer. The plain reading of the term, "the premises of any place," is that it applies to a fixed location only. The term "premises" does not include a motor vehicle that is being used as a means of transportation. Officer #1 applied the law in the manner consistent with department training and consistent with the department's understanding of the statute. Because this is a training issue, I conclude that there is no policy violation and that Officer #1 should be exonerated.

II. Performance of Duty and Impartial and Objective Discharge of Duties.

A. Use of Profanity.

The last two issues in this case revolve around Officer #1's statement referring to Witness #1 as a "lying little asshole." The statement was made to one of the other officers at the scene after Witness #1 and Witness #2 had left the scene. Officer #1's actions following his discovery that his audiotape was still running indicate that he was aware that the statement was objectionable. He laughed and then stated loudly into the audio recorder, "What I meant to say was if he was not being honest I should probably [recording ends]."

The Boise Police Department's policy (§ 11.01.07) Relationships with Others and Demeanor states:

An employee shall treat all other persons in a civil and respectful manner. He/she shall not use profanity or uncomplimentary speech in the presence of members of the public, prisoners, or other persons he/she has contact with nor shall he/she intentionally antagonize any person.

This policy applies to police conduct with respect to "members of the public, prisoners, or other persons [the officer] has contact with." (Emphasis added). Though the thrust of this policy section is to prohibit the use of profanity when an officer is engaged with civilians, as written, this policy section could be seen as extending the prohibition to include contact with colleagues as well as with members of the public. However, this policy section has not been interpreted to have this meaning; nor has it been applied in such a manner.

The present case illustrates the potential negative consequences when a professional law enforcement officer uses vulgar, derogatory language with reference to a member of the public even when the comment is made outside the presence of the public. Though the comment was made to a colleague who apparently did not find the language objectionable, it was recorded. The recording was transcribed and eventually relayed not only to Witness #1,

but also his parents, Witness #1's defense lawyer, and the prosecutor. According to Officer #1, the prosecutor agreed to dismiss the case because the comment had been recorded. While the Prosecutor's Office explained that the case was dismissed because the State could not disprove Witness #1's story, it would be unfortunate to have an officer's use of profanity detract in any way from the prosecution of a criminal charge.

Boise Police Department Policy prohibits the use of profanity. Though the policy is directed toward maintaining professional relations between officers and the public, the fact that the policy is not interpreted to include interactions with colleagues does not mean that the use of offensive language is acceptable anytime the public is out of earshot. The policy should not be seen as unintentionally encouraging officers to use language that might be vulgar or distasteful. The use of unprofessional language can have consequences even where it is not spoken directly to the public. In this case, the prosecutorial agency chose to dismiss the case on the basis of its inability to prove beyond a reasonable doubt that Witness #1 had knowledge that drugs were present; but Officer #1's understanding of the situation was that his recorded comment may have contributed to the decision. It would be unfortunate if a police officer's choice of language detracted from the prosecution of a criminal case.

Officer #1 used profanity, but did not do so in the presence of a member of the public. For the reasons set forth above, I conclude find that Officer #1 did not violate Boise Police Department's policy (§ 11.01.07) Relationships with Others and Demeanor and that the charge is unfounded.

B. Lack of Objectivity and Impartiality.

The Complainants allege that Officer #1's use of derogatory and objectionable language to describe a juvenile also call into question his objectivity and impartiality. For this reason, his statement must be evaluated under the Boise Police Department's policy (§ 11.03.04) Performance of Duty, which states:

An employee shall perform his/her duties in an objective, impartial, and firm manner. He/she shall act with other employees to assist and protect each other in the maintenance of law and order.

According to the Complainants, Officer #1's use of a derogatory term, combined with a statement that Witness #1 was lying, raise a concern that Officer #1 filed a questionable charge against Witness #1 in retaliation for Witness #1's perceived behavior.

Officer #1 stated in his interview that he had known Witness #1 at school, and believed that he knew him by name. Witness #1 confirmed that he had had prior contact with Officer #1 in the context of school activities. Officer #1 had not called Witness #1 into his office for law enforcement reasons. These facts indicate that there was no pre-existing lack of objectivity.

Officer #1 performed field sobriety tests on Witness #1. These tests did not yield facts indicating that Witness #1 was under the influence; however, Officer #1 noted that Witness #1 had "a hell of a eye-flutter." For this reason, Officer #1 believed that Witness #1 was not being truthful about either having smoked marijuana or having been present when Witness #2 was smoking marijuana. Though Officer #1 made an unfortunate word choice in expressing his doubts regarding Witness #1's truthfulness, his concerns regarding Witness #1's honesty were genuine and based on results he obtained as a result of legitimately performed field tests.

In addition, as was discussed above, the charge of frequenting appears to have been made within the parameters of accepted departmental practice. Officer #1's law enforcement decisions were not arbitrary or capricious. His judgments, however poorly worded, were based on the facts that he gathered throughout the course of the incident. His decision to charge Witness #1 with frequenting was based on an interpretation of the law that is accepted by other officers in the department. For these reasons, even though the officers' reading of the frequenting statute may be stretched beyond the plain meaning of the actual wording of

the statute, and even though Officer #1 chose to express his opinion about Witness #1's veracity in less than professional terms, the underlying opinion and the decision to file a criminal charge do not evidence a lack of impartiality or objectivity.

POLICY FINDINGS

Officer #1:

P.M. § 11.03.02 – Performance of Duty – Based on a preponderance of the evidence, a finding of exonerated is recommended.

P.M. § 11.01.07 – Relationships with Others and Demeanor – Based on the preponderance of the evidence, a finding of unfounded is recommended.

P.M. § 11.03.04 – General Discharge of Duties – Based on a preponderance of the evidence, a finding of exonerated is recommended.

POLICY AND TRAINING REVIEW

It is recommended that the department obtain a legal review of the interpretation of Idaho Code § 37-2732(d) and that the statute be applied in a manner consistent with that review. It is noted that there are some variations in interpretation of the statute from one officer to another. For this reason, it is also recommended that officer training address the issue in order to effect a consistent, department-wide application of the statute.




Pierce Murphy
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CASE NO. CR-2017-230

2017 APR 24 AM 10:54

CLERK OF DISTRICT COURT
LATAH COUNTY

BY  DEPUTY

ERIN E. TOMLIN
PROSECUTING ATTORNEY
CITY OF MOSCOW
PO Box 9203
Moscow, Idaho 83843-0568
Phone: (208) 883-7000
ISB No. 9035

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
Plaintiff,)
vs.)
DANIEL AMSTAD,)
Defendant.)
_____)

Case No. CR-2017-0230
SUPPLEMENTAL RESPONSE TO
DEFENDANT'S REQUEST FOR
DISCOVERY

COMES NOW the Plaintiff and submits the following Supplemental Response to the
Request for Discovery:

Additional reports relevant to the issues in the above-referenced matter and
intended to be introduced or the subject of witness testimony are as follows:

- 1/30/17 17-M01054
- 10/23/16 16-M09449
- 10/22/16 16-M09425
- 8/29/16 16-M07532
- 4/2/16 16-M02799
- 2/6/16 16-M01106

 ORIGINAL 000056

Witnesses subpoenaed by the State are:

1. Officer Joe Sieverding, MPD
2. Christopher A. Hughes
3. Noah A. Sharp

Pursuant to Rule 16 of the Idaho Criminal Rules, if the Prosecutor discovers additional evidence or the evidence of an additional witness or witnesses, or decides to use additional evidence, witness or witnesses, such evidence shall automatically be subject to discovery and inspection.

DATED this 24th day of April, 2017.



Erin E. Tomlin
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the Plaintiff's Supplemental Discovery

Response were served on the following in the manner indicated below:

Andrea Hunter
Attorney for Defendant
Courthouse Mail
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery


Dated this 24 day of April, 2017

AW

CASE NO. CR-2017-230

2017 APR 24 PM 4:02

CLERK OF DISTRICT COURT
LATAH COUNTY

BY  DEPUTY

CITY OF MOSCOW
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ISB No. 9035

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,)	
	)	Case No. CR-2017-0230
V.)	
	)	RESPONSE TO
	)	DEFENDANT'S MOTION
DANIEL C. AMSTAD,	)	TO DISMISS
Defendant.)	
_____)	

The State of Idaho, by and through Erin Tomlin, City of Moscow Prosecuting Attorney, and Legal Intern, Scott T. Ugelstad, submits its response to the Defendant's Motion to Dismiss.

FACTS

On January 30, 2017, at approximately 10:40 pm, Officer Joe Sieverding noticed a Honda Accord with fogged windows parked in the west Wallace Complex parking lot. This lot, located across the street from the Wallace Complex dorms, has been the location of a number of drug related incidents involving Officer Sieverding alone. Sieverding

approached the car on foot and, as he got closer, he smelled a strong odor of marijuana coming from the Honda. The vehicle was not running and, seeing three males inside, he walked up and knocked on the passenger window. As Daniel Amstad, the Defendant, opened the passenger door, Sieverding could see the driver, CH, hide a plastic baggie under his seat. CH also had what appeared to be marijuana residue spilled on his lap. Sieverding, who noticed the baggie, asked CH where the marijuana was and CH handed him a small sandwich bag from under the seat containing about 16.8g of marijuana. Sieverding then asked what they used to smoke the marijuana with and CH handed him a large glass bong from the back seat.

Sieverding then asked the occupants to step outside of the vehicle while he conducted a search. The search resulted in the discovery of one gallon sized Ziploc bag with approximately 46.5g of marijuana in the trunk and other various paraphernalia throughout the vehicle. Before the search ended, CH also pulled an AMS digital scale from his pocket and handed it to a covering officer. Sieverding asked CH if he was selling marijuana. CH said no but he lets people use his Honda to smoke marijuana. The passenger from the back seat, Noah Sharp, said that they walked from the dorms to smoke marijuana in CH's car. Sieverding then cited Amstad and Sharp with frequenting pursuant to I.C. § 37-2732(d) and told CH, a juvenile, that he would be forwarding possession of marijuana charges to the Latah County Prosecutor's Office.

The Defendant moves to dismiss, claiming I.C. § 37-2732(d) does not apply to occupants in a vehicle. The State responds, and respectfully requests this Court to deny the Defendant's Motion to Dismiss.

LAW AND ARGUMENT

Amstad violated I.C. § 37-2732(d) because by walking from the dorms to a car in a nearby parking lot for the purpose of smoking marijuana, he was present at a place where he knew illegal controlled substances were being held for use, delivery, or to be given away. The question presented to this Court is whether a person can be "present at or on the premises of any place" if they are in a vehicle. Because there is no controlling case law on this issue, Defendant has attached two magistrate court's decisions on pre-trial motions and an Ombudsman's Report for insight. Although these opinions address a similar issue, all three present vastly different factual scenarios than the one we are faced with here.

A car used for travelling is not a "place" as defined in I.C. § 37-2732(d). In all three scenarios the Defendant provided, the individual charged with violating § 37-2732(d) was in a car used for travelling. *See Traveller* (officer saw the vehicle pull into a parking lot); *Reid* (defendant knew there were controlled substances in the vehicle in which she was travelling); Ombudsman's Report (students left school, parked in a private lot, and walked to get lunch). The significance of using a car to travel is further supported by the emphasis all three opinions place on "a fixed location" when defining a "place" or "premises."

Here, the stationary Honda in the Wallace complex parking lot was not used for traveling, but for smoking marijuana. Unlike the vehicles in the three opinions that were used for travelling, CH's Honda was in a fixed position, parked, stationary, and not even running. Not only did CH admit that he lets his friends use his car for smoking marijuana, Sharp, the passenger in the backseat, stated that they walked from the dorms to the car to smoke marijuana. Based on these facts, the Honda was not used for travel, but as a place that the three friends walked to for the purpose of smoking marijuana.

In addition to the cars being used for travel, none of the three scenarios presented any indication that the drugs were going to be anything more than present in the vehicles. In fact, in *Traveller* and the Ombudsman's Report, the vehicles were unoccupied when the marijuana was spotted. Also, of the few facts stated in *Reid*, there was no indication that the drugs were anything other than merely present in the travelling vehicle. Here, however, there is ample evidence that Amstad and/or his friends intended to smoke the marijuana in the Honda. Not only do we have the admissions that the car is used for smoking and that the three walked from their dorms to the car to smoke marijuana, there is physical evidence to corroborate those statements. Green marijuana residue was spilled over CH's lap, a baggie of marijuana was under the driver's seat, and CH indicated they were going to use a large glass bong in the backseat to smoke it.

The Ombudsman's Report expressed concern that an expansive interpretation of the statute could cause people to become "trapped." The Report posed the following hypothetical:

If person 'A' were attending a concert at a public concert house, and persons sitting near 'A' began smoking marijuana cigarettes, under the interpretation put forward by the officer, 'A' could be charged with frequenting. 'A' probably paid for a ticket to enter the concert venue and would be disinclined to leave the concert simply because people in the vicinity were smoking marijuana. 'A' may also find the marijuana smoke objectionable and disapprove of the activity. Nonetheless, under the interpretation put forth by the officers, "A" has a duty to leave the premises or risk being charged with frequenting. Under that interpretation, 'A' does not have the right to remain in a place open to the public, even if 'A' paid for the privilege of being there."

Also, the Report indicated that people travelling in cars were considered trapped as well. The Report stated, "At one point, Witness #1 asked one of the officers whether the law required him to jump out of the car as soon as he knew his friend had drugs. This question illustrates the problem of considering a vehicle, particular a moving vehicle, to be 'a premises of any place.'"

Although this is a valid concern to raise, it does not apply to the facts presented here. Neither Amstad nor any of his friends were trapped in the Honda. Unlike person 'A' in the hypothetical who paid to enter a venue and was unaware, possibly objectionable, to the use of marijuana, Amstad was well aware that CH's Honda was going to be used for smoking marijuana. Even if, *arguendo*, he was unaware until after he

entered the car, he was free to leave after his discovery and walk back to his dorm. Instead, he chose to stay and was in no way "trapped."

Because of these key fact distinctions, the decisions of the Defendant's attached opinions should be of little to no persuasion in this case.

Although plain meaning and the rule of lenity are routinely used to interpret a statute, if that interpretation yields absurd results, it is no longer the most reasonable interpretation. *See e.g., United States v. Brown*, 333 U.S. 18, 27 (1948) ("No rule of construction necessitates our acceptance of an interpretation resulting in patently absurd consequences.").

Where the literal reading of a statutory term would "compel an odd result," *Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 509, 109 S.Ct. 1981, 1984, 104 L.Ed.2d 557 (1989), we must search for other evidence of congressional intent to lend the term its proper scope. *See also, e.g., Church of the Holy Trinity, supra*, 143 U.S., at 472, 12 S.Ct., at 516; *FDIC v. Philadelphia Gear Corp.*, 476 U.S. 426, 432, 106 S.Ct. 1931, 1935, 90 L.Ed.2d 428 (1986).

Pub. Citizen v. U.S. Dep't of Justice, 491 U.S. 440, 454 (1989).

Interpreting I.C. § 37-2732(d) to not include CH's Honda as a "place" would lead to absurd results. If CH's Honda is not considered a "place" on these facts, then no car could ever be considered a place under this statute. If this happened, it would create a loophole sanctuary for not only students, but everyone with access to a car. Under Defendant's proposed interpretation, anyone, especially students, could get a group of people, walk to their car, use any drug, and be immune from I.C. § 37-2732(d). Instead of gathering inside a building and risking a violation, people could take a couple steps

outside to their car and be protected from the statute because it is not a "place." It is true that occupants could be charged with other crimes such as possession. However, if one occupant claims ownership to everything (as is the case here), the other occupants would likely be free to go, even if they partook in using the drugs as well.

Defendant's interpretation would also lead to absurd results because it would not apply to mobile homes, trailers, or RVs. Under Defendant's proposed interpretation, mobile homes, trailers, or RVs would not be considered a "premises" or "place" because they are vehicles. It requires little to no explanation why it would be absurd to exclude say, a mobile meth lab, from the definition of "place."

In addition to absurdity, courts can also consider potential consequences and effects when construing criminal statutes. *State v. Yager*, 139 Idaho 680, 690 (2004) ("In construing criminal statutes, courts are free to consider effect and consequence of differing and available constructions of a statute."). Right now, as enforcement includes cars such as CH's Honda, students in dorms walk to their cars to smoke marijuana because it is difficult to conceal in their rooms. Under Defendant's proposed construction of the statute, students will be immune from I.C. § 37-2732(d) if they just simply walk to their cars. This creates even more incentive to smoke marijuana in their cars.


Not only will the increased activity in the parking lots lead to more drug use and law violations such as possession, it would create a major risk to society as well. The more students that feel free to smoke marijuana in their cars without fear of I.C. § 37-2732(d),

the more students who will be behind a wheel. With the convenience of already being behind the wheel, there would be little stopping them from driving away while possibly under the influence. This interpretation would essentially incentivize students to be behind a wheel while under the influence and increase the likelihood of those students driving.

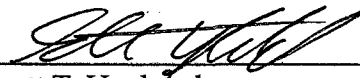
For these reasons, Defendant's proposed interpretation would lead to an absurd result and not what the legislature intended.

For the foregoing reasons, the State respectfully requests that this Court deny the Defendant's Motion to Dismiss.

RESPECTFULLY SUBMITTED this 24th day of April, 2017.



Erin Tomlin
Prosecuting Attorney



Scott T. Ugelstad
Legal Intern

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing RESPONSE TO
DEFENDANT'S MOTION TO DISMISS was

mailed, United States mail, postage prepaid

hand delivered

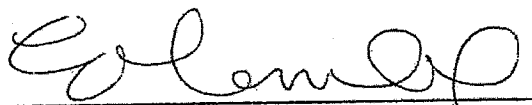
sent by facsimile, original by mail

emailed

to the following:

D. RAY BARKER LAW OFFICE
Andrea Hunter, ISB# 9515
Attorney at Law
P.O. Box 9408
Moscow, ID 83843-0118
Tel: (208) 882-6749

Dated this 25th day of April, 2017.



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

Title of Action St. vs. Daniel C. Amstad Judge J. Judge
Type of Hearing MOTION TO DISMISS Clerk M. WESTERMAN
Attorney for Plf. Cott Ugelstad - Intern, sitting in for Recording Z:01/2017-4-27
Erin Tomlin
Attorney for Def. Amira Hunter, sitting in for Ray Barker, Case No. CR17-230
public defender, present with the defendant
Others Present Joe Steverding - MPD, Erin Tomlin Date 4-27-17
Time 3:11 pm

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

Court makes statements regarding legislative history.

Court notes all those who are present.

(315) Court in recess at 3:15 pm

(317) Court reconvenes at 3:17 pm with all those present as previously stated.

(317) Joe Steverding is called, sworn and testified for the state.

Upon the court's inquiry, Mr. Ugelstad responded to the court. Mr. Ugelstad continued direct examination of the witness.

(324) Ms. Hunter conducted cross examination of the witness.

Mr. Ugelstad had nothing further and the witness stepped down.

(326) State rests.

Ms. Hunter states the defense has no witnesses to call.

(326) Mr. Ugelstad presents argument.

000008

St. vs. Amstad
J. Judge

RECORD OF COURT PROCEEDINGS

PAGE 2

RECORDING #Z:01/2017-4-27

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

The Court makes statements regarding the language of the statute.

Mr. Ugelstad continues presenting arguments in opposition to Ms. Hunter's motion.

(330) Ms. Hunter makes argument in support of the defendant's motion.

The Court makes statements regarding the legislative history and language.

Ms. Hunter continues presenting argument.

Ms. Tomlin makes statements to the court regarding this statute being appealed. The court responds.

Ms. Hunter continues argument.

Mr. Ugelstad presents rebuttal argument.

(359) Ms. Tomlin makes argument in support of Mr. Ugelstad's argument.

(4:04) Ms. Hunter argues in rebuttal.

(4:01) Court articulated findings into the record and grant's the defendant's motion to dismiss.

(4:20) Court in recess at 4:20 pm

ST vs. Amstad
J. Judge

RECORD OF COURT PROCEEDINGS

PAGE 3

RECORDING # 2:01/2017-4-27

BE IT KNOWN THAT THE FOLLOWING PROCEEDINGS WERE HAD, TO WIT:

(428) Court recommenced at 4:28 pm with all those present as before.

Ms. Turner will prepare an order granting the defendant's motion to dismiss and dismissing this case.

(428) Court in recess at 4:28 pm

PAGE # 1

RECORD OF COURT PROCEEDINGS

CASE NUMBER# OR-2017-230 \$ vs. Daniel Amstutz

=====

EXHIBITS

[Lined area for exhibits]

WITNESSES

PLAINTIFF - STATE

DEFENDANT

317 Joe Severding

CASE NO. CR 2017-230

2017 APR 28 PM 4:44

CLERK OF DISTRICT COURT
LATAH COUNTY

IN THE DISRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE

BY [Signature] DEPUTY

STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,) Case No. CR-2017-230

Plaintiff,)
ORDER DISMISSING CASE

vs.)

DANIEL AMSTAD,)

Defendant.)

Based on the findings and conclusions announced in open court;

IT IS HEREBY ORDERED that the Defendant's Motion to Dismiss is GRANTED, and
this case is DISMISSED.

Dated this 28th day of April, 2017, nunc pro tunc to April 27, 2017.

[Signature]
John C. Judge
Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28 day of April, 2017, a true and correct copy of the foregoing document was served, by first class mail, postage prepaid, and addressed to, or by personally delivering to or leaving with a person in charge of the office of or serving by facsimile:

Latah County Prosecuting Attorney
Latah County Courthouse
522 S. Adams St.
Moscow, Idaho 83843

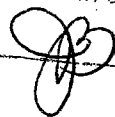
First-class mail
 Hand-delivered
 Facsimile

Andrea Hunter
Attorney at Law
P.O. Box 9408
Moscow, Idaho 83843

First-class mail
 Hand-delivered
 Facsimile

By: Betschart
Deputy Clerk

LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR.
PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843-0568
Phone: (208) 883-2246
ISB No. 2613

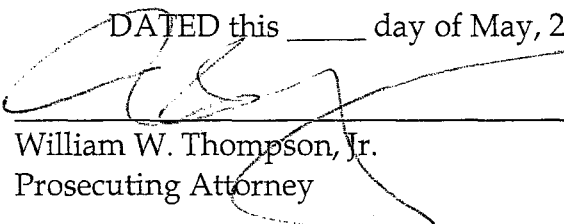
CASE NO. CR-2017-230
2017 MAY -5 PM 3:42
CLERK OF DISTRICT COURT
LATAH COUNTY
BY  DEPUTY

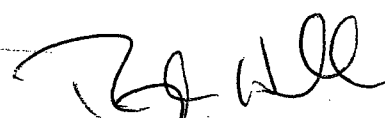
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
Plaintiff,	)	Case No. CR-2017-230
)	
V.	)	NOTICE OF SUBSTITUTION
	)	OF ATTORNEY
DANIEL C. AMSTAD,)	
Defendant.)	
_____)	

COME NOW the Moscow City Attorney and the Latah County Prosecutor and hereby stipulate that the Latah County Prosecutor's Office is substituted for the Moscow City Attorney's Office and shall henceforth represent the Plaintiff as the attorney of record in the above-entitled action.

THEREFORE, YOU ARE HEREBY NOTIFIED that all papers and documents in said action are to be served on the Latah County Prosecutor's Office, P.O. Box 8068, Moscow, Idaho 83843.

DATED this _____ day of May, 2017.

William W. Thompson, Jr.
Prosecuting Attorney


Rod Hall
Moscow City Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the NOTICE OF SUBSTITUTION OF ATTORNEY were served on the following in the manner indicated below:

Andrea Hunter
Attorney at Law
P.O. Box 9408
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Rod Hall
Moscow City Attorney
P.O. Box 9203
Moscow, ID 83843

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Dated this 5th day of May, 2017.

A handwritten signature in black ink, appearing to read "Jacra", written over a horizontal line.

CR 2017-230

CASH NO.

2017 MAY 10 AM 9:36

LATAH COUNTY PROSECUTOR'S OFFICE
KEITH SCHOLL
DEPUTY PROSECUTING ATTORNEY
Latah County Courthouse
P.O. Box 8068
Moscow, Idaho 83843
(208) 883-2246
ISB No. 10062

CLERK OF DISTRICT COURT
LATAH COUNTY
BY EM DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
Plaintiff,)
V.)
DANIEL C. AMSTAD,)
Defendant.)
_____)

Case No. CR-2017-0000230

NOTICE OF APPEAL

The State of Idaho, by and through Latah County Deputy Prosecuting Attorney, Keith Scholl, submit this Notice of Appeal and hereby appeals the Magistrate Judge's Order Dismissing Case. This notice of appeal is made pursuant to Idaho Criminal Rule 54.1(c).

Pursuant to Idaho Criminal Rule 54.4, the State provides the following information:

- (a) The title of the action or proceeding is State of Idaho versus Daniel C. Amstad.
- (b) The title of the court which heard the proceedings appealed from is the Magistrate

Division of the District Court of the Second Judicial District in and for the County of Latah, and the presiding magistrate was the Honorable John C. Judge.

- (c) The number assigned to the action of proceedings by the trial court is Latah County Case

No. CR-2017-0000230

(d) The title of the court to which this appeal is taken is the District Court of the Second Judicial District, in and for the County of Latah.

(e) The date of the judgment, decision or order from which the appeal is taken is April 28, 2017 as evidenced by the filing stamp of the clerk of the court. The hearing and oral pronouncement occurred on April 27, 2017. The heading is "Order Dismissing Case."


(f) The appeal is taken upon matters of fact and law.

(g) The testimony and proceedings in the original hearing were recorded by audiotape, which is in the possession of the Clerk of the District Court of Latah County.

(h) A certificate that the notice of appeal has been served personally or by mailing upon the opposing party's attorney is attached to this notice.

(i) The State intends to assert in the appeal that the Magistrate Judge erred in his interpretation of Idaho Code 37-2732(d). In particular, the Magistrate erred by holding that a parking lot belonging to the University of Idaho where Defendant is alleged to have violated the statute does not come within the purview of the statute.

DATED this 10th day of May, 2017.



Keith Scholl
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing Notice of Appeal
was

mailed, United States mail, postage prepaid

hand delivered

sent by facsimile, original by mail

to the following:

Hon. John R. Stegner
Latah County Courthouse
Moscow, ID 83843

Andrea Hunter
D. Ray Barker Law Office
Courthouse Mail
522 S. Adams St.
Moscow, ID 83843

Dated this 10th day of May, 2017.



CASE NO.

CR 2017-230

June 8 2017 8:00 AM

CLERK OF DISTRICT COURT
LATAH COUNTY

BY

[Signature]

DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiff,

vs.

DANIEL C. AMSTAD,

Defendant.)

CASE NO. CR-2017-230

TRANSCRIPT OF HEARING OF MOTION TO DISMISS

BEFORE THE
HONORABLE JOHN C. JUDGE
MAGISTRATE JUDGE

DATE: April 27, 2017

TIME: 3:11 P.M.

ORIGINAL

000079

APPEARANCES

FOR THE STATE:

SCOTT UGELSTAD, INTERN WITH
LATAH COUNTY PROSECUTOR
ERIN TOMLIN, CITY PROSECUTOR
SUPERVISING ATTORNEY
MOSCOW, ID 83843

FOR THE DEFENDANT:

ANDREA HUNTER, APPEARING FOR
D. RAY BARKER, PUBLIC DEFENDER
MOSCOW, ID 83843

WITNESSES

FOR THE STATE:

JOSEPH SIEVERDING

Direct examination by Mr. Ugelstad 9
Cross examination by Ms. Hunter 16

1 MOSCOW, IDAHO, THURSDAY, APRIL 27, 2017, AT 3:11 P.M.

2
3 THE COURT: Good afternoon, everybody. Uhm,
4 just let me explain my momentary delay here. One of the
5 reasons is I-- I got an email, uhm,-- and I'm just
6 sharing this because it's relevant to the case because I
7 made an inquiry about legislative history; whether or
8 not it's relevant or not, I don't know. I mean, I'll
9 hear-- hear argument, but I guess the-- the good news
10 or the bad news, depending on how you want to look at
11 it, is there really isn't significant legislative
12 history on this, you know, to guide our-- our, uh,--
13 our inquiry. But I wanted to let you know that and
14 maybe we'll be talking about legislative history and
15 maybe we won't, but I did want to tell you that.

16 So, uh, we are on the record in Daniel Amstad,
17 C-R-- is it Amstad, is that right?

18 THE DEFENDANT: That is--

19 THE COURT: Correct pronounci--

20 THE DEFENDANT: -- the traditional way to
21 pronounce it.

22 THE COURT: How do you pronounce it?

23 THE DEFENDANT: Uhm, Amstad.

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THE COURT: Amstad, okay.

THE DEFENDANT: Correct.

THE COURT: Okay. I'll pronounce it that way,
Amstad.

Okay. Mr. Amstad is here, represented by Ms.
Hunter. Mr. Ugelstad is here representing the State,
Latah County Prosecutor's Office. With him is Officer
Sieverding.

MR. UGELSTAD: Uh, Your Honor, it's City of
Moscow.

THE COURT: City of Moscow, I apologize. What
did I say? Oh, you're representing the City of Moscow?

MR. UGELSTAD: Yes, Your Honor.

THE COURT: Okay. You're sitting in for Ms.
Tomlin?

MR. UGELSTAD: Yes.

THE COURT: Okay. Great. I'm always-- I'm
always saying that the prosecutors are no longer
fungible, but I guess maybe there is some-- some of
that going on. So, uhm,-- so, is it my understanding
we're just having-- having a legal argument about the--
about the application of this statute, is that right?
But you have Officer Sieverding here from Moscow Police
Department; is he here to testify?

MR. UGELSTAD: Just in case, Your Honor. We--

1 we haven't actually hashed that out yet, so-

2 THE COURT: Just in case. Okay.

3 MS. HUNTER: I think we're going to stipulate
4 to some facts and he didn't know if I was going to
5 stipulate to some facts, and so, I mean, in-- for the
6 purpose of arguing the motion. And, so, uhm, he want--
7 wanted to-- I mean, he didn't know if I was going to so
8 he brought--

9 THE COURT: Okay. So, what are we doing? Are
10 we stipulating to facts or do you want to just establish
11 a factual record?

12 MS. HUNTER: We don't-- I mean, I-- I'm
13 going to stop speaking for him.

14 Go ahead.

15 MR. UGELSTAD: Well, I was going to say, could
16 we have a moment so we could decide--

17 THE COURT: Sure.

18 MR. UGELSTAD: -- uhm, which--

19 THE COURT: Yeah.

20 MR. UGELSTAD: Alright.

21 THE COURT: I mean, I-- I want to-- before--
22 that you have your-- your con-- conversation, but, I
23 mean, you want to have some factual record here because,
24 either way, I mean, this-- this is, uh, definitely
25 subject to appeal. I think there's-- I mean, as-- as

1 you know, I mean, there have been different applications
2 of this statute. It's-- it's kind of mutated, uh,
3 through a-- a few revisions, uhm, and it's, uhm,--
4 it's got some issues. So, uh,-- and, so, I think, uh,
5 we'll likely, one way or the other, get some
6 clarification no matter what I decide from either the
7 Court or the legislature. So, go ahead and-- do you
8 want me to-- do you want me to go off the record for a
9 minute?

10 MS. HUNTER: Sure.

11 MR. UGELSTAD: Sure, yeah.

12 THE COURT: Okay. Just go off the record and
13 talk about what we want to talk about.

14 MR. UGELSTAD: Thank you.

15
16 [WHEREUPON THE HEARING WAS RECESSED AT 3:15
17 P.M., RECONVENING AT 3:17 P.M., COURT, COUNSEL AND THE
18 DEFENDANT BEING PERSONALLY PRESENT AS BEFORE.]

19
20 MR. UGELSTAD: The State calls Officer
21 Sieverding to the stand.

22 THE COURT: Okay. Officer Sieverding, step on
23 up please.

24 MS. HUNTER: I don't think we're on the
25 record.

1 THE COURT: Yes, we are. That's what that--
2 those numbers are.
3 MS. HUNTER: Oh, okay.
4 THE COURT: Okay.
5 MS. HUNTER: Sorry.
6 THE COURT: Yeah, thank you.
7 MS. HUNTER: I just thought you went off, so I
8 for--
9 THE COURT: We did, but--
10 MS. HUNTER: -- to announce--
11 THE COURT: -- then I think we got-- went
12 back on.
13 MS. HUNTER: Okay. Just wanted to make sure.
14 THE COURT: Myranda's right on top of it, I'm
15 telling you.
16 MS. HUNTER: She's on the ball.
17 THE COURT: She's really good.
18 MR. UGELSTAD: She's on it.
19 MS. HUNTER: She's very good.
20 MYRANDA WESTERMAN: Do you solemnly swear or
21 affirm that the testimony you give in this case shall be
22 the truth, the whole truth, and nothing but the truth
23 under the penalty of perjury?
24 THE WITNESS: I do.
25 THE COURT: Alright. Thank you, Sir. Go

1 ahead and have a seat there and then please state your
2 name and spell your last.

3 THE WITNESS: My name is Joseph Sieverding;
4 that's S-I-E-V, as in Victor, E-R-D-I-N-G.

5 THE COURT: Alright. Thank you.

6 Mr. Ugelstad.

7 DIRECT EXAMINATION OF JOSEPH SIEVERDING
8

9 BY MR. UGELSTAD:

10 Q Officer Sieverding, where are you currently
11 employed?

12 A Moscow Police Department.

13 Q How long have you worked for the Moscow
14 Police Department?

15 A Uh, over five years now.

16 Q Can you briefly describe your training?

17 A Yes. I graduated from P.O.S.T. Academy.

18 Uhm, I graduated the F-T-O program, and I am currently
19 an F-T-O myself.

20 Q Does that mean you're P.O.S.T. certified?

21 A Yes.

22 Q Okay. I'd like to turn your attention to

23 January thirtieth, two thousand seventeen, were you

24 working that day?

25 A Yes.

1 Q Where were you working at about ten-forty
2 P.M.?

3 A The U of I campus, in the dorm Wallace
4 Complex lot.

5 Q Is that in the City of Moscow, State of
6 Idaho?

7 A Yes.

8 Q What were your duties at that time?

9 A Patrol.

10 Q What happened at about ten-forty P.M.?

11 A I was in the West Wallace Complex parking
12 lot in my vehicle. I saw a parked vehicle, a parked
13 Honda with fogged windows in the parking lot.

14 Q Was that vehicle moving or-- or running?

15 A Uh, I don't recall if it was running or
16 not, but it was parked, uh, with the fogged windows in
17 the lot.

18 Q And what did you do next?

19 A I exited my vehicle. Uh, parked my
20 vehicle, exited my vehicle, walked up to the Honda, the
21 passenger side. Uh, when I was about five feet away
22 from the vehicle, I could smell the odor of-- a strong
23 odor of marijuana. Uhm,--

24 Q How strong was that odor?

25 A Not as strong as, uh, when I knocked on the

1 door and the door was actually opened. But when I
2 walked up, it was-- it was strong.

3 Q Uh, how many people were inside?

4 A Three.

5 Q What did you do after, uhm, knocking on the
6 window?

7 A So, I-- I tapped on the passenger side
8 window. Mr. Amstad opened the door. When the door was
9 opened, the-- the odor was even stronger. I looked
10 inside the vehicle with my flashlight and the driver,
11 uh, Mr. Hughes, stuffed a, uhm,-- a sandwich baggie
12 under his seat. Uh, when I was looking at Mr. Hughes
13 with my flashlight, on his lap there was green
14 marijuana-- what appeared to be green marijuana flake
15 or residue on his pants.

16 Q And to clarify, uh, what seat was Mr.
17 Amstad in?

18 A The pass-- front passenger side.

19 Q And Mr. Hughes?

20 A Driver's seat.

21 Q Uh, when you were approaching this vehicle,
22 did you see anyone-- or at all times, did you see
23 anyone leave or, uh, enter the vehicle?

24 A No.

25 Q And who was the person that opened the door

1 that was in the front passenger seat?

2 A Mr. Amstad.

3 Q Is that person in the courtroom today?

4 A Yes.

5 Q Could you please point him out and describe
6 what he's wearing?

7 A He's wearing a, uh, collared, uh, black and
8 white shirt.

9 Q And where is he sitting?

10 A He's sitting with, uh, the defense table.

11 MR. UGELSTAD: Let the record reflect that the
12 witness has identified the defendant, Mr. Amstad.

13 THE COURT: Okay.

14

15 [MR. UGELSTAD CONTINUING]

16 Q After you s-- after you saw Mr. Hughes
17 hide the bag, uh, the little baggie, what-- what
18 happened next?

19 A So I asked him-- I asked him for the bag
20 of marijuana. It was pretty evident to me what it was.
21 Uh, Mr. Hughes handed me the bag of marijuana. I asked
22 what they were-- I asked for either a pipe or a bong or
23 what they were going to smoke it with. Uh, without
24 answering that, he reached into the back seat and handed
25 me a bong, a marijuana bong with residue.

1 Q After he handed you a bong, what happened
2 after that?

3 A It was about that time, uh, another
4 officer, Officer Vincello, arrived. I had the three
5 males exit the vehicle so I could conduct a search.

6 Q Uh, during your search, what did you find?

7 A I found, uh,-- in the trunk, I found a
8 larger-- a gallon size, uh, plastic bag with marijuana.
9 I think it was over approximately forty-six grams. I
10 found, uhm, a bong mouth piece in the back seat, which
11 would go with a bong. I found a pill bottle with
12 marijuana residue, a jar with marijuana residue, a, uh--
13 like a Ziploc bag box with a bunch more Ziploc bags that
14 had been, uh, used. There was no residue in those. Uh,
15 while I was searching, Mr. Hughes gave my partner,
16 Officer Vincello, a-- a elec-- a digital scale from
17 his pocket. That's what was recovered.

18 Q Have you been involved in any drug related
19 incidents in that parking lot before?

20 A Yes.

21 Q And how many in the last year?

22 A Approximately half a dozen within the last
23 year or so.

24 Q In those incidents, what was the drug
25 allegedly used?

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A Marijuana.

Q Did you charge anyone?

A Yes.

Q Uhm, what were the charges?

A Possession of marijuana, possession of paraphernalia and frequenting on-- depending on who the people were, the different offenses.

Q In every offense, uhm,-- or in every incident, were they inside or outside of the vehicle?

A Inside.

Q Every single one?

A Yes.

Q How many people involved were students?

A All of them, to my knowledge.

Q And how many were living in the dorms?

A All of them, to my knowledge.

Q Uh, what was the conclusion of--

THE COURT: Can-- can you tell me what the relevance of that is?

MR. UGELSTAD: Your-- Your Honor, to establish that the parking lot is a place, uhm,--

THE COURT: Okay.

MR. UGELSTAD: Yeah. No,--

THE COURT: It's a place?

MR. UGELSTAD: Just that, uh, students use

1 that as a common place the students use to use
2 marijuana.

3 THE COURT: Six incidents in the last year?

4 MR. UGELSTAD: Uh, for, uh, Mr. Sieverding
5 alone.

6 THE WITNESS: Just, uh-- yeah, me
7 specifically.

8 THE COURT: Oh, okay.

9 Go ahead.

10

11 [MR. UGELSTAD CONTINUING]

12 Q After you searched the car, what was the
13 conclusion of the, uhm, contact?

14 A So, I-- I seized the-- the paraphernalia
15 and the marijuana. And, uh, Mr. Hewes was cited. He
16 was a minor at the time. Uh, so he was cited for
17 possession of marijuana and par-- paraphernalia. And
18 Mr. Amstad was cited for frequenting and there was a
19 back seat passenger as well, Mr. Sharp. He was cited
20 for frequenting.

21 MR. UGELSTAD: Thank you.

22 No further questions.

23 THE COURT: Thank you.

24 Ms. Hunter.

25 MS. HUNTER: Uhm, yes.

1 CROSS EXAMINATION OF JOSEPH SIEVERDING
2

3 BY MS. HUNTER:

4 Q Uhm, so the parking lot is, uh,-- it says
5 the south side. Sorry. Maybe you just tell me. Where
6 is the parking lot in relation to the Wallace Complex?

7 A It's just to the west, to the Wallace
8 Complex, across Stadium, uh, Street-

9 Q Okay. So--

10 A -- or Stadium Avenue.

11 Q So, it is a parking lot, uhm,-- uhm, for
12 the purpose of servicing the people in the West Wallace
13 Complex?

14 A Correct. And there's soccer fields on the
15 other side of it.

16 Q Okay. So both of those people would use
17 that parking lot?

18 A Correct.

19 Q People who live there and people who--
20 okay.

21 A Um hmm.

22 Q Uhm, and the West Wallace Complex is a
23 dorm, is that correct? Is that a dorm? Is it a dorm?

24 A Yeah, yes.

25 Q Okay. I just learned that, so-- uhm, so,

1 I think-- and six within the past year, and-- and your
2 experience is that more than other complex, uh, or dorm
3 parking lots?

4 A Yeah. Uhm, that one particularly, uh, is
5 one that it seems like a lot of my contacts for people
6 using drugs are in that specific parking lot.

7 Q And, uhm, how many of an-- how many on
8 average were-- are in other com-- like complex parking
9 lots, or not complex, but dorm parking lots, like what's
10 a good average?

11 A Uh, just a hand-- two or three maybe--

12 Q Per year?

13 A -- for those other complexes, yeah.

14 Q Okay.

15 A Or other lots.

16 Q Okay. Thank you.

17 That's all.

18 THE COURT: Thank you.

19 Any redirect?

20 MR. UGELSTAD: Nothing, Your Honor.

21 THE COURT: Okay. Thank you, Officer
22 Sieverding.

23 THE WITNESS: Thank you.

24 THE COURT: Go ahead and have a seat there.

25 Any other witnesses?

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MR. UGELSTAD: No, Your Honor.

THE COURT: Okay. Thank you. So the State rests-

MR. UGELSTAD: The State-

THE COURT: -- its presentation of evidence anyway?

MR. UGELSTAD: Yes, Your Honor.

THE COURT: Do you have witnesses to call?

MS. HUNTER: Not at this time.

THE COURT: Okay. Argument?

MR. UGELSTAD: Yes, Your Honor.

The statute, which can be read in the disjunctive, can read, it shall be unlawful for any person to be present at any place where he knows illegal controlled substances are being manufactured, etcetera. Uh, this is a question about whether a stationary, non-running car parked in a parking lot constitutes as a place; it's not a question of whether it's premises. There's no patrol--

THE COURT: So-- so you're saying that-- that the prem-- the word premises doesn't even apply to this, uh, analysis?

MR. UGELSTAD: That-- yes, Your Honor.

THE COURT: But when-- what do you make of this prepositional ph-- uh, phrase that modifies

1 premises? It says premises of any place.

2 MR. UGELSTAD: It says-

3 THE COURT: That's-- that's-- that's what
4 you call, I think, in grammar, an adjectival
5 prepositional phrase.

6 MR. UGELSTAD: It says, uh, to be present at--
7 present at or on-- on premises of any place. So, uhm,
8 you can either be present at a place or be on the
9 premises-

10 THE COURT: Well, that's-

11 MR. UGELSTAD: -- of a place.

12 THE COURT: That-- well, okay.

13 MR. UGELSTAD: Well, that-- that's my
14 understanding, but-

15 THE COURT: Alright. I'm-- I'm just trying
16 to apply grammatical conventions to the way this statute
17 is written. This-- this-- this issue was actually
18 addressed in the ombudsman's report in terms of
19 analyzing the grammatical structure of the sentence,
20 which is a disaster, honestly. But that-- we're
21 supposed to read the statute the way it's written.

22 MR. UGELSTAD: Right.

23 THE COURT: And apply the words as it-- in
24 terms of their common and ordinary meaning, unless they
25 are specifically defined. So, I've been-- I looked at

1 this sentence all morning trying to-- trying to,
2 basically, diagram it, and I'm-- I'm not the first, uh,
3 judge or lawyer or, I guess, ombudsman, who has tried to
4 decipher what this really means. So, anyway, I'm just
5 telling you where-- where-- where I've been on this.
6 And I've-- I've read-- I've read, uh, Judge Kershaw's
7 opinion, obviously; I've read Judge Clark's opinion on
8 it; I've read the ombudsman's analysis; I've looked at
9 the statute; I've looked at other statutes, which direct
10 us in construing the language of statutes. Uhm, and I--
11 I-- I also looked at, uhm, the other statute, which is
12 in the same section and, uh, when-- when it involves,
13 uh, cases where children are present, thirty-seven -
14 twenty-seven thirty-seven A two, in which they
15 specifically define premises for that particular statute
16 as including motor vehicle, but they-- they-- they
17 failed-- the legislature failed to come back and
18 address the meaning of premises in this context.

19 But you're saying-- that's why you're saying--
20 - that's not why you're saying, but you're saying that--
21 - that I don't even have to worry about premises.

22 MR. UGELSTAD: That's-- that's a--

23 THE COURT: I just need--

24 MR. UGELSTAD: Oh.

25 THE COURT: I just need to read it in the

1 disjunction as, uh, unlawful for any person to be
2 present at any place or on any premises of any place.

3 MR. UGELSTAD: That's our position.

4 THE COURT: Okay.

5 MR. UGELSTAD: Uhm, and as far as the opinions
6 you referenced, the, uhm, two magistrate decisions and
7 ombudsman's report, uh, they were faced with
8 considerably different facts than we're faced with here.
9 Uhm, in those opinions, the car there was used for
10 travel. In, uh, two of the opinions the car was parked,
11 the occupants left, and then the marijuana was spotted
12 in the vehicle. Uh, in one of the opinions, uh, *State*
13 *v. Reid*, it's not very clear, but it says that the
14 defendant acknowledges that there was marijuana in the
15 traveling vehicle. So, it, uhm-- to-- to us, it seems
16 that that was not parked and stationary.

17 Uhm, in those, also--

18 THE COURT: And I-- I-- I didn't hear any--
19 am I to just assume that this was marijuana? I mean,
20 Officer Sieverding-- Sieverding testified that he
21 thought it was marijuana or it looked like marijuana,
22 but I didn't hear him verify it to be marijuana. Is
23 that something I should consider?

24 MR. UGELSTAD: Uhm, not at this-- this issue,
25 Your Honor, would be a statutory interpretation issue.

1 Uhm,--

2 THE COURT: Well, except we just have-- we
3 have a record now of-- of the evidence presented in
4 support of this motion to dismiss and-- and, uh, there
5 was no testing of the marijuana or verification that it
6 was marijuana; it could be some other leafy, green
7 substance. He just said it was marijuana. He thought
8 it was marijuana.

9 MR. UGELSTAD: Yes, Your Honor, uhm, given his
10 training, he is-

11 THE COURT: Okay.

12 MR. UGELSTAD: Uhm,--

13 THE COURT: It could have been oregano?
14 Probably not, but go ahead.

15 MR. UGELSTAD: Uhm, and, Your Honor, that, uh,
16 we-- yeah, sorry. I'll continue.

17 THE COURT: It's okay.

18 MR. UGELSTAD: Uhm,--

19 THE COURT: I'm not trying to throw you off
20 track. Well, maybe a little, just test--- test--
21 testing your argument.

22 MR. UGELSTAD: Uh, in those-- also, in those
23 decisions, the-- the marijuana was just merely present.
24 Uhm, and, in fact, in two of those decisions, the
25 occupants weren't even in the vehicle at the time.

1 There's no incidence-- there's no indication that it's
2 going to be used, sold, uh, distributed, anything like
3 that. Uhm, and then here we have the fogged windows,
4 the marijuana was on the driver's lap, the marijuana bag
5 was, uh, being hidden under the seat and there's a large
6 bong, uh, in the back seat.

7 Officer Sieverding also found over forty-six
8 grams of marijuana in the trunk, along with various
9 containers with marijuana residue and paraphernalia.
10 There was also a scale-

11 THE COURT: There-- there's no evidence on
12 this record anyway, that Mr. Amstad knew what was in the
13 trunk.

14 MR. UGELSTAD: I understand, Your Honor.
15 However, that, uhm-- that evidence would go towards Mr.
16 Amstad's knowledge by the odor, how strong the odor was.
17 Uhm,--

18 THE COURT: Was it-- I didn't hear-- I
19 didn't hear Officer Sieverding talk about whether the
20 odor was raw marijuana or smoked-- burnt marijuana.

21 MR. UGELSTAD: He, uh,-- I believe he said it
22 was not-

23 THE COURT: Did he say-

24 MR. UGELSTAD: -- smoked at this time.

25 THE COURT: Okay.

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MR. UGELSTAD: I-- I-- I--

THE COURT: It was raw marijuana?

MR. UGELSTAD: Yes, Your Honor.

THE COURT: Alright.

MR. UGELSTAD: Uhm, in this case the--

Officer Sieverding asked the driver what they used to
smoke it with and, uh, the driver, Christopher Hughes,
handed him a-- the large glass bong in the back. Uhm,-
-

THE COURT: But what he smelled. I'm talking
about what he smelled, what he said he smelled as he was
walking up to the car. I-- I don't remember him
distinguishing, but I could be wrong. Do you remember?

MR. UGELSTAD: I-- I-- I--

THE COURT: I-- I don't.

MR. UGELSTAD: I thought he was just--

THE COURT: I might have missed it.

MR. UGELSTAD: Okay. Uhm, I'm not sure if--
if, uh,-- but it was unburned marijuana. Uhm, the
ombudsman report was worried about people being trapped.
They ever kind of quoted one of the defendants saying,
what am I supposed to do? What-- you know, jump out of
the car as soon as I noticed that there's marijuana?
And I can see that's a real concern; however, none of
these facts, uhm, -- there was--

1 THE COURT: Well, what if it was? Should that
2 be a concern in a statute like this? Say you're driving
3 along, somebody-- the driver pulls out a joint, what are
4 you supposed to do? Are you immediately a criminal
5 unless you get out of the car?

6 MR. UGELSTAD: I'm not prepared to answer that
7 question, uhm--

8 THE COURT: Okay.

9 MR. UGELSTAD: -- at this time.

10 THE COURT: That's fair enough.

11 MR. UGELSTAD: And it's--

12 THE COURT: It doesn't apply to this case.

13 MR. UGELSTAD: Yeah. It's just not the--
14 yeah, it's not the issue at hand.

15 Uhm, and-- but going back to the original
16 concern, this statutory interpretation question, whether
17 a car can be a place. Uhm, if the defendant's
18 interpretation is accepted, which is that a car can
19 never be a place that you can frequent, it would yield
20 absurd results. Uhm, it would incentivize everyone,
21 especially students, especially college students in the
22 dorms to smoke in their cars and only have the
23 possibility of a possession charge and that's-- it
24 could be one person, as it was in this case, where the,
25 uhm,-- someone claims ownership of all of the

1 paraphernalia and marijuana. Uh, it would create just,
2 uh-- hypothetically, if there were people sitting
3 around a-- a circle, passing a bong around in a parking
4 lot, uhm, they could be charged with frequenting.
5 However, now the fact that they're in a car, they're
6 shielded from this law, it-- it just doesn't make
7 sense. The, uhm,--

8 THE COURT: What if they're just in an open
9 field somewhere?

10 MR. UGELSTAD: It still would be--

11 THE COURT: Is that a-- is that--

12 MR. UGELSTAD: I-- it's our position--

13 THE COURT: Is that a premises?

14 MR. UGELSTAD: It's our position that would be
15 a premises or a place.

16 THE COURT: Okay.

17 MR. UGLESTAD: On-- on the premises or at--
18 or present at any place.

19 THE COURT: So, I mean, the State's position
20 is that anywhere you are qualifies under this statute.

21 MR. UGELSTAD: I wouldn't go that--

22 THE COURT: How-- well, how-- where--

23 MR. UGELSTAD: -- far.

24 THE COURT: Where's the line? What's--

25 MR. UGELSTAD: On these facts, uhm, with the

1 car in a parked position, not-- not moving, uh, not
2 running, that would qualify as a place.

3 THE COURT: A place in the car?

4 MR. UGELSTAD: A place either in the car or on
5 the parking lot. Uhm, I don't know if it has to-

6 THE COURT: And the-- and-

7 MR. UGELSTAD: -- be distinguished.

8 THE COURT: Okay. And the premises-- and,
9 again, premises has nothing to do with it?

10 MR. UGELSTAD: Not in our position, Your
11 Honor.

12 THE COURT: Okay.

13 MR. UGELSTAD: Defendant's interpretation
14 would also, uh, be absurd because it would make all R-
15 Vs, uh, mobile homes and trailers immune from the
16 statute. That would be including mobile meth labs,
17 anything of this sort of a vehicle.

18 Uhm, and lastly, as Your Honor's aware, that
19 you have ruled on this issue on a similar set of facts.

20 THE COURT: What if I was wrong?

21 MR. UGELSTAD: Uh,-- at-

22 THE COURT: It's-

23 MR. UGELSTAD: At the moment,--

24 THE COURT: And it's happened.

25 MR. UGELSTAD: At the moment, it's-- it's,

1 uh, local con-- local authority.

2 THE COURT: Local precedent?

3 MR. UGELSTAD: Yeah. Uhm, and in that set of
4 facts, that there was a-- a car parked in a lot on
5 Seventh and Elm as designated at lot-- as lot sixty-
6 six, uh, same situation, it was parked, not moving,
7 officer walked up. Uhm, you stated that it could be
8 read in the disfunc-- disjunctive and it can be-- and
9 the, uh,-- the car was a place. Or the-- it was, uh--
10 they were present at a place. For these reasons, Your
11 Honor, the State requests this Court deny the
12 defendant's Motion to Dismiss.

13 THE COURT: Alright.

14 MR. UGELSTAD: Thank you.

15 THE COURT: Thank you, Mr. Ugelstad.

16 Ms. Hunter.

17 MS. HUNTER: Uhm, so if I'm understanding the
18 State's position correctly, you're not worried about the
19 premises of any place, just a-- just, uhm, be present
20 at-- and we can cut out or on the premises of. So just
21 be present at any place, is what he's arguing. Right?

22 THE COURT: That's what I understand.

23 MS. HUNTER: Is that correct? Okay.

24 THE COURT: We're just-- we're just
25 eliminate-- we're just whiting out on-

1 MS. HUNTER: On the premises of.
2 THE COURT: Yeah.
3 MS. HUNTER: Okay.
4 THE COURT: That present at anyplace, we're
5 whitening out, or on premises of any place.
6 MS. HUNTER: Okay.
7 THE COURT: Well, no, no, we're not. Let me
8 see this. Yeah.
9 MS. HUNTER: Okay.
10 THE COURT: On premises of-- on premises of.
11 MS. HUNTER: Okay. Uhm, so, uh, forgive me.
12 I-- I might read some of this because I-- I-- I filed
13 this motion with, uhm, these memos and orders attached
14 because they did a-- a much better job than I could at
15 being eloquent in describing this kind of--
16 THE COURT: Well, I wouldn't--
17 MS. HUNTER: -- unnecessarily complex--
18 THE COURT: I wouldn't necessarily concede
19 that, but I-- I have read all those.
20 MS. HUNTER: Yes. And, so, it does-- it does
21 discuss the specific definition of place, how it's, uh,
22 defined in several dictionaries, and I think he cites
23 *Black's Law Dictionary*, uhm, and, uh, says the court
24 notes the terminology in the statute supports the
25 argument that the legislator intended a particular

1 geographic location when using these terms. Uhm, and
2 then he-- it says if the legislator had meant to
3 include moveable mobile-- moveable motor vehicles,
4 presumably the words in or near would have been used.
5 One is at a house or on land, one is not in or near a
6 car. And that's, uhm,-- and, you know,-- and that's
7 kind of the main focus of my argument, is language of
8 the statute, uhm, if-- and if the legislators wanted to
9 include a car, they should have included a car. Like
10 you stated, there's another, uhm, statute where they
11 talked about the premises and place and included, uhm,--
12 and-- and made-- and included, uh, a vehicle in that.
13 Uhm, and they didn't do that in this one. Uhm, this is
14 an incredibly broad statute. Uhm, I don't think we need
15 to help make it even broader, uhm, and include words
16 that aren't in there, uhm, especially when considering
17 the-

18 THE COURT: I don't think-- I don't think
19 they're talking about including words. They're talking
20 about eliminating words.

21 MS. HUNTER: What do you mean?

22 THE COURT: In-- in-- so to make it in the
23 disjunctive, it's either a place or it's a premises of-

24 MS. HUNTER: Of a place.

25 THE COURT: -- a-- a place.

1 MS. HUNTER: Sure.

2 THE COURT: So, honestly-- I mean, I do think
3 this is a-- this is kind of a question of, uh,-- it's
4 a-- it's a question of definition and it's a divi--
5 uh, a question of grammatical structure--

6 MS. HUNTER: Sure.

7 THE COURT: -- as much as a legal analysis.
8 That's why I'm way unqualified to really sort this out,
9 I think. But, uh, it's really an interesting question
10 and, you know, I think this is one more example why, as
11 people say, you shouldn't watch, uh, laws or sausages
12 being made, because this-- the-- the-- the-- the way
13 this-- I don't-- there isn't much, uh, legislative
14 history. And I-- I started by saying that because I
15 actually tried to find some and there was no, uhm-- you
16 could only go back so far in Westlaw--

17 MS. HUNTER: Um hmm.

18 THE COURT: -- on legislative history.

19 And I-- maybe you two tried to do that, and
20 thinking, oh, there's going to be some discussion about
21 this. And apparently, there wasn't because-- I mean,
22 that-- that's why I just ask-- I just asked, is there
23 any information that-- that-- I looked on the
24 legislative website. I'm just telling you this to know--
25 - to let you know where kind of I went and--

1 MS. HUNTER: Sure.

2 THE COURT: And I asked one of the people who
3 works in the legis-- legislative-- I said, do you
4 have-- is there-- can you point me in the right
5 direction? And I-- I'm just going to tell you this so
6 you know. What-- what she said is that the-- the
7 statute was first-- so this is just a summary, which
8 she really didn't find anything. But she said that,
9 uhm, it was first written in nineteen seventy-one, but
10 paragraph D was not added until nineteen seventy-two.
11 And that's when it said knowingly frequent places where
12 illegal, uh, was added. And in seventy-seven, it
13 changed to be present at or on the premises of any
14 place. And that was because they-- they-- the
15 legislature--

16 MS. HUNTER: Didn't have to prove more than
17 one.

18 THE COURT: -- wanted to make-- make--
19 impose criminal liability on a single incident, instead
20 of the problem with, uh, proving this course of conduct,
21 frequenting, whatever that meant.

22 MS. HUNTER: Sure.

23 THE COURT: And, uhm, they didn't have any
24 discussion. She said she checked the statement of
25 purpose and there was no discussion on the use of the

1 term premises or the concept, other than to refer to,
2 quote, the scene of the crime. Now, I-- I-- I'm
3 referencing the-- the legislative history and, of
4 course, legislative history can only be referred to
5 unless-- if you find first that the statute or the
6 language is ambiguous. Uhm, and, you know, I-- we'll--
7 we'll get to that. I mean, there's one way to look at
8 this to find ambiguity and there's another way to look
9 at it to not find ambiguity. But the problem with
10 legislative history, as Bart-- I heard Bart Davis once
11 say is that nobody voted on the legislative history.
12 The legislative history is really not law. Can it
13 provide some guidance? Well, the case law says-- yeah,
14 I mean, you kind of look to a legislative history as a--
15 as a last resort to try to determine legislative intent.
16 But the best evidence of legislative intent is-- is the
17 use of their language, because that is the law, that's
18 what was passed. So, uhm,-- so, yeah, that's-- that's
19 the-- the frustrating part of this, is this-- this
20 part-- this phrase of the place and the premises was not
21 really part of the discussion of the statute. They just
22 wanted to, uh, eliminate the requirement that they had--
23 that they prove this kind of continuous contact, but I--
24 - I-- I would say, it's-- it's fair to say that they
25 were thinking about places where people would hold

1 things, uh, I mean, structures, I'm thinking like a drug
2 house kind of thing. Because part-- part of the-- the
3 overall discussion historically was about drug
4 conspiracies and they wanted to bring more people in.
5 So that's just sort of the general history. But I don't
6 know that it has that much relevance to where we are
7 today, trying to interpret this. So, anyway, sorry for
8 interrupting.

9 MS. HUNTER: No, you're fine. Uhm, I
10 appreciate your insight.

11 THE COURT: And some of this comes out of the
12 ombudsman's report and, also, uhm, Judge Clark's, uh,
13 report because they both talk about the legislative
14 history.

15 MS. HUNTER: Yes, they do. It's interesting.
16 Uhm, and kind of, uhm, continuing on with
17 that, uh, how we should interpret, uhm, statutes, uhm,
18 and what's relevant, uh, you know, legislative history
19 or not. Uhm, I just want to point out that, uh, the
20 *State v. Martinez*, uhm, uh, phra-- phrase that says the
21 ambiguous criminal statutes must be strictly construed
22 in favor of the accused, so I just want to throw that
23 out there as well.

24 Uhm, so I-- so, I mean, like I-- like I
25 said, it-- it-- and you've read the-- my Motion to

1 Dismiss, so you've read all of the, uhm,-- all of the
2 reasoning, so I won't go into the nuts and bolts of that
3 other than to say, uhm, you know, the-- the
4 legislator[sic] would have included it, uhm-- a vehicle
5 if they wanted to. They knew how to do that.

6 Uhm, and I want to address some of the State's
7 arguments. They argue that the car, uhm, is not used
8 for traveling. Uhm, and I don't think that there is
9 enough evidence to conclude that. Uhm, Officer
10 Sieverding said that he couldn't remember whether or not
11 the car was running. So it was parked but he couldn't
12 remember if it was running or not, which means their
13 argument that, well, you know, the other cases, uhm,--
14 you know, the car was running and then it wasn't, so
15 it's still travel because they were traveling before.
16 Uhm, I don't think that that really matters, uhm,
17 because we-- we don't know when the car-- well, based
18 on the evidence, we don't know when the car last, uhm,
19 ran, but, uhm, uh,-- I'm sorry, I lost my train of
20 thought.

21 And, also, I-- I-- and I don't remember if
22 he addressed this in his oral argument, but he-- I
23 think he references it in-- I believe he reference--
24 references it in the response that he filed, uhm, that
25 the car is one that's known to be something that stores

1 marijuana in it. Let me make sure that's accurate.
2 Uhm, let's see here. Well, maybe he doesn't, but in
3 case he did and I'm missing it, uhm, there would be--
4 if this were to go to trial, there would be evidence.
5 And that's the problem, is there would be evidence, uhm,
6 to the-- to the fact that my client did not know that
7 this was a place that had marijuana in it, uhm,
8 regularly.

9 And I also wanted to address the fact that the
10 car, uhm, was in a parking lot where, you know, there'd
11 been-- he-- there'd been a lot of stops for marijuana.
12 Uhm, this is a parking lot that's att-- that's, uhm,
13 used for, uhm, students who live in the west com--
14 complex dorm and the West Wallace dorm-- complex, which
15 is a dorm, and, uh, my client lives in that--

16 You live in that, right? You don't live in
17 that one?

18 THE DEFENDANT: Humpt um.

19 MS. HUNTER: Okay.

20 Well, we would establish--

21 THE COURT: Never mind.

22 MS. HUNTER: -- why he was there.

23 THE COURT: I-- yeah.

24 MS. HUNTER: But it's a dorm. Uh, it's not,
25 uh,-- people have to use that parking lot. Uhm, it's

1 not its only function.

2 So, uhm, I also want to address the trapped
3 issue. Uhm, the State acknowledged that it was a good
4 point that it didn't, uh, apply to the facts here.
5 Again, were this to go to trial, there's evidence to the
6 contrary that there, uhm,-- that it would apply here.
7 Uhm, I don't think there's enough evidence to, uh-- I
8 don't know that there's enough evidence to conclude that
9 it doesn't.

10 Uhm, and then he talks about absurdity and if
11 this were-- the statute were to con-- to be construed
12 in the way that, uhm,-- that I ask it to be, then it
13 would be an absurd result. Uhm, first of all, I think
14 other counties have it-- I mean, is it-- as I've shown
15 with the, uhm, decisions in, I think it was Twin Falls
16 and Bonneville County and, uh, which-- whichever the
17 other county was, uhm, I don't think it-- I think it's
18 reasonable to say that it's not absurd if two other,
19 uhm, judges just in our State, at least, have
20 interpreted it that way. Uhm,--

21 THE COURT: It's kind of interesting that-- I
22 mean, this-- this has been going on for so long, that--

23 MS. HUNTER: Yeah.

24 THE COURT: -- nobody took it up.

25 MS. HUNTER: Yeah.

1 MR. UGELSTAD: Yeah. I don't know.

2 MS. HUNTER: That is interesting. I've
3 thought that, too.

4 THE COURT: Ms. Tomlin,--

5 MS. HUNTER: Like why--

6 THE COURT: -- you-- what-- what--

7 MS. HUNTER: -- has this not been decided.

8 THE COURT: Go ahead.

9 MS. TOMLIN: Well, I have some insight on
10 that. I can wait 'til it's a more appropriate time--

11 THE COURT: Insight for--

12 MS. TOMLIN: -- for me to address the Court.

13 THE COURT: -- an-- is-- are you-- are
14 you going to tell me there's an appellate decision on
15 this?

16 MS. TOMLIN: Uhm, not at all.

17 THE COURT: No. Okay.

18 MS. TOMLIN: But it has been some--

19 THE COURT: Go ahead.

20 MS. TOMLIN: Uhm, it-- it is something that
21 has come up from my perspective, and so I can share
22 those insights and-- as to why, uhm-- how those cases
23 were dealt with and why this case is now in front of you
24 here in this court again and-- and you're being asked
25 to address it. I can talk about this. This isn't a new

1 issue to the city at all.

2 THE COURT: Well, it's not a new issue to--
3 obviously, because of these other decisions. It's not a
4 new issue since this statute was passed.

5 MS. TOMLIN: And,-- absolutely. So, uh,
6 there's been opportunities in the pretrial room for
7 negotiation based on these reports and this question was
8 raised-

9 THE COURT: Well, but I'm talking about the
10 development of a law.

11 MS. TOMLIN: I understand that.

12 THE COURT: Yeah. I mean, the legislature
13 hasn't addressed it and the Supreme Court or the Court
14 of Appeals hasn't addressed it and I'm not aware of a
15 district court that has addressed it, unless you all
16 tell me otherwise, which if that-- all I'm saying is
17 that's surprising to me--

18 MS. TOMLIN: I agree.

19 THE COURT: -- that this statute hasn't been
20 addressed and-- and-- and my guess is that it's not
21 worth it, given the level of the charge, for people to
22 do that. All-- but I would-- would have thought a--
23 you know, a public defender's office would have, you
24 know, said, you know what, let's-- let's just find out-
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MS. TOMLIN: Sure.

THE COURT: -- what the-- what the Supreme Court thinks about it. So, anyway. That's--

MS. TOMLIN: No, I won--

THE COURT: I'm just-- I curious about it.

MS. TOMLIN: I wondered the same thing.

THE COURT: I mean, I've thought about this now for a while. Not the first time, as Mr. Ugelstad points out.

MS. HUNTER: Right. Uhm, so--

THE COURT: I love having an old decision that I made seven years ago, like--

MS. HUNTER: So you can see how you--

THE COURT: - presented to me in the way that I'm bound by my own precedent, which is very good to do that. But I-- I-- I had to go back. I-- yeah. I mean, I actually-- I kind of remembered it, once I looked at the case, but that was in two thousand ten.

MS. HUNTER: Yeah. I wasn't aware of that--

THE COURT: A lot's--

MS. HUNTER: -- until--

THE COURT: -- happened--

MS. HUNTER: -- this morning.

THE COURT: -- since two thousand ten.

MS. HUNTER: So, I wish I would have--

1 THE COURT: Yeah.

2 MS. HUNTER: -- been able to see that. But,
3 uh, so I can't really distinguish it from this case
4 because I haven't seen it. But, uhm, the other reason I
5 don't think it would be an absurd, uhm, result is just
6 because he-- that, you know, they-- uh, you wouldn't
7 be subject to, uhm, the subsection D, uhm, in this
8 statute but you'd be subject to every other-- you'd be
9 subject to the possession aspect and all of the-- you
10 know, there's several, uhm, uh, sections that still
11 apply. And you could, uhm-- and, you know, you might
12 have to work a little harder to prove it, to prove that
13 there had been something bad going on, but I don't think
14 it's absurd.

15 Uhm, also, they brought up the, uhm,-- the
16 point that they-- that they believed that mobile homes
17 and trailers and R-Vs would be, uhm, now not subject to
18 this, uhm,-- to this statute-- to this section of the
19 statute, which I don't agree with. Uhm, mobile homes
20 and trailers, uhm, if they're attached to land, are
21 regularly, uhm, interpreted to not be a vehicle, even--
22 and I-- and I-- and I can't-- I-- I didn't go
23 through and look-- and look at all the statute-- all
24 the places that it would-- it does, uhm, indicate that,
25 but I did-- I'm familiar with the homestead exemption

1 because I've done some bankruptcies and you-- and it's
2 section-- Idaho Code section fifty-five - one thousand
3 one subsection two, if you're interested, but, uhm, it
4 does-- you can exempt a mobile home, even if it's not
5 attached to the land yet. So, uhm, I-- I-- I don't
6 think that you would have to strictly interpret a mobile
7 home and a trailer to be a vehicle. I don't think that
8 that's true. And I think that's a little bit of a scare
9 tactic to bring up a mobile meth lab. I think that,
10 uhm,-- that there would be a way to bring a mobile meth
11 lab down. Uhm,--

12 THE COURT: Yeah. I don't-- I don't think
13 anybody running a mobile meth lab would be charged with-
14 - with a-

15 MS. HUNTER: Frequenting.

16 THE COURT: -- frequenting as the charge.

17 MS. HUNTER: I would think that they would
18 have bigger fish to fry.

19 THE COURT: Probably.

20 MS. HUNTER: But, uhm,--

21 THE COURT: One could speculate.

22 MS. HUNTER: Yes. Uhm, so,-- and he also--
23 I don't think he brought it up in his oral argument, but
24 in his motion, he talks about how this would drive kids
25 to smoke in cars now, uhm, and how that would be really

1 bad for the public. I think that, uhm, maybe kids would
2 smoke in cars more, but I would think that would be--
3 make it easier for the cops to find them than if
4 they're, uhm, found-- found in other remote location or
5 their room or wherever else they do it. Uhm, so I don't
6 understand why they don't go to Pullman, but, uh,-- but
7 anyway, so-

8 THE COURT: Well, then they'd have to drive
9 back stoned.

10 MS. HUNTER: Right. That's true.

11 THE COURT: That's the other-- that's the
12 other, uh, demon that Mr. Ugelstad raises, is that we'd
13 be encouraging, uh, students to get high and drive under
14 the influence.

15 MS. HUNTER: Are uh-

16 THE COURT: You don't have to respond to that.

17 MS. HUNTER: No, no, no.

18 THE COURT: I'm just saying,--

19 MS. HUNTER: I-- I-

20 THE COURT: That's one of the things-

21 MS. HUNTER: I've got-

22 THE COURT: That's one of the-

23 MS. HUNTER: No, I-

24 THE COURT: One of the-

25 MS. HUNTER: I thought about that, too, and I-

1 - and that's what made me think of the Washington
2 thing, because I'm like, well, they drive to Washington
3 to get-- to get high and drive home, so, uhm, you know,
4 if we're trying to de-incentivize that or prevent that,
5 then, you know,-- I don't--

6 THE COURT: Maybe we could charge people with
7 driving under the influence.

8 MS. HUNTER: Right. There-- that's another
9 statute that--

10 THE COURT: There's that.

11 MS. HUNTER: -- you could use. Uhm, so,
12 anyway, uh, I-- I guess that's my-- the last of my
13 response to his-- to his arguments. And, so, uhm, like
14 you said, it's an interesting issue that's uh-- that's,
15 uhm,-- and I-- and I was surprised that it hadn't
16 been, uhm,-- that it hadn't been appealed either. But,
17 uhm,-- but I think that it's-- it's good to address it
18 now and figure out what we want to do with it for now.
19 Uhm, and I would ask that you, uh, grant my motion to
20 dismiss.

21 THE COURT: Okay. Thank you.

22 Do you want to respond to anything?

23 MR. UGELSTAD: Just two things, Your Honor.

24 Uhm, a lot of the points that defense counsel has
25 brought up is, uhm-- and-- and she even said, are

1 issues for trial and-- and not to be, uhm,-- have any
2 weight in this statutory interpretation argument. Uhm,
3 also the other counties that were presented, or that
4 have ruled on this issue, were not presented with these
5 facts. Uhm, these are very specific facts where the car
6 was parked and not moving, uhm, running or not running,
7 it's still not moving. It's parked and stationary and
8 very different facts from the other counties.

9 And that's it, Your Honor.

10 THE COURT: Alright. Thank you.

11 MS. TOMLIN: Your Honor.

12 THE COURT: Yes.

13 MS. TOMLIN: If I may just add a little bit of
14 history from the city's perspective that, uhm, would
15 assist in what Mr. Ugelstad argued.

16 THE COURT: Okay.

17 MS. TOMLIN: May I do that?

18 THE COURT: Sure.

19 MS. TOMLIN: Thank you. Uhm, in the past,
20 there have been some frequenting cases that, uhm, did,
21 uh,-- were charged with a moving vehicle and, in the
22 pretrial room, I was faced with these same, uhm,
23 pleadings and trial court rulings and ombudsman reports
24 and I did consider those and, uhm, ultimately, I
25 dismissed those because I-

1 THE COURT: Yeah.

2 MS. TOMLIN: -- I agreed that the vehicle was
3 moving and I couldn't identify it as a place. And so I
4 wanted this Court to know that this is one of, uh,--
5 well, it's the first case I've had with frequenting
6 where--

7 THE COURT: I wish we could come up with
8 another-- because it's not a frequenting statute.

9 MS. TOMLIN: It-- you're right. And--

10 THE COURT: It hasn't been a frequenting
11 statute forever. I don't know what-- what do we call
12 it?

13 MS. TOMLIN: I have to retrain my brain, but I
14 understand that it's not frequenting. So, being in a
15 place where drugs were used, stored, manufactured; I
16 think it gets wordy to say.

17 THE COURT: Yeah.

18 MS. TOMLIN: So, we need a better catch
19 phrase.

20 THE COURT: Yeah.

21 MS. TOMLIN: But, uh, regardless of, uhm,
22 whether we're calling a rose by another name or not, I
23 do think that, uh, when this issue was presented to the
24 city by Ms. Hunter and, uhm, Mr. Amstad, uhm, I reread
25 these and then I reread the facts and I understand that

1 Mr. Ugelstad took the reins on this and did a lot of
2 research, and so he's in the weeds where I'm-- I'm not
3 and-- and so, uh, he might be in a better position to
4 answer some of the questions, but the distinguishing
5 points for me in terms of not dismissing this as quickly
6 as I had dismissed the others, where the vehicle was in
7 motion. Based on the persuasiveness of the, uhm,
8 statutory interpretation presented by Ms. Hunter, I
9 really could not get past a couple details, and those
10 were that, uhm, the vehicle was stationery and that it
11 was in a lot. And I tried to analogize the vehicle to
12 something else that maybe would be a canopy of sorts for
13 people who are trying to hide and maybe get away from an
14 R-A or someone else who does the mandatory reporting.
15 That's where my mind went. And so, I was like where--
16 now what would this be? So I thought of the camper down
17 Elms on campus. I thought of a couple other places that
18 students might feel a little bit more insulated in terms
19 of hiding to, uhm-- to smoke pot. And when I, uh, read
20 the facts and I knew that they were stationary and I
21 knew that they were in this parking lot and that Officer
22 Sieverding, uhm,-- and only Officer Sieverding-- I can
23 only speak to the incidences that he has, uhm, dealt
24 with in that parking lot, but-- and-- and the times
25 that he's even assigned to campus patrol because he

1 didn't testify to that so I don't want to put words in
2 his mouth or let this Court, uhm, hear something that I
3 can't be sure of, but it's not all the time. And, so,
4 within this timeframe, it's only, uhm, you know, six or
5 seven, but I think that that's somewhat significant
6 because he knows it's a place or premises, which is, uh,
7 buildings or land or appurtenances attached to
8 something, right? That's a premises? So,--

9 THE COURT: I don't know what a premises is.

10 MS. TOMLIN: That's the definition of
11 premises.

12 THE COURT: That's what I'm going to--

13 MS. TOMLIN: Yes.

14 THE COURT: That's what I'm going to try and
15 divine.

16 MS. TOMLIN: Yeah. A premises, uh,-- a
17 premise is, uhm,-- or premises is--

18 THE COURT: Well, Mr.--

19 MS. TOMLIN: What is--

20 THE COURT: -- Ugelstad is saying--

21 MS. HUNTER: A premises is--

22 THE COURT: -- premises has--

23 MS. HUNTER: Premises is--

24 THE COURT: -- nothing to do with this.

25 MS. TOMLIN: I understand he said that, but I

1 did contemplate it.

2 THE COURT: Okay.

3 MS. TOMLIN: And I'm not saying that he's
4 wrong, but I did contemplate it because it's part of--
5 it's part of what helps me understand what a place is.
6 And, so, when I'm reading that in the language of the
7 statute, uhm, I think that--

8 THE COURT: Okay.

9 MS. TOMLIN: -- a parking lot is a place.
10 And I think that, uh, any kind of shelter--

11 THE COURT: Is a parking lot a premises?
12 That's the-- that's part of the question.

13 MS. TOMLIN: Absolutely.

14 THE COURT: Okay.

15 MS. TOMLIN: It is attached to the dorm. And,
16 uhm, it says in the definition of premises, that it's,
17 uhm,--

18 THE COURT: I don't know. Where's the
19 definition of premises?

20 MS. TOMLIN: Well, I'll-- I'll go get it for
21 you.

22 THE COURT: No. I'm not going to--

23 MS. TOMLIN: Okay.

24 THE COURT: I'm not going to let you guys
25 double up like this.

1 MS. TOMLIN: Yeah.

2 THE COURT: I mean--

3 MS. TOMLIN: I don't want to double up.

4 THE COURT: I'm getting a totally different
5 argument now, from you.

6 MS. TOMLIN: Well, I agree with his argument
7 in many respects, but I'm telling you where I came to in
8 terms of not dismissing it outright and handing the
9 reins to him, Your Honor.

10 THE COURT: Right.

11 MS. TOMLIN: And the other thing-- I won't
12 talk about that anymore, because I understand. That's
13 not what I'm trying to do. But let me tell you the--
14 the-- the fact that-- the last fact that I lingered
15 on.

16 THE COURT: Okay.

17 MS. TOMLIN: And that was, uhm, that the
18 windows were fogged up.

19 THE COURT: Yeah.

20 MS. TOMLIN: And I-- I stayed on that for a
21 while. And the reason I did is because it indicated
22 that there was time. You asked Mr. Ugelstad earlier,
23 and I like his response, because he said he didn't have
24 to answer that question or wasn't prepared to in terms
25 of, you know, when does it become a crime for someone to

1 be-- let's say they're in a moving car and someone
2 lights up a joint, at what point do they, you know, get
3 to say, let me out, I don't want to be implicated or,
4 you know-

5 THE COURT: So because the windows are foggy,
6 it means they've been in the car for a long time smoking
7 marijuana?

8 MS. TOMLIN: I am not jumping that far with
9 it, Your Honor.

10 THE COURT: Okay.

11 MS. TOMLIN: But what I am saying-

12 THE COURT: What-- what are you-

13 MS. TOMLIN: -- is that it indicates a period
14 of time, uhm, in which, uh, there was some knowledge.
15 And so then the next-

16 THE COURT: It depends on how cold it was, who
17 was in there, what was going on in there.

18 MS. TOMLIN: I understand that.

19 THE COURT: I mean, it-- it could be so many
20 different things.

21 MS. HUNTER: Your Honor, I'm-- oh, sorry.

22 MS. TOMLIN: So, then the next thing, Your
23 Honor, is that the, uhm,-- this-

24 THE COURT: How cold it was.

25 MS. TOMLIN: The-

1 THE COURT: I mean, I-- I don't know. I
2 mean, I-- I don't know. I mean, and I don't even-- I
3 don't have a clear record, even, of whether it--
4 whether it was raw marijuana that was smelled or burning
5 mari-- marijuana.

6 MS. TOMLIN: I under-

7 THE COURT: Or burnt marijuana.

8 MS. TOMLIN: I understand.

9 THE COURT: Or marijuana smoke.

10 MS. TOMLIN: I understand that wasn't in the
11 record. I'm just letting you know where I came to,
12 because past cases were dismissed when I felt like
13 there-- that what you've been presented with was
14 compelling and I'm trying to just help you understand
15 what-- that-- that I understand the discrepancies and
16 the city understands those discrepancies and that there
17 was a-- a place here, uhm, that, I think, went past
18 those. And, then, I'm not going to--

19 THE COURT: And that-- and that-- and that
20 your line was the fact that the car was stationary in
21 the parking lot?

22 MS. TOMLIN: That was critical to me.

23 THE COURT: That made a difference in your
24 analysis of whether or not you should pursue the case?

25 MS. TOMLIN: It did. And then, uhm, Mr.

1 Amstad sitting in-- if he had been sitting in the back
2 seat, that would be really significant to me in terms
3 of-- we probably would have-- I-- I don't know where
4 we'd be. But he was sitting right-

5 THE COURT: Mr. Sieve--

6 MS. TOMLIN: -- next to-

7 THE COURT: Officer Sieverding says that's
8 where they grabbed the bong.

9 MS. TOMLIN: Well, there was raw marijuana,
10 uhm, on the lap of the driver.

11 THE COURT: I mean, there was-- there was--
12 there was presumed marijuana on the lap of the driver.

13 MS. TOMLIN: I understand that that's what
14 was-

15 THE COURT: It was not confirmed to be
16 marijuana, according to the officer's testimony.

17 MS. TOMLIN: I understand what the record
18 indicated. I just wanted to let you know-

19 THE COURT: Yeah.

20 MS. TOMLIN: -- my thoughts. Thank you.

21 THE COURT: Okay. Thank you.

22 MS. HUNTER: Your Honor, can I-

23 THE COURT: I mean, I can't-- I can't analyze
24 a case based on, well, we didn't prosecute all these
25 cases, so that means we should prosecute this case.

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MS. HUNTER: Uhm, Your Honor-

THE COURT: I know you're not saying that.

MS. TOMLIN: Okay.

THE COURT: You're saying, this is where the line is, but that's-- I mean, that's what I have to figure out here.

Did you want to say something else, Ms. Hunter?

MS. HUNTER: I'm sorry?

THE COURT: Did you want to say something else? Is that-

MS. HUNTER: Yeah, I did, Your Honor. Because I feel like this is hinging on facts and I feel like I should be able to offer facts, if they're going to base it on facts that, honestly, aren't the case.

THE COURT: I'm not going to consider anything that's not part of the record.

MS. HUNTER: Okay.

THE COURT: And the only thing that's part of the record is what Officer Sieverding test-- testified to.

MS. HUNTER: Right. Well, I-- would you, uh-- would you be okay with me putting my client on to establish other facts? Because this isn't-- and I-- I find it interesting that Ms. Tomlin-

1 THE COURT: Well, if the-- if--
2 MS. HUNTER: -- said--
3 THE COURT: -- the other facts-- and you--
4 you alluded to this, which isn't part of the record,
5 that-- that at trial, it-- it-- this would be an
6 issue, whether or not he knew, and that-- that's a
7 legitimate question. I-- I would-- I would say, just
8 to kind of put everybody at ease, in terms of this
9 Motion to Dismiss, I think-- I think I really have to
10 construe the facts that are established, that are in the
11 record, in a light most favorable to the State. So that
12 question of whether he knew or didn't know would be--
13 MS. HUNTER: Sure.
14 THE COURT: -- a jury question anyway.
15 MS. HUNTER: I wasn't going to--
16 THE COURT: I'm talking about--
17 MS. HUNTER: -- ask him.
18 THE COURT: I'm talking about a legal analysis
19 based upon the-- the record now that I have before me.
20 MS. HUNTER: Sure.
21 THE COURT: About the application of this
22 statute.
23 MS. HUNTER: Sure. I-- I get that, Your
24 Honor. But, uhm, I-- and I wasn't going to go into
25 whether or not he knew, because I know that that's a--

1 that's a factual issue. But whether or not the car was
2 moving and was a mode of transportation-- and I can
3 tell you what he would say, and if you want to cons--
4 if you want him to put it on the record so you want to
5 consider it, we can do that. They were planning on
6 going-- going to Walmart. They were on their way.
7 Uhm, they were trying to decide what to do next. They--
8 and they were going to go to Walmart. Also, I-- and--
9 and if you don't want to consider that, it's not a very-

10 THE COURT: I-- I don't-

11 MS. HUNTER: That-- that's fine.

12 MR. UGELSTAD: Yeah, your-- Your Honor,--

13 MS. HUNTER: But I would at least like-

14 THE COURT: Well, it's not part of-

15 MR. UGELSTAD: That's not-

16 MS. HUNTER: -- to say.

17 THE COURT: -- the record right now.

18 MR. UGELSTAD: That's not part of the record.

19 MS. HUNTER: That's fine.

20 THE COURT: Yeah.

21 MS. HUNTER: And if-- and-- and if you don't
22 want it to be part-- if you don't want it-- me to put
23 him on-

24 THE COURT: Uh, it's not what-

25 MS. HUNTER: -- it's just [REMAINDER OF

1 STATEMENT UNINTELLIGIBLE, COURT SPEAKING AT THE SAME
2 TIME.]

3 THE COURT: -- I want or don't want, it's just
4 what is-

5 MS. HUNTER: Okay.

6 THE COURT: -- right now. And-- and I-

7 MS. HUNTER: Well, then I-

8 THE COURT: I can tell-- I can tell you like
9 whatever the intentions were of the people in the car
10 about the mobility of the car, I don't think it's
11 particularly relevant to the-- to the legal analysis.

12 MS. HUNTER: Okay. Well, then I'd at least
13 like to point out that it wasn't established that the
14 car was-

15 THE COURT: Yeah.

16 MS. HUNTER: -- not running. Uhm, and I'd
17 also like-

18 THE COURT: And I-- I agree.

19 MS. HUNTER: And I'd also-

20 THE COURT: It was not established one way or
21 the other.

22 MS. HUNTER: Right. And--

23 THE COURT: The car may have been running.

24 MS. HUNTER: Yes. And I'd also like to, uh,
25 point out that-- well, because the, uhm, State said

1 that it was a lot different from, uhm,-- from these
2 other cases, because it wasn't moving. Uhm, and the
3 other cars weren't moving either. They had been moving,
4 uhm, possibly, and, uh,--

5 THE COURT: Well, I-- I do think that-- I
6 can't remember which case it was, the guys were in the
7 alley and one guy was charged just because he said--
8 even though he wasn't in the car, that-- and it was a
9 parked car in a parking lot.

10 MS. HUNTER: Um hmm.

11 THE COURT: And he said, I-- I knew there was
12 marijuana in the car.

13 MS. HUNTER: Sure.

14 THE COURT: I can't-- it's one or the other--
15 it was-- it was either Judge Kershaw's case or Judge
16 Clark's case.

17 MS. HUNTER: Yeah. I'm not good with names,
18 but I-- I-- so I don't remember which is which, but I
19 could--

20 THE COURT: Yeah.

21 MS. HUNTER: -- tell you which, uh,
22 circumstances it went with. So, anyway, uh, so that's
23 my rebuttal to that. And in terms of, uhm,-- of the--
24 or, well, I guess I won't address that because you
25 already kind of did. So, yeah, that's all I want to

1 say. Thank you.

2 THE COURT: Alright. Thank you.

3 Well, I mean, there's a lot of kind of
4 surrounding facts that we could all argue about. A lot
5 of those-- a lot of those would-- would have to be
6 resolved at trial, as I just said. I think for purposes
7 of the Motion to Dismiss, filed by the defense, that I
8 have to-- I have to really construe the facts in a--
9 in a light most favorable to the State on any kind of
10 motion to, uh-- motion to dismiss because, uh, so many
11 of these questions, uhm, are for a jury or these--
12 well, these questions. And I think what I'm-- I'm left
13 with for purposes of making this decision is the fact--
14 facts that, uh, we're on the University of Idaho campus
15 in a parking lot that's associated with Wallace Complex,
16 but also has other purposes, like servicing the soccer
17 field, uh, that Officer Sieverding sees fogged windows,
18 attracts his attention. He smells marijuana, whether--
19 I'd have-- I'd have to check the record, whether it's--
20 it's burnt or-- or raw, uh, it may be an open question.
21 As he gets closer to the car, he smells it more
22 strongly. He knocks on the passenger's window. Mr.
23 Amstad, who's identified, opens the door. The-- the
24 smell is, uh, much stronger, uh, thus, giving him
25 probable cause. Uh, and he, uh, sees Mr. Hughes, who's

1 in the driver's seat, putting the-- the baggie, which
2 he presumes to be marijuana based on his training and
3 experience. Also, sees fla-- uh, uh, green flakes,
4 also presumed to be marijuana based on his training and
5 experience. And then searches the car, uh, gets the
6 bong, uh, finds some presumed marijuana, also finds
7 presumed marijuana in the trunk. I think that's
8 probably pretty straightforward recitation of the facts
9 that are sufficient for me to access whether or not this
10 statute, the way it's written, applies-- applies to
11 this case. And I'm-- I'm saying that also for purposes
12 of appeal because whatever-- whatever I do here, I
13 think, you know, could be-- may be appealed, because in
14 some ways, I think every judge who's addressed this
15 issue is inviting appeal in a way because, uh, this
16 statute is very poorly written. Uhm, it's uh-- it's
17 unclear. I don't know if it's ambiguous or not. I'm
18 going to analyze it both ways. Uhm, and I'm going to
19 just tell you kind of how I-- how I proceeded through
20 this. And I-- I, basically, did this this morning, uh,
21 because- I don't know how I had the time but, I mean, it
22 wasn't all morning but I just started grabbing, uh,
23 things to figure out what these words mean. Uh, because
24 I'm-- I was genuinely curious and genuinely confused
25 about it. Uh, and the-- and the language is that we--

1 we need to analyze here. And it really is kind of an
2 exercise in sentence diagraming. It shall be unlawful
3 for any person to be present at or on premises of any
4 place where he knows illegal controlled substances are
5 being manufactured or cultivated or are being held for
6 distribution, transportation, delivery, administration,
7 use or to be given away.

8 And so the-- the heart of the question is
9 that as, uh, Mr. Ugelstad would argue that it could be
10 read in its edited form as it shall be unlawful for any
11 person to be present at any place where he knows illegal
12 controlled substances are being used.

13 Ms. Hunter would argue that it should be read
14 as it shall be unlawful for any person to be present at
15 or on premises of any place where he knows illegal
16 controlled substance-- substances are being used.

17 So that is an issue of statutory
18 interpretation in terms of the meaning of the words and
19 grammatical structure of the sentence, in my opinion.
20 And all of these decisions have-- have addressed that.
21 And I think the-- I think the, uh,-- this is na--
22 [PAUSE]. I wrote his name down here somewhere. Pierce
23 Murphy. He may not be a lawyer. I don't think he's a
24 lawyer, maybe he is. The community ombudsman actually
25 did a pretty good grammatical analysis and I suspect

1 that-- that Mr. Murphy is kind of a grammarian, maybe,
2 uh, and he parsed it out that way. And he's the one who
3 correctly identified, of any place, as a prepositional
4 phrase. That's what it is. Of, which is a preposition,
5 any place modifies premises. It's-- it's adjectival.
6 That's-- that is-- that is, uh,-- that is basic
7 grammar and I-- so I grabbed my *Chicago Manual of*
8 *Style*, fifteenth edition. Because I don't really-- I'm
9 not a grammarian. And I thought, well, what does that
10 mean? A prepositional phrase consists of a preposition,
11 its object and any words that modify the object can be
12 used as a noun, an adverb or an adjective. We call this
13 an adjectival phrase; i.e., the cathedrals of Paris.
14 So-- and, generally, a phrase follows the last element
15 of the compound. So, it's-- the placement of the
16 preposition is significant in terms of interpretation.
17 So because-- because it is-- it is that prepositional
18 phrase that modifies premises, premises of any place,
19 it's not grammatically correct to read this in the
20 disjunctive as, to be present at any place. It's not--
21 it's not-- the sentence is not set up to be
22 disjunctive. And when I was considering this way back
23 in two thousand ten in the *State v. Lamb* case, I read it
24 that way and I think I was wrong grammatically. I don't
25 think that was a correct analysis of the-- of the

1 grammari-- of the-- of the structure of the sentence.
2 And I'm not trying to parse this. I'm not making this
3 up. This is the-- this is the-- this is basic, uh,
4 grammar. And I don't think we-- when we're-- when
5 we're reading statutes we get to disregard that. So,
6 then, there's that. Okay. So, that means premises has
7 a role to play in the meaning of this statute and the
8 interpretation of this statute.

9 Now, we all know that we have to, uh,-- to
10 apply the plain, ordinary meaning of-- of-- of words,
11 uh, that are used in statutes, uh, and if they're
12 specifically defined in the-- in the statute, we have
13 to use those words the way we commonly use those words.
14 So, like these other judges, I went to the dictionary.
15 First, I went-- I went to *Black's Law Dictionary*,
16 because we are talking about the law. This is my-- my
17 *Black's Law Dictionary* from law school. It's the fifth
18 edition. I'm sure it's been updated, but I don't think
19 it-- uh, this definition of premises has changed
20 significantly since that time, except as otherwise
21 defined in this statute. [PAUSE] So, besides other
22 definitions, which don't apply like in logic in terms of
23 a premise, this is defined as lands and tenements, an
24 estate including lands and buildings thereon, the
25 subject matter of a conveyance, the area of land

1 surrounding a house, and actually, by our legal
2 construction, forming one encl- enclosure with it, a
3 distinct and definite locality and may mean a room,
4 shop, building or other definite area - maybe a parking
5 lot or a distinct portion of real estate. Okay. So
6 that is *Black's Law Dictionary*.

7 And then I thought, well, I'll look in-- this
8 is an *American Heritage Dictionary*, Second College
9 Edition. Such a [UNINTELLIGIBLE WORD] law, I mean, it
10 is-- it's really fascinating. Aside from the logic,
11 uh, definition, premises are defined as land and the
12 buildings upon it, a building or part of a building.
13 So, I-- I-- I would say that, generally speaking, the
14 commonly used definition or the common definition of the
15 word premises is related to land and structures or--
16 or, uh, land associated with structures.

17 Uhm, I looked for other definitions, uhm, in
18 the-- in the Idaho Code. I did find one in, uh, the
19 definitions. This is under twenty-three - one thousand
20 one, defining a premises where people can sell beer,
21 which is kind of an-- you know, there's a little bit of
22 an analogy there, I guess, with-- with, uh, places--
23 premises where drugs might be held. In this case it's
24 alcohol. This is in, uh, twenty-three dash one thousand
25 one subsection H. The word premises means the building

1 and contiguous property owned or leased or used under
2 government permit by a licensee as part of the business
3 establishment, etcetera. So, that definitely, uh, talks
4 about building and contiguous property. We all know the
5 case law on interpreting statutes and of-- you know,
6 first, before we can even go to legislative history or
7 engage in statutory interpretation, we have to-- we
8 have to apply the-- the plain language of-- of the
9 statute. And there's actually a statute on this, which
10 I actually didn't know about. Uh, it's-- it's in, uh,
11 construction of statutes. It's a statute, seventy-three
12 dash one one three. The language of a statute should be
13 given its plain, usual and ordinary meaning. Where a
14 statute is clear and unambiguous, the expressed intent
15 of the legislature shall be given effect without
16 engaging in statutory construction. The literal words
17 of a statute are the best guide to determining
18 legislative intent. That's what the legislation tells
19 us. If a statute is capable of more than one
20 conflicting construction, the reasonableness of the
21 proposed interpretation shall be considered and the
22 statute must be construed as a whole. Interpretations
23 which would render the statute a nullity or which would
24 lead to absurd results are disfavored, as Mr. Ugelstad
25 argued. Words and phrases are construed according to

1 the context and improved use of the language. But
2 technical words and phrases and such others as have
3 acquired a peculiar and appropriate meaning in law are
4 defined in the succeeding section, are to be construed
5 according to such peculiar and appropriate meaning or
6 definition. That's an-- in-- then in seventy-three
7 one one four, there are particular words that are
8 defined, none of which include premises or motor
9 vehicle. Although we know that motor vehicle is defined
10 elsewhere in the statute for particular purposes. And
11 one of the things I found interesting, as I alluded to
12 before, is thirty-seven - twenty-seven thirty-two-- not
13 thirty-two, I'm sorry. Thirty-seven - twenty-seven
14 thirty-seven A, which was enacted after-- well after
15 thirty-seven - twenty-seven thirty-two D. So this was
16 enacted in nineteen eighty-- nineteen ninty-one, then
17 revised in two thousand six. Thirty-seven - twenty-
18 seven thirty-seven A, uh,-- and this is, uh, the
19 statute regarding manufacture or delivery of controlled
20 substance where children are present, specifically
21 defines premises, but only as used in this section-- as
22 used in this section, motor vehicle or vessel is part of
23 the-- is-- is included in the definition of premises.
24 Also, dwelling or rental unit, including but not limited
25 to, apartment, townhouse, condominium, mobile home,

1 manufactured home, motel room or hotel room. And C,
2 dwelling house, its curtilage, and any other
3 outbuildings.

4 So, that's kind of where I wandered through
5 these-- through these statutes, through these
6 definitions. So, this is where-- this is where I come
7 down on this. I think that it cannot be read in the
8 disjunctive because it's a-- an adjectival preposition
9 phrase of any place modifying premises. Under the
10 circumstances of this case, I am not finding that a
11 parking lot, even though it might be associated with a
12 dorm which houses many, many people, can be considered a
13 premises. I don't think that any place applies, uhm, to
14 this, and I have to apply this statute as written. I
15 think it-- I-- I think this is beyond, uh, what could
16 be fairly used in this particular factual situation.
17 There's certainly others where it could be used, when
18 associated with more of what could be fairly defined as
19 a premises. Uh, I think I am persuaded by the reasoning
20 of Judge Kershaw, by Judge Clark and by the ombudsman.
21 I'm not fully, but, uh,-- but mostly on this-- on this
22 issue of, uh, word meaning and sentence structure. And
23 in terms of the potential of sur-- you know, rendering
24 an, uh, nullity, I don't think that this interpretation
25 does render the statute a nullity. I think it could

1 still apply in many, many circumstances, just not this
2 circumstance. And in response to the potential
3 absurdity of having, you know, a parking lot filled with
4 college students smoking marijuana, I think there are
5 two ways to go about dealing with that. Uh, monitor the
6 parking lot more carefully, uh, or go to the legislature
7 and fix this statute, which I, again, am surprised that
8 nobody has thought to do to clarify it because it could
9 be easily clarified, or appeal my decision and see what
10 the Supreme Court says about it. Uhm, I'm reminded of
11 something that I heard Justice Scalia say once at the
12 Bellwood Lecture many years ago, here at the University
13 of Idaho College of Law. He said, you know, if you
14 don't like how things are or you disagree with it, pass
15 a law. So, I think that's really what we're talking
16 about and so I'm going to grant, uh, Mr. Amstad's Motion
17 to Dismiss and, uh, we'll see what happens. The State,
18 I expect, will likely appeal this decision and maybe we
19 can get some clarification from a higher court, maybe
20 starting with Judge Stegner, maybe the-- maybe the
21 Supreme Court or maybe the legislature will intervene in
22 the next legislative session.

23 I think, honestly, part of the problem is the
24 subsequent passage of, uh, thirty-seven-- what is it?
25 Thirty-seven - twenty-- thirty-seven - twenty-seven

1 thirty seven A, which then specifically dealt with motor
2 vehicles in this-- in this same context, in this same
3 chapter, and that was very persuasive to me.

4 So, there you have it. Any questions?

5 MR. UGELSTAD: No, Your Honor.

6 MS. HUNTER: Thank you, Your Honor.

7 THE COURT: Alright. Thank you all. Good
8 luck.

9 [WHEREUPON THE HEARING WAS RECESSED AT 4:28
10 P.M., RECONVENING AT 4:28 P.M., COURT, COUNSEL AND THE
11 DEFENDANT BEING PERSONALLY PRESENT AS BEFORE.]

12 THE COURT: Uh, so, this is just based upon,
13 uh, the, uh, findings and reasoning set forth in-- on
14 the record. Uh, the order[sic] to dismiss is granted.

15 MR. UGELSTAD: Thank you, Judge.

16 MS. HUNTER: Oh, okay. I don't have to go
17 through all the grammatical stuff?

18 THE COURT: No.

19 MS. HUNTER: Okay.

20 THE COURT: No. Because they can-- they're
21 going to have to do a transcript anyway.

22 MS. HUNTER: Okay, great. Okay.

23

24 [WHEREUPON THE HEARING WAS CONCLUDED AT 4:29
25 P.M.]

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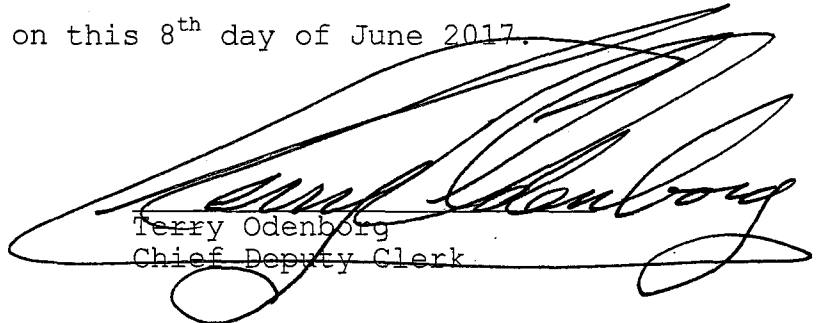
CLERK'S CERTIFICATE

STATE OF IDAHO)
) ss.
County of Latah)

I, Terry Odenborg, Chief Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah do hereby certify:

That hearing of the defendant's Motion to Dismiss was held in the above-entitled action and the proceedings had thereat were recorded by electronic recorder; that I thereafter, from the digital recording made at said motion hearing, prepared a typewritten transcript of said proceedings; that the foregoing 69 pages constitutes said transcript and that said transcript contains a full, true, complete and correct transcript of those proceedings.

IN WITNESS THEREOF, I have set my hand and the official Court seal on this 8th day of June 2017.


Terry Odenborg
Chief Deputy Clerk

CASE NO. LA 2017-230
June 8 2017 10:38 AM
CLERK OF DISTRICT COURT
LATAH COUNTY
BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
)
Plaintiff/Appellant,)
)
vs.)
)
DANIEL C. AMSTAD,)
)
Defendant/Respondent.)
_____)

CASE NO. CR-2017-230
NOTICE OF LODGING OF
TRANSCRIPT

NOTICE is hereby given that on June 8 2017, the transcript in the above entitled appeal was lodged with the District Court Clerk. Copies are available for pickup in the Clerk's Office of the Latah County Courthouse.

THE PARTIES ARE HEREBY NOTIFIED that they have twenty-one days from the date of this notice in which to file any objections to the transcript; upon failure of the parties to file any objection within such time period, the transcript shall be deemed settled.

DATED this 8th day of June 2017.

Henrienne K. Westberg
Clerk of the District Court

By [Signature]
Deputy Clerk

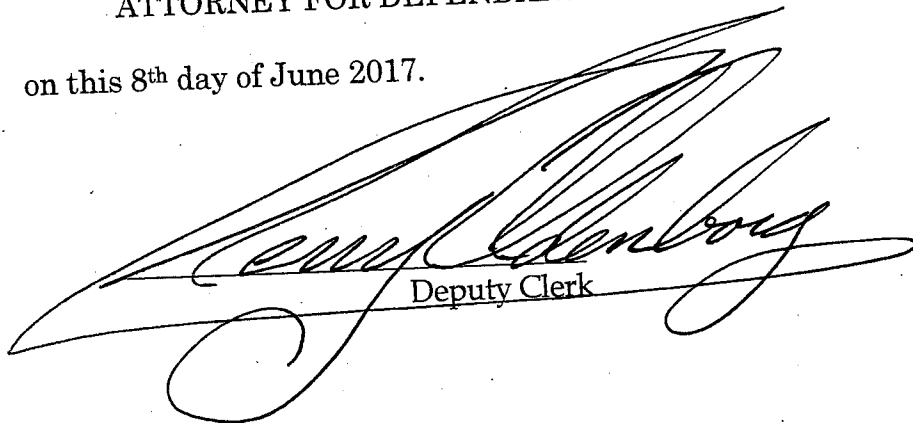
CERTIFICATE OF SERVICE

I do hereby certify that a full, true, complete
and correct copies of the foregoing NOTICE OF
LODGING OF TRANSCRIPT was hand delivered to:

KEITH SCHOLL
DEPUTY PROSECUTOR

ANDREA HUNTER
ATTORNEY FOR DEFENDANT

on this 8th day of June 2017.



Deputy Clerk

CASE NO.

CR 2017-230

July 6 2017 9:53 AM

CLERK OF DISTRICT COURT
LATAH COUNTY

BY

DEPUTY

[Signature]

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH**

STATE OF IDAHO,

Plaintiff/Appellant,

vs.

DANIEL C. AMSTAD,

Defendant/Respondent.

) Case No. CR-2017-230

) **ORDER SETTING BRIEFING**
) **SCHEDULE AND SCHEDULING**
) **ORAL ARGUMENT**

On May 10, 2017, the State filed a Notice of Appeal with this Court. The appeal is taken from the Order Dismissing Case issued by Magistrate Judge John C. Judge. The transcript of the hearing on the Defendant's Motion to Dismiss was lodged with this Court on June 8, 2017. Neither party has filed an objection to the transcript and therefore, the transcript is therefore now settled in this case. Consequently, a briefing schedule is appropriate.

**ORDER SETTING BRIEFING
SCHEDULE AND SCHEDULING
ORAL ARGUMENT**

It is ORDERED that:

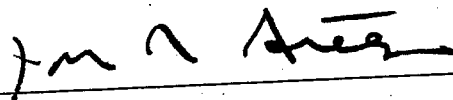
(1) Appellant's opening brief shall be filed and served no later than August 7, 2017;

(2) Respondent's response brief shall be filed and served no later than September 5, 2017;

(3) Appellant's reply brief, if any, shall be filed and served no later than September 26, 2017;

(4) Oral argument will be conducted on October 30, 2017, at 9:30 a.m.

Dated this 5th day of July 2017.



John R. Stegner
District Judge

**ORDER SETTING BRIEFING
SCHEDULE AND SCHEDULING
ORAL ARGUMENT**

CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete, and correct copies of the foregoing **ORDER SETTING BRIEFING SCHEDULE AND SCHEDULING ORAL ARGUMENT** were delivered in the following methods to:

Keith Scholl
Deputy Prosecutor, Latah County

- U.S. Mail
- Overnight Mail
- Fax
- Hand Delivery

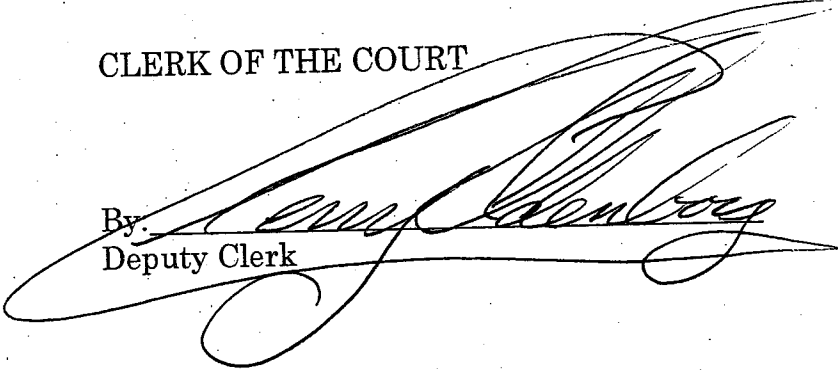
E-MAILED

Andrea Hunter
Public Defender, Latah County

- U.S. Mail
- Overnight Mail
- Fax
- Hand Delivery

on this 6th day of July 2017.

CLERK OF THE COURT

By: 
Deputy Clerk

**ORDER SETTING BRIEFING
SCHEDULE AND SCHEDULING
ORAL ARGUMENT**

CR-2017-0230

2017 AUG -7 PM 4:25

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,
Plaintiff - Appellant,

vs.

DANIEL AMSTAD,
Defendant - Respondent.

LATAH COUNTY CASE
NO. CR-2017-0230

APPELLANT'S BRIEF

APPEAL FROM THE MAGISTRATE DIVISION OF THE DISTRICT COURT OF
THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR
THE COUNTY OF LATAH

HONORABLE JOHN C. JUDGE
Magistrate Judge

WILLIAM W. THOMPSON
Prosecuting Attorney

KEITH SCHOLL
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ATTORNEY FOR
DEFENDANT- RESPONDENT

ORIGINAL

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STATEMENT OF THE CASE

Factual Background

On January 30, 2017, at about 10:40 p.m., Officer Joe Sieverding (Sieverding) noticed a Honda Accord with fogged windows parked in the west Wallace Complex parking lot on the University of Idaho Campus in Moscow, Idaho. Dismissal Hearing ("DH") at 9: 23-25, 10:1-6. Sieverding approached the car on foot, and from about five feet away from the Honda, he smelled a strong odor of marijuana coming from the vehicle. DH at 10:19-25, 11: 1-2. The vehicle was not running and he walked up and knocked on the passenger window. DH: 7-8. Daniel Amstad (Amstad/Defendant) opened the passenger door. DH at 12: 2. Sieverding could see the driver, C.H., a juvenile, hide a plastic baggie under his seat. DH at 11: 11-12. C.H. also had what appeared to be marijuana flakes on his lap. DH at 11:12-15. Sieverding asked C.H. where the marijuana was and C.H. handed him a small sandwich bag from under the seat containing marijuana. DH at 12: 19-20. Sieverding then asked what they used to smoke the marijuana with and C.H. handed him a large glass bong from the back seat. DH at 12:23-25.

Sieverding then asked the occupants to step outside of the vehicle while he conducted a search. DH at 13: 3-5. During the search, Sieverding found a one gallon sized Ziploc bag with approximately 46.5g of marijuana and a large quantity of new, plastic Ziploc bags in the trunk, along with various paraphernalia. DH at 13: 7-14. Before the search ended, C.H. also pulled a digital scale from his pocket and handed it to a covering officer. DH at 13:15-17. After the investigation was complete, Sieverding cited Amstad with a violation of I.C. § 37-2732(d), which is commonly referred to as Frequenting. DH at 15:18.

Procedural Background

The Defendant was charged with Frequenting, Idaho Code § 37-27329(d). He pled “Not Guilty” and moved to dismiss the case. On April 27, 2017 the magistrate court heard evidence and oral arguments on the matter. At the conclusion of the hearing, the magistrate stated his factual findings and conclusions of law on the record, and dismissed the case.

On April 28, 2017, the magistrate filed a written Order Dismissing Case. The State timely appealed on May 10, 2017.

ISSUE PRESENTED ON APPEAL

The State raises the following issue on appeal:

Did the magistrate err in determining that the west Wallace Complex parking lot belonging to the University of Idaho is not “the premises of any place” under I.C. § 37-2732(d)?

STANDARD OF REVIEW

The District Court hears appeals from the magistrate division in the same manner and on the same standards as an appeal from the District Court to the Supreme Court. I.C.R. 54(f)(1). While a Motion to Dismiss under I.C.R. 48(a) is typically reviewed for abuse of discretion, the interpretation of a statute is a question of law reviewed by an appellate court as de novo. *State v. Martinez-Gonzalez*, 152 Idaho 775, 778 (2012); *State v. Schulz*, 151 Idaho 863, 865 (2011).

ARGUMENT

The magistrate erred in determining that a parking lot is not the premises of any place because the plain meaning of “premises” is a tract of land. The parking lot at issue in this case

is a tract of land belonging to the University of Idaho. Under Idaho Code 37-2737(d) it is unlawful for any person:

“...to be *present at or on the premises of any place* where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away.”

(Emphasis Added). While there are several elements that the State must prove beyond a reasonable doubt in order for a person to be guilty under this statute, the only element the Defendant’s Motion to Dismiss challenged was the element emphasized above. Thus, at issue in this case is the meaning of “premises” and the rules of statutory interpretation as applied to I.C. § 37-2732(d).

In order to determine this issue, the Idaho Supreme Court employs 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.”

State v. Schulz, 151 Idaho 863, 866-67 (2011) quoting *Farber v. Idaho State Ins. Fund*, 147 Idaho 307, 310 (2009) (*internal citations omitted*). The State’s position in this case is that the statute is unambiguous and must be construed as a whole, giving all the words in the statute

plain, usual, and ordinary meaning in accordance with *Schulz*.

First, the statute uses the phrase “present at or on” indicating that there is a difference from being “at” the premises of any place or “on” the premises of any place. The State’s position is that one can be “at” a premises without being “on” a premises. In our case, the Defendant was not physically standing “on” the parking lot, but was “at” the parking lot by sitting in the Honda Accord; the vehicle was “on” the parking lot. A reading of the statute that would allow for a safe haven of sitting in one’s vehicle on a tract of land, and thus, not falling within the purview of I.C. § 37-2732(d), renders the word “at” a nullity or superfluous. Because none of the statute is to be construed as a nullity or superfluous under *Schulz*, one can be “at” a premises without being “on” the premises.

Second, the State does not disagree with the definitions given on the record by the magistrate, but with the application of the facts to those definitions. A premises is “a tract of land with the buildings thereon.” “premises.” Merriam-Webster Online Dictionary. 2017. <http://www.merriam-webster.com> (5 Aug. 2017). Here, the University of Idaho dormitory parking lot is a tract of land without buildings or structures. University of Idaho is presumably responsible for its upkeep and any premises liability. The parking lot is a premises by its plain meaning in accordance with the principles listed in *Schulz*. Simply because there are no buildings on this particular area of University of Idaho’s land does not mean that the parking lot is not a premises within the meaning of the I.C. § 37-2732(d).

Additionally, the following hypothetical will help to illustrate the error in the magistrate’s holding in this case: A farmer owns Blackacre and uses the parcel to grow marijuana. There are no structures, outbuildings, or fences on Blackacre. If a person were

sitting in an automobile directly across the street from Blackacre watching the farmer tend the marijuana crop, that person would not be in violation of I.C. § 37-2732(d). However, if that same individual were to drive across the street onto Blackacre and discuss marijuana prices with the farmer from the front seat of his car, that person would now be present at or on the premises of any place where he knows marijuana is cultivated. Again, there are no buildings, but the marijuana farm in this hypothetical is still a premises within the meaning of the statute. Additionally, the hypothetical person was in a vehicle at the time of the violation, yet was "present at or on" Blackacre.

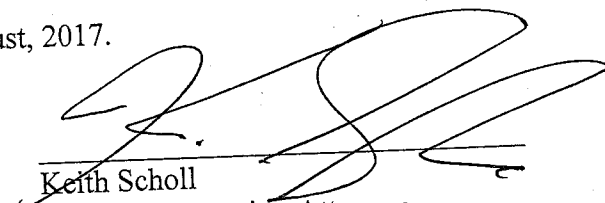
Third, a holistic reading of I.C. § 37-2732(d) shows that the statute is very broad in encompassing all places. The operative words of the statute, "any place," indicate the legislature's intent to criminalize the conduct of a person who is present anywhere he knows controlled substances are being used, cultivated, distributed, transported, or given away. The Defendant in our case was present where marijuana was potentially being used, distributed, transported, or given away. Because the record is void of the Defendant's knowledge or intent, the sole issue of the Defendant's presence at a premises should have been ruled as undisputable and the Motion to Dismiss based solely on the Defendant's presence at the parking lot should have been denied by the magistrate.

The magistrate erred in holding that the University of Idaho's parking lot serving the west Wallace Complex dormitory is not a premises of any place under I.C. § 37-2732(d). The plain, usual, and ordinary meanings of the statute indicate a person can be "at" a premises without being "on" it, that premises includes a parking lot, and the statute is broad enough to condemn the course of conduct described in the statute at any place.

CONCLUSION

Because Defendant only challenged the singular element of "present at or on the premises of any place", and the course of conduct describe on the record falls within I.C. § 37-2732(d), the magistrate abused his discretion in dismissing this case under I.C.R 48(a)(2). The State requests that the Order Dismissing Case be reversed and this case be remanded for further proceedings.

Dated this 7 day of August, 2017.


Keith Scholl
Deputy Prosecuting Attorney

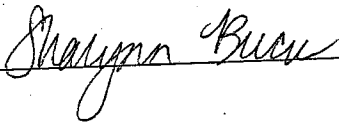
CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing APPELLANT'S BRIEF was delivered to following person and in the manner indicated:

ANDREA HUNTER
Attorney at Law
PO Box 9408
Moscow, Idaho 83843
(208) 882-6749

Courthouse Mail

Dated this 14th day of August, 2017.



CR-2017-0230

2017 SEP -5 AM 10:45

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)	
	)	LATAH COUNTY CASE
Plaintiff - Appellant,	)	NO. CR-2017-0230
vs.)	
)	
DANIEL AMSTAD,)	
)	
Defendant - Respondant.)	

RESPONSE TO APPELLANT'S BRIEF

APPEAL FROM THE MAGISTRATE DIVISION OF THE DISTRICT COURT OF THE
SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF LATAH

HONORABLE JOHN C. JUDGE
Magistrate Judge

WILLIAM W. THOMPSON
Prosecuting Attorney

KEITH SCHOLL
Deputy Prosecuting Attorney

Latah County Prosecutor's Office
P.O. Box 8068
Moscow, Idaho 83843
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ATTORNEYS FOR
PLAINTIFF- APPELLANT

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ATTORNEY FOR
DEFENDANT- RESPONDENT

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Rules

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STATEMENT OF THE CASE

Respondent agrees with the Factual Background and Procedural Background set forth in the Appellant's Statement of the Case in Appellant's Brief, filed herein August 7, 2017.

STANDARD OF REVIEW

The standard of review is de novo. *State v. Martinez-Gonzalez*, 152 Idaho 778, (2012); *State v. Schulz*, 151 Idaho 863, 865 (2011).

ARGUMENT

The magistrate did not err in determining that the parking lot in this case was not the premises of any place under Idaho Code 37-2732(d). Appellant argues that since the parking lot belonged to the University of Idaho, it is the premises of a place, the university. Idaho Code 37-2732(d), which reads that it is unlawful for a person "to be present at or on the premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, or to be given away." Should the University of Idaho be considered "a place" and every parking lot and tract of land maintained by the university a "premises" of that place, then only the naive would be truly safe from a charge under this statute, as there is certainly marijuana being used or held somewhere on the campus. This is an overbroad interpretation of "the premises of any place," and would render the statute overbroad and absurd.

While the Respondent agrees that the Court must follow the principles of statutory interpretation under *State v. Schulz*, and "must give effect to all words and provisions of the


statute so that none will be void, superfluous, or redundant," 151 Idaho 866-67 (2011), the Respondent does not agree that "at" would be rendered a nullity under the magistrate's interpretation of the statute. The Respondent does not agree that you can be "at" the premises of any place and not be "on" the premises of any place. The phrase "present at or on" included both "at" or "on" to be able to describe places and objects. For example, a person is generally described to be "at" the mall, but "on" the mall's property. If the legislature wanted to specifically include cars as a place for a person to be subject to this code section, they might have used the word "in," or even "automobile."

The Appellant argues that the statute was written to be very broad. While the statute may be broad, it is not broad enough to include automobiles. In another similar statute, Idaho Code 37-2737A, which prohibits manufacturing or delivering controlled substances upon the same premises as a minor, the statute defines "premises" for the purpose of that section as including a motor vehicle or vessel. If the legislature wanted to include motor vehicles in the definition of Idaho Code 37-2732(d), they would have. They were careful enough to broaden the definition of "premises" to protect children from being exposed to drug trafficking, and if they were concerned enough with charging college students for being in the same car as their friends who possessed marijuana, they would have been careful enough to broaden the definition for "premises" under the so-called frequenting statute as well.

CONCLUSION

The magistrate did not abuse his discretion in dismissing this case under I.C.R. 48(a)(2). Therefore, the Order Dismissing Case should be affirmed.

Dated this 5th day of September, 2017.



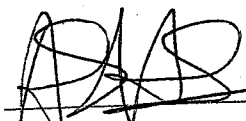
Andrea Hunter
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September, 2017, I caused a true and correct copy of the foregoing to be delivered on the following, in the method indicated:

Keith Scholl
Deputy Prosecutor
Latah County Prosecutor's Office
P.O. Box 9303
Moscow, ID 83843

- Hand Delivery
- U.S. Mail
- Facsimile

By: 

Andrea Hunter

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

- COURT MINUTES -

John R. Stegner
District Judge

Sheryl L. Engler
Court Reporter
Recording: Z: 3/2017-10-30
Time: 9:33 A.M.

Date: October 30, 2017

STATE OF IDAHO,)
)
Plaintiff/Appellant,)
)
vs.)
)
DANIEL C. AMSTAD,)
)
Defendant/Respondent.)

Case No. CR-2017-230

Appearances:

Keith Scholl, Deputy Prosecutor
Appearing on behalf of the State

Defendant present with counsel,
Andrea Hunter, Public Defender

Subject of Proceedings: APPELLATE ARGUMENT


This being the time fixed pursuant to order of the Court for the hearing of appellate argument in this case, Court noted the presence of counsel and the defendant.

Mr. Scholl presented appellate argument on behalf of the State/Appellant. Ms. Hunter presented appellate argument on behalf of the defendant/respondent. Mr. Scholl argued in rebuttal. Ms. Hunter argued in surrebuttal.

For reasons articulated on the record, Court affirmed the magistrate's ruling in this case.

Court recessed at 10:05 A.M.

APPROVED BY:


JOHN R. STEGNER
DISTRICT JUDGE

Terry Odenborg
Deputy Clerk

CR-2017-230

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CLERK OF DISTRICT COURT
LATAH COUNTY
BY PK DEPUTY

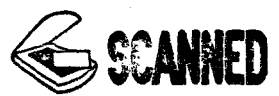
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,	)	Case No. CR-2017-230
)	
Plaintiff/Appellant,)	
	)	MEMORANDUM OPINION
vs.	)	ON APPEAL
)	
DANIEL C. AMSTAD,)	
)	
Defendant/Respondent.)	
)	
)	

In this case, the Magistrate Judge, John C. Judge, dismissed the criminal charge of "frequenting"¹ brought against the Defendant Daniel C. Amstad. The State appeals the Magistrate's decision. For the reasons set out in this opinion, the Magistrate's dismissal of the charge will be affirmed.

¹ The charge is colloquially referred to as "frequenting" because that was the language used in the statute when it was originally enacted in 1972. 1972 Idaho Sess. Law Ch. 133 § 6, p. 274. However, the statute was amended in 1977 and the frequenting language was deleted. 1977 Idaho Sess. Law Ch. 185 § 1, p. 517. Nevertheless, the frequenting moniker has remained, even though it is now a misnomer. The current statute, Idaho Code § 37-2732(d), criminalizes being present "at or on premises of any place" where controlled substances are being held and the defendant knows of that fact.

**MEMORANDUM OPINION
ON APPEAL**



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BACKGROUND

On January 20, 2017, an officer with the Moscow Police Department, Joe Sieverding, noticed a car parked in the parking lot near the Wallace Complex on the campus of the University of Idaho. The car's windows were fogged over. It is not clear from the record whether the car, a Honda, was running. As the Officer approached, he smelled the aroma of marijuana. He knocked on the passenger door. The Defendant, Daniel Amstad, opened the door and there in the lap of the driver, C.H.,² was a baggie containing what the officer believed to be marijuana. Amstad was charged with violating Idaho Code § 37-2732(d). The allegation being that he was "present at or on premises of any place where he [knew] illegal controlled substances [were] . . . being held"

Amstad moved to dismiss the charge, arguing "[a] vehicle is not a 'premises of any place.'" Mot. to Dismiss at 2. In support of his motion, Amstad's attorney attached two decisions: Memorandum Opinion Concerning Motion for Judgment of Acquittal and Motion to Suppress Evidence, *State v. Traveller*, Twin Falls County Case No. CR-2008-215 (May 8, 2008); and Court's Order on Motion to Dismiss, *State v. Reid*, Bonneville County Case No. CR-2014-3601 (July 30, 2014); in which, under similar, although not identical circumstances, magistrate judges in two different counties (Twin Falls and Bonneville) concluded that a vehicle was not the premises of any place and dismissed the charges. (Amstad also attached the analysis of Pierce

² C.H. are the initials of the driver who was a minor at the time of the incident. The initials C.H. are being used to protect the minor's identity.

Murphy, the Community Ombudsman of Boise City in which the Ombudsman came to the same conclusion, that a car did not fall within the ambit of the statute.

However, as noted at oral argument, the Ombudsman's analysis has no legal effect on this Court's analysis.)

On appeal, the State characterizes the issue as follows: "Did the magistrate err in determining that the west Wallace Complex parking lot belonging to the University of Idaho is not 'the premises of any place' under I.C. § 37-2732(d)?" Appellant's Brief at 4. While Judge Judge spoke in terms of the applicability of the statute to the parking lot (*see* Tr. of Hearing of Mot. to Dismiss (Tr.) p. 67, lines 10-13 ("I am not finding that a parking lot, even though it might be associated with a dorm which houses many, many people, can be considered a premises.")) those were not the facts presented to Judge Judge, and therefore did not constitute the holding of the case.

The transcript makes it clear that Amstad was apprehended while sitting in the passenger seat of a car while C.H., the person who had physical possession of the marijuana, sat in the driver's seat. Tr. p. 11. The issue presented to Judge Judge by Amstad was as follows:

A vehicle is not a "premises of any place." When in a vehicle, one is not "present at or on premises of any place." Therefore, criminal liability does not attach under that statute when one is a passenger in a vehicle in which drugs are present.

Mot. to Dismiss at 2. In its response to the Defendant's Motion to Dismiss, the State succinctly articulated the issue facing Judge Judge: "The question presented to this

Court is whether a person can be 'present at or on the premises of any place' if they [sic] are in a vehicle." Response to Defendant's Mot. to Dismiss at 3.

To now attempt to change the issue as being a question about a parking lot when the facts are undisputed and the existing law analyzed dealt with a person's presence in a car is to engage in sophistry. This Court will consider the question presented as it was by the State's attorney when this matter was presented to Judge Judge - "The question presented to this Court is whether a person can be 'present at or on the premises of any place' if they [sic] are in a vehicle."

STANDARD OF REVIEW

The standard of review for this Court, in its appellate capacity, in interpreting a statute is well-settled:

This Court exercises free review over the application and construction of statutes. Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction. The language of the statute is to be given its plain, obvious, and rational meaning. If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history or rules of statutory interpretation. 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. 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. It is incumbent upon a court to give an ambiguous statute an interpretation that will not render it a nullity. Constructions of an ambiguous statute that would lead to an absurd result are disfavored. Additionally, if a criminal statute is ambiguous, the rule of lenity applies and the statute must be construed in favor of the accused. However, where a review of the legislative history makes the meaning of the statute clear, the rule of lenity will not be applied.

State v. Bradshaw, 155 Idaho 437, 439–40, 313 P.3d 765, 767–68 (Ct. App. 2013) (citations omitted). “Statutory interpretation begins with the literal words of the statute, and this language should be given its plain, obvious, and rational meaning. The objective of statutory interpretation is to give effect to legislative intent. Such intent should be derived from a reading of the whole act at issue.” *State v. McKean*, 159 Idaho 75, 79, 356 P.3d 368, 372 (2015) (citations and quotation marks omitted).

ANALYSIS

The operative question presented in this case is what did the legislature intend when it used the phrase “at or on premises of any place . . .”? The State seeks to prosecute Amstad contending that his presence in a car with another occupant who had marijuana in his possession constitutes what the legislature sought to proscribe.

As a threshold matter, it is clear that the definition of premises does not include a car. Black’s Law Dictionary defines premises as follows: “[a] house or building, along with its grounds; esp., the buildings and land that a shop, restaurant, company, etc. uses.” PREMISES, Black’s Law Dictionary (10th ed. 2014).

Idaho’s case law also distinguishes “premises” from a vehicle. *See*, for example, *State v. Schaffer*, 133 Idaho 126, 982 P.2d 961 (Ct. App. 1999) in which the Court of Appeals concluded that a search warrant authorizing a search of a truck and a bus did not include the search of “premises.” *Schaffer*, 133 Idaho at 133, 982 P.2d at 968. As noted by the Court of Appeals, “[i]n the instant case, by contrast, the

search warrant authorized the search of only a truck and a bus located in the backyard of a house. There was no authorization to search any 'premises.'" *Id.*

It could also be argued that "premises" modified by the phrase "of any place" could arguably include a car. However, in order to reach such a conclusion after having found premises does not include a car would require interpreting "place" as including a vehicle. After reviewing the definition of "place" such an argument fails.

"Place" is defined as follows:

This word is a very indefinite term. It is applied to any locality, limited by boundaries, however large or however small. It may be used to designate a country, state, county, town, or a very small portion of a town. The extent of the locality designated by it must generally be determined by the connection in which it is used. In its primary and most general sense means locality, situation, or site, and it is also used to designate an occupied situation or building.

PLACE, Black's Law Dictionary (5th ed. 1979).³ Suffice to say, the definition of "place" does not include a parked Honda.

Having concluded that neither "premises" nor "place" refer to a parked car, it appears the legislature did not intend to criminalize Amstad's activity on January 13, 2017; in its use of the language employed.

Even though the definitions of premises and place do appear to not include a car, the State argues the legislature should be given latitude when it comes to the use of its chosen language. Several considerations suggest otherwise. In reading the statute, it seems ambiguous on its face. It is difficult to glean what the legislature

³ Apparently, the term "place" has been removed from Black's Law Dictionary by the Seventh Edition (1999), and remains absent from the Tenth Addition (2014). See Black's Law Dictionary at 1169 (7th ed. 1999).

intended by simply reading the statute. In an effort to understand the legislative intent, it is helpful to examine the statute in context. In doing so, it becomes apparent that the legislature has specifically defined "premises" elsewhere in the Idaho Code as including a "motor vehicle." I refer to Idaho Code § 37-2737A in which the legislature defined "premises" to mean "[m]otor vehicle or vessel" I.C. § 37-2737A(2). In the statute here being interpreted, Idaho Code § 37-2732(d), the legislature could have, but chose not to use that definition. The conclusion to draw from this difference is that the legislature did not intend to include a "motor vehicle" within its definition of premises or to proscribe this behavior in the statute in question. The legislature could have expanded the definition of premises to bring it into congruence with the more expansive definition of Idaho Code § 37-2737A. It did not and has not. Consequently, in comparing Idaho Code § 37-2732(d) with Idaho Code § 37-2737A, it appears the legislature did not intend to criminalize Amstad's behavior.

The second consideration militating in favor of the Defendant is the principle of lenity.

[I]f a criminal statute is ambiguous, the rule of lenity applies and the statute must be construed in favor of the accused. However, where a review of the legislative history and underlying public policy makes the meaning of the statute clear, the rule of lenity will not apply. If the ambiguity remains after examining the text, context, history, and policy of the statute, the interpretive tie between the two or more reasonable readings is resolved in favor of the defendant.

State v. Trusdall, 155 Idaho 965, 969, 318 P.3d 955, 959 (Ct. App. 2014) (citations omitted). As explained, the plain text chosen by the legislature does not appear to

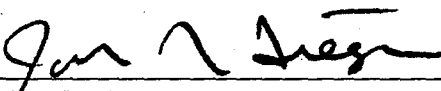
include a car within its coverage. Nevertheless, the State urges that "premises" be given an unconventional and expansive definition. As noted, the legislature recognized in a different code section that when it wanted "premises" to include a "[m]otor vehicle" it defined premises as including a motor vehicle. Because the legislature chose not to do so, it should be assumed that this expansive definition was not intended by the legislature. Given the ambiguity mentioned, applying the rule of lenity is appropriate in this case. Consequently, the statute should be construed in favor of the accused. In matters of statutory construction, the tie does not go to the legislature. It goes to the defendant. Affording Amstad the rule of lenity also leads to the conclusion that an expansive definition of premises would be inappropriate.

Finally, the fact that every court that has been asked to look at this statute has come to a similar interpretation lends support to the conclusion that the statute does not stand for the proposition urged by the State.

CONCLUSION

The decision of the Magistrate Judge in dismissing the charge against Daniel Amstad is AFFIRMED.

Dated this 1st day of December 2017.



John R. Stegner
District Judge

MEMORANDUM OPINION
ON APPEAL

Page 8

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CERTIFICATE OF SERVICE

I do hereby certify that full, true, complete, and correct copies of the foregoing
MEMORANDUM OPINION ON APPEAL were delivered by the following
methods to the following:

William W. Thompson & Keith Scholl
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on this 1st day of December 2017.

CLERK OF THE COURT

By: Peggy Lund
Deputy Clerk

**MEMORANDUM OPINION
ON APPEAL**

Page 9

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CR-2017-230

2018 JAN -2 PM 2:33

CLERK OF DISTRICT COURT
LATAH COUNTY
BY JD DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR LATAH COUNTY

STATE OF IDAHO,	)	District Court Case No. CR-2017-230.
)	
Plaintiff-Appellant,	)	Supreme Court No.
)	
v.	)	NOTICE OF APPEAL
)	
DANIEL C. AMSTAD,)	
)	
Defendant-Respondent.)	

TO: DANIEL C. AMSTAD, THE ABOVE-NAMED RESPONDENT, ANDREA S. HUNTER, P. O. BOX 9408, MOSCOW, ID 83843 AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the above-named respondent to the Idaho Supreme Court from the MEMORANDUM OPINION ON APPEAL, entered in the above-entitled action on the 1st day of December, 2017, the Honorable John R. Stegner presiding. A copy of the order being appealed is attached to this notice.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(10), I.A.R.

3. Preliminary statement of the issue on appeal: Did the district court err by affirming the magistrate's dismissal of the charge of frequenting?

4. To undersigned's knowledge, no part of the record has been sealed.

5. The appellant requests the preparation of the following portions of the reporter's transcript:

No additional transcripts are requested. The state requests that all transcripts prepared for the appeal to the district court from the magistrate division be included in the record.

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R.

7. I certify:

(a) That a copy of this notice of appeal is not being served on a court reporter because no additional transcripts are requested;

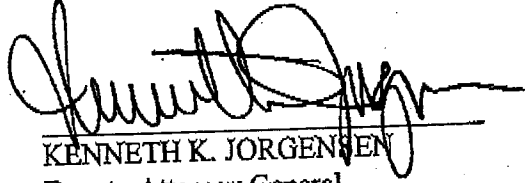
(b) That arrangements have been made with the Latah County Prosecuting Attorney who will be responsible for paying for the reporter's transcript if one should be requested in the future;

(c) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

(d) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(e) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 2nd day of January, 2018.



KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 2nd day of January, 2018, caused a true and correct copy of the foregoing NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

THE HONORABLE JOHN R. STEGNER
Latah County District Court
P. O. Box 8068
Moscow, ID 83843

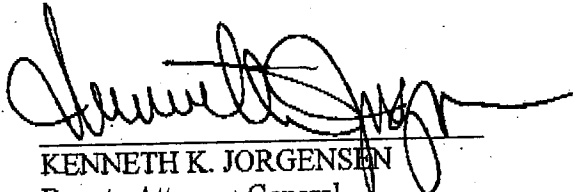
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ANDREA S. HUNTER
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Boise, ID 83720-0101


KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
)
)
Plaintiff-Appellant,)
)
vs.)
)
DANIEL C. AMSTAD,)
)
Defendant-Respondent,)
_____)

CLERK'S CERTIFICATE

Supreme Court Docket No. 45707
Latah Co. Case No. CR-2017-0230

I, Tonya Dodge, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that the above and foregoing transcript in the above entitled cause was compiled and bound under my direction as, and is a true, full, complete and correct transcript of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that all exhibits, offered or admitted in the above entitled cause will be duly lodged with the Clerk of the Supreme Court along with the court reporter's transcript and the clerk's record, as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 12th day of February 2018.

Henrienne K. Westberg, Clerk of the
District Court, Latah County, ID

By Dodge
Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,

Plaintiff-Appellant,

vs.

DANIEL C. AMSTAD,

Defendant-Respondent,

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CLERK'S CERTIFICATE
RE: EXHIBITS

Supreme Court Docket No. 45707
Latah Co. Case No. CR-2017-0230

I, Tonya Dodge, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that there were no exhibits presented in this case.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 12th day of February, 2018.

Henrienne K. Westberg, Clerk of the
District Court, Latah County, ID

By *T Dodge*
Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,)
)
)
Plaintiff-Appellant,)
)
vs.)
)
DANIEL C. AMSTAD,)
)
Defendant-Respondent,)
_____)

CERTIFICATE OF SERVICE

Supreme Court Docket No. 45707
Latah Co. Case No. CR-2017-0230

I, Tonya Dodge, Deputy Court Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, do hereby certify that I have mailed, by United States mail, one copy of the Reporter's Transcripts and Clerk's Record to each of the attorneys of record in this cause as follows:

KENNETH K. JORGENSEN
ATTORNEY GENERAL
PO BOX 83720
BOISE, ID 83720-0010

ANDREA S. HUNER
PO BOX 9408
MOSCOW, ID 83841

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Moscow, Idaho this 12th day of February 2018.

Henrienne K. Westberg, Clerk of the
District Court, Latah County, ID

By *T. Dodge*
Deputy Clerk