3-29-2018

State v. Amstad Appellant's Brief Dckt. 45707

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45707**
Plaintiff-Appellant,	)	
	)	**Latah County Case No.**
v.	)	**CR-2017-230**
	)	
DANIEL C. AMSTAD,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF APPELLANT

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

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's intermediate appellate decision affirming the magistrate's order dismissing a charge of frequenting a place where drugs were being held for use.

Statement Of The Facts And Course Of The Proceedings

The state charged Daniel C. Amstad under I.C. § 37-2732(d) with frequenting a place where drugs were being held for use. (R., p. 9.) Amstad filed a motion to dismiss, asserting the facts of his case "do not amount to the offense of 'frequenting' as defined in Idaho Code § 37-2732(d)" because he was in a car. (R., pp. 23-25.) The state responded by arguing Amstad was at a "place" where drugs were being used. (R., pp. 59-67.) It argued that the evidence would show that three people, including Amstad, walked from their dorm to a car parked in the dorm parking lot for the specific purpose of smoking marijuana together. (R., p. 62.) The magistrate granted the motion and dismissed. (R., pp. 72, 137-47 (Tr., p. 59-69).) The state filed a timely notice of appeal. (R., pp. 76-77.)

The district court affirmed. (R., pp. 171-78.) The district court reasoned that a "premises" and "place" does not include a parked car, and therefore Amstad could not be guilty of frequenting. (R., pp. 175-78.) The state filed a notice of appeal timely from the district court's intermediate appellate decision. (R., pp. 180-82.)

ISSUE

Did the district court err when it concluded that a person in a car with others for the purpose of smoking marijuana is not within the scope of the frequenting statute?

ARGUMENT

A Person In A Parked Car For The Purpose Of Smoking Marijuana With Others Is Frequenting A Place Where Marijuana Is Being Held For Use

A. Introduction

The district court concluded that Amstad's presence in a car with others for the purpose of smoking marijuana did not fall within the ambit of the frequenting statute. (R., p. 176.) The district court's analysis is faulty, and should be reversed.

B. Standard Of Review

"We exercise free review over statutory interpretation because it is a question of law." State v. Owens, 158 Idaho 1, 3, 343 P.3d 30, 32 (2015). On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision to determine whether it correctly decided the issues presented to it on appeal." Borley v. Smith, 149 Idaho 171, 176, 233 P.3d 102, 107 (2010); see also Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008).

C. The District Court Erred By Concluding That Amstad's Presence In A Car Excluded A Finding Of His Being Present At A Place Where Marijuana Was Being Held For Use

"Statutory interpretation begins with the statute's plain language." State v. Taylor, 160 Idaho 381, 385, 373 P.3d 699, 703 (2016). "When the statute's language is unambiguous, the legislature's clearly expressed intent must be given effect, and we do not need to go beyond the statute's plain language to consider other rules of statutory construction." State v. Leary, 160 Idaho 349, 352, 372 P.3d 404, 407 (2016). "Only where the language is ambiguous will this Court look to rules of construction for guidance and

consider the reasonableness of proposed interpretations." In re Adoption of Doe, 156 Idaho 345, 349, 326 P.3d 347, 351 (2014).

Where the words of the statute are ambiguous because subject to more than one meaning, the Court examines "not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history." Taylor, 160 Idaho at 385, 373 P.3d at 703 (internal quotation omitted). "Where ambiguity exists as to the elements or potential sanctions of a crime, this Court will strictly construe the criminal statute in favor of the defendant." State v. Rhode, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999). However, the ambiguity must be "grievous" and "not resolved by looking at the text, context, history or policy of the statute" before the interpretation benefiting the defendant must be chosen. State v. Bradshaw, 155 Idaho 437, 440, 313 P.3d 765, 768 (Ct. App. 2013) (citing State v. Jones, 151 Idaho 943, 947, 265 P.3d 1155, 1159 (Ct. App. 2011) (rule of lenity "does not require a court to disregard the purpose of a statute when it is clear from the context"). "The rule of lenity applies only if, after seizing everything from which aid can be derived, we can make no more than a guess as to what Congress intended." Muscarello v. United States, 524 U.S. 125, 138 (1998).

The relevant language of the statute is as follows:

> 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.

I.C. § 37-2732(d). The portion of this language in dispute is "to be present at or on premises of any place where he knows illegal controlled substances are … being held." (R., pp. 175-78.) This language has two clauses separated by a disjunctive "or." Thus, this statute is violated by anyone "*present at* … any place where he knows illegal controlled

substances" are being held **or** "… *on premises of* any place where he knows illegal controlled substances" are being held. I.C. § 37-2732(d) (emphasis added). The evidence showed Amstad was present at such a place, and therefore the charge should have been decided by a jury.

The district court phrased the issue before it as "whether a person can be 'present at or on the premises of any place' if they [sic] are in a vehicle" and held that a parked car is neither a "place" nor a "premises." (R., pp. 174-76 (brackets original).) As shown above, however, nothing in the plain language of the statute provides that a person **cannot** "be 'present at or on the premises of any place' if they [sic] are in a vehicle." Even accepting the core premise of the district court's reasoning, that a parked car is not itself a "place" or "premises," such simply begs the question of whether *Amstad* was "present at" a place where marijuana was being held for use. For example, a person who goes with friends to smoke marijuana on a sidewalk, at a park, or in a garage would be "present at or on premises of any place where he knows illegal controlled substances are being … held" for use and thus guilty of frequenting. There is no reading of this statute's plain language or legislative intent indicating that if those same people move to a parked car adjacent to the sidewalk, in the park, or in the garage to continue their drug-related activity the person is

no longer frequenting.[1] The district court's holding that a person cannot "be 'present at or on the premises of any place' if they [sic] are in a vehicle" (R., p. 174; see also R., pp. 174-78) was error under the plain language of the statute.

CONCLUSION

The state respectfully requests this Court to reverse the district court's intermediate appellate decision affirming the magistrate's order granting the motion to dismiss.

DATED this 29th day of March, 2018.

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

[1] The district court expressed some concern about the state "chang[ing] the issue" on appeal. (R., pp. 173-74.) The issue before the district court, according to that court, was whether a person can be present at or on the premises of any place where drugs are being held if that person is in a vehicle. (R., p. 174.) The state specifically argued to the magistrate that excluding activities in cars from the frequenting statute would "yield absurd results" because persons engaged in drug activities could simply enter a car to shield themselves from this statute (R., pp. 103-04 (Tr., pp. 25-26)), the same argument the state is currently making. The issue, as phrased by the parties, has always been whether being in a vehicle shields a person from prosecution under I.C. § 37-2732(d), and the district court erred when it held that being in a vehicle does shield a defendant from prosecution for "frequenting."

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 29th day of March, 2018, served two true and correct paper copies of the foregoing BRIEF OF APPELLANT by placing the copies in the United States mail, postage prepaid, addressed to:

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