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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	No. 45707
)	
Plaintiff - Appellant,)	LATAH COUNTY CASE
vs.)	NO. CR-2017-0230
)	
DANIEL AMSTAD,)	
)	
Defendant - Respondent.)	

BRIEF OF RESPONDENT

**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**

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Attorney General
State of Idaho**

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Deputy Attorney General
Chief, Criminal Law Division**

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STATEMENT OF THE CASE

A. Statement of the Facts and Course of the Proceedings

Respondent disagrees with the Appellant's Statement Of The Facts And Course Of The Proceedings, in that the record did not establish that there was "specific purpose" nor intent on the part of Amstad to smoke marijuana. Respondent otherwise agrees with the Appellant's Statement Of The Facts And Course Of The Proceedings.

ISSUE

Did the District Court err when it concluded that a car is not “place” or a “premises of any place” under Idaho Code § 37-2732(d)?

ARGUMENT

A. Introduction

The District Court correctly concluded that a car is not a “place” or a “premises of any place” under Idaho Code § 37-2732(d), and the decision should be affirmed. (R., p. 176.)

B. The District Court Did Not Err by Concluding that Amstad Was Not Present At Or On Premises Of Any Place When He Was In a Car With a Person Who Possessed Marijuana.

Appellant argues that 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. First of all, there is no indication from the record that Amstad had the intent to smoke the marijuana that was found in CH’s lap, and the assertion of the Appellant that Amstad had the intent to use marijuana appears to be an attempt to cloud the issue of whether or not a vehicle can be a place or premises of any place pursuant to Idaho Code § 37-2732(d). The Appellant asserts that the phrase “present at or on the premises of any place” must be read as two clauses separated by a disjunctive “or,” and that Amstad violated the statute pursuant to the first clause, by being present at a place where he knew illegal controlled substances were being held. Appellant is not correct in assuming that the “or” must be disjunctive. “Of any place” could also be interpreted as a prepositional phrase modifying “premises,” as concluded by the magistrate judge. (Tr. pp. 60-67.) However, even if one agrees that the statute must be read in the disjunctive, Amstad would still not be criminally liable, as it would require the definition of a place to include a motor vehicle, which it does not. “Place” is defined, in part, “In its primary and most general sense means locality, situation, or

site, and is also used to designate an occupied situation or building.” PLACE, Black’s Law Dictionary (5th ed. 1979).

C. The Legislature Did Not Intend for a Person in a Motor Vehicle to be Criminally Liable Under Idaho Code § 37-2732(d)

If the legislature intended for passengers in motor vehicles to be culpable under this statute, it could have specifically included motor vehicles as a “place” or “premises.” The legislature specifically included motor vehicles in the definition of “premises” in a statute under the same title, Idaho Code § 37-2737A(2), Manufacture or Delivery of Controlled Substance While Children are Present. It appears the legislative intent was to broaden the definition of “premises” to increase culpability for a major felony in order to protect children. If the legislature wanted to extend the definition of “premises” to include motor vehicles in order to cite more college kids who are travelling in cars with misdemeanors, it was capable of doing so. This statute has been amended several times, and could have been amended again. Idaho Code § 37-2732.

D. Since the Statute is Ambiguous, the Rule of Lenity Applies

As concluded in the District Court’s Memorandum on Appeal, since the statute could reasonably be read two different ways, it is inherently ambiguous, and the rule of lenity applies. Statutory interpretation is a question of law over which this Court exercises free review. *State v.s Schwartz*, 139 Idaho 360, 361-362 (2003). Where the language of the court is clear and unambiguous, the Court need not go beyond the plain meaning of the statute, and there is no reason to resort to legislative history or the rules of statutory interpretation. *State v. Bradshaw*,

155 Idaho 437, 439-440, 313 P.3d 765, 767-68 (Ct. App. 2013). When there is ambiguity in a statute, “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), so long as it does not lead to an absurd result. *United States v. Brown*, 333 U.S. 18, 27 (1948). Since there is inherent ambiguity, it would not result in absurdity, and it appears that the legislature did not intend to include motor vehicles in Idaho Code § 37-2732(d), the Court must strictly construe the statute in favor of the defendant.

CONCLUSION

Respondent respectfully requests that this Court AFFIRM the District Court’s appellate decision and the Magistrate Court’s order granting the motion to suppress.

Dated this 27th day of April, 2018.

A handwritten signature in black ink, appearing to read 'A. Hunter', is written over a horizontal line. The signature is stylized and cursive.

Andrea Hunter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of April, 2018, I caused two true and correct copies of the foregoing to be delivered on the following via email:

Kenneth K. Jorgensen
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A handwritten signature in black ink, appearing to read "A. Hunter", is written over a light blue horizontal line. The signature is stylized and cursive.

Andrea Hunter