5-11-2018

State v. Amstad Appellant's Reply 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.	)	
	)	

REPLY 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

Statement Of The Facts And Course Of The Proceedings

The state asserts that Amstad and two others walked from their dorm to a car in a parking lot for the "specific purpose" of smoking marijuana. (Appellant's brief, p. 1 (citing R., p. 62).[1]) Amstad disputes this assertion, contending the record does not "establish" his purpose in being in a car with two associates, a fair amount of marijuana, and an item of paraphernalia used to smoke marijuana. (Respondent's brief, p. 3.) He further argues that the state's assertion that he intended to smoke marijuana is "an attempt to cloud the issue of whether or not a vehicle can be a place or premises." (Respondent's brief, p. 5.) While Amstad is accurate that his intent was not established in the sense that it was decided at trial, the state's assertion is well-founded.

The language the state relied on was the state's assertion below that Amstad violated I.C. § 37-2732(d) "by walking from the dorms to a car in a nearby parking lot for the purpose of smoking marijuana." (R., p. 61.) The state could also have cited to the officer's notes that "Amstad was in a parked vehicle getting [ready] to use marijuana from a bong." (R., p. 11 (capitalization altered).)

Amstad "concede[d]" the following facts for purposes of his motion to dismiss:

> 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 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

[1] It appears that the state cited the actual page 62 of the record, not the Bates stamped page 62. The Bates stamp and the pages in the electronic document are off by one.

> being present at a place where a person knows illegal drugs are used, manufactured, cultivated, or held.

(R., pp. 23-24.) The record thus establishes that the state asserted, but Amstad did not admit, that he had the intent to smoke marijuana with his compatriots.[2] His intent to smoke marijuana is, however, a reasonable inference from the evidence and was part of the state's factual claims regarding the circumstances at the time in question.

[2] The state did not have to prove Amstad's intent to use marijuana, only knowledge the marijuana was being held for use. I.C. § 37-2732(d).

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

Amstad was not insulated from the frequenting charge by his presence in a car, and the lower courts erred by concluding otherwise. (Appellant's brief, pp. 3-6.) Amstad argues that he was insulated from the frequenting charge by his presence in a car because a car is not a "place" (Respondent's brief, pp. 5-6); that if the legislature intended cars to be places they would have said so (Respondent's brief, p. 6); and that the rule of lenity prevents interpreting the frequenting statute to include cars (Respondent's brief, pp. 6-7). None of Amstad's arguments address the state's contention that a defendant may be in both a car and a place.

B. Whether A Car Is Itself A Place Is Irrelevant

Both parties apparently agree that, to be guilty, Amstad had to be present at a *place* or on *premises of a place* where he knew controlled substances were being held for use. (Compare Appellant's brief, pp. 5-6 with Respondent's brief, p. 5.[3]) The state in fact alleged that the location where the violation occurred was "1080 W. Sixth St.

[3] The parties also probably agree that the words "of," "at" and "on" are prepositions and the language "present at or on premises of any place" therefore constitutes at least one prepositional phrase. Amstad contends "of any place" is a prepositional phrase (Respondent's brief, p. 5), a contention with which the state does not disagree. The state contends, however, that in context the disjunctive "or" indicates that the statute covers both being present at the place or present on the premises of the place where drugs are held for distribution or use. (Appellant's brief, pp. 4-5.) Both interpretations presented by the parties apparently agree that the statute applies to defendants present at a place where he or she knows controlled substances are being held.

Wallace Complex Lot" (R., p. 9), which seems, on its face, to be a place. Amstad's argument that "the definition of a place" does not "include a motor vehicle" (Respondent's brief, p. 5) ignores the state's primary point that a person at a place does not leave that place merely by getting into a car. The car could certainly transport him from that place to a different place, but being in a car does not render one not in a place. Amstad, the marijuana, the bong, and the car were, according to all the laws of physics and grammar, at a place. Being in the car did not insulate Amstad from prosecution for frequenting a place where marijuana is being held.

C. The Lack Of Language About Cars In The Statute Does Not Insulate Those In Cars From Frequenting Charges Or Convictions

Amstad next contends that the legislature could have specifically included cars in the frequenting statute. (Respondent's brief, p. 6.) While this is certainly true, it is also irrelevant. Nothing in the language of the statute indicates that presence at a place the defendant knew controlled substances were being held for use is negated by being in a car.

D. Because The Statute Is Clear The Rule Of Lenity Does Not Apply

The Court's "goal in interpreting a statute is to give effect to the purpose of the statute and the legislative intent in enacting it." Farmers Nat. Bank v. Green River Dairy, LLC, 155 Idaho 853, 859, 318 P.3d 622, 628 (2014) (internal quotation omitted). "If the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction. This is because the asserted purpose for enacting the legislation cannot

modify its plain meaning." Searcy v. Idaho State Bd. of Correction, 160 Idaho 546, 554, 376 P.3d 750, 758 (2016) (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). There is nothing in the language of the statute that would exclude a person in a car from being "present at or on premises of any place where he knows illegal controlled substances are … being held for distribution … [or] use." I.C. § 37-2732(d). Therefore, the lower courts erred by concluding the statute did not apply to Amstad's behavior. (Appellant's brief, pp. 3-6.)

Amstad argues there is an ambiguity in the language of the statute that requires application of the rule of lenity and construction of the statute to exclude his behavior. (Respondent's brief, pp. 6-7.) The flaw in this argument is that he has not articulated a reading of the statute that would in any way exclude his behavior. His argument is apparently that a "car" is not a "place" or the "premises of a place." (Respondent's brief, pp. 5-6.) However, even accepting that a car, because of its mobility, is neither a place nor a premises does not exclude Amstad from the statute, because his presence in a car did not mean he was not in a place ("1080 W. Sixth St. Wallace Complex Lot" (R., p. 9), to be precise). By Amstad's logic a pocket or a suitcase would not be considered a place or the premises of a place, but application of the rule of lenity does not lead to the conclusion that placing the drugs in a pocket or a suitcase would exempt someone from being "present at or on premises of any place where he knows illegal controlled substances are … being held for distribution … [or] use." I.C. § 37-2732(d).

The statute, by its plain language, penalizes being knowingly present at a place or on the premises of a place where illegal controlled substances are being held for distribution or use. (Appellant's brief, pp. 4-6.) The legislature did not, by not mentioning cars in the statute, exclude people in cars from being knowingly at a place or on the premises of a place where illegal controlled substances are being held for distribution or use. Nor is there any reading of the statute, ambiguous or otherwise, that would exclude people in cars from being knowingly at a place or on the premises of a place where illegal controlled substances are being held for distribution or use. That Amstad and the others entered a car for their marijuana-related activities does not exclude Amstad from being knowingly present at a place or on the premises of a place where illegal controlled substances are being held for distribution or use. The district court erred by affirming the magistrate's conclusion otherwise.

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 11th day of May, 2018.

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 11th day of May, 2018, served two true and correct paper copies of the foregoing REPLY BRIEF OF APPELLANT by placing the copies in the United States mail, postage prepaid, addressed to:

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KKJ/dd