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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

)

) Docket No. 39483-2011

Plaintiff/Respondent,) Case No. CR-2009 -0025609

v.

)

)

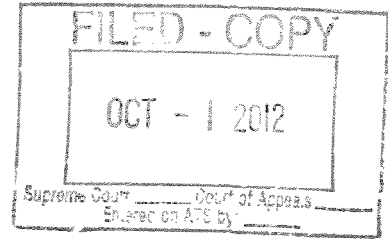
RICHARD W. WRIGHT,

)

)

Defendant/Appellant,))

_____)



APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIRST
JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE PENNY FRIEDLANDER, Magistrate Judge
HONORABLE JOHN T. MITCHELL, District Judge

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TABLE OF POINTS AND AUTHORITIES

1. STATUTES

- a. Idaho Code § 49-1301
- b. Idaho Code § 49-1302
- c. Idaho Code § 49-1303
- d. Idaho Code § 49-1304
- e. Idaho Code § 49-1305
- f. Idaho Code § 49-102(3)

2. CASE LAW

a. Statutory Interpretation

"The interpretation of a statute is a question of law over which we exercise free review." *McLean v. Maverik Country Stores, Inc.*, 142 Idaho 810, 813, 135 P.3d 756, 759 (2006). "This Court must construe a statute to give effect to the intent of the legislature." *Carrier v. Lake Pend Oreille School Dist. # 84*, 142 Idaho 804, 807, 134 P.3d 655, 658 (2006). "It must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole." *McLean v. Maverik Country Stores, Inc.*, 142 Idaho 810, 813, 135 P.3d 756, 759 (2006) (citations omitted). "Statutes that are in *pari materia* must be construed together to effect legislative intent. Statutes are in *pari materia* if they relate to the same subject." *City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 139 Idaho 65, 69, 72 P.3d 905, 909 (2003) (citations omitted)."

Paolini v. Alberston's, Inc., 143 Idaho 547, 149 P.3d 822, 824 (Idaho 2006).

Where the legislature has not provided a definition, terms in a statute are given their commonly understood, everyday meanings.

Ada County Assessor v. Roman Catholic Diocese, 123 Idaho 425, 849 P.2d 98 (1993).

In construing a statute, this Court will not deal in any subtle refinements of the legislation, but will ascertain and give effect to the purpose and intent of the legislature, based on the whole act and every word therein, lending substance and meaning to the

provisions.

George W. Watkins Family v. Messenger, 118 Idaho 537, 539-40, 797 P.2d 1385, 1387-88 (1990).

When interpreting a statute, the most important aim is to ascertain the Legislature's intent when considering all the applicable statutes, the reasonableness of the proposed interpretations, the policy behind the statute, and the legislative history.

State v. Piña, 149 Idaho 140, 144, 233 P.3d 71, 75 (2010).

1. INTRODUCTION

Defendant/Appellant Richard W. Wright appeals his conviction following a bench trial of a violation of Idaho Code § 49-1301. The thrust of Mr. Wright's appeal is that Idaho Code § 49-1301 does not apply to single vehicle collisions. Mr. Wright argues that to convict him of a violation of Idaho Code § 49-1301 the State must prove that a vehicle driven by Mr. Wright was involved in a collision with another vehicle driven or attended by a person.

In Mr. Wright's case, there was a glancing collision between Mr. Wright's vehicle and a speed limit sign when Mr. Wright's vehicle slid off an icy road as he drove to work one morning. Construing the State's evidence most favorable to the prosecution, it would be concluded that the collision damaged a piece of a plastic door strip on Mr. Wright's vehicle and that Mr. Wright's vehicle was the only vehicle involved in the collision. It would also be concluded that the speed limit sign was knocked down in the collision. No person was injured in the collision.

2. ARGUMENT IN REPLY

The Brief of Respondent filed by the State in this matter does not directly argue the points raised by the Appellant in his Opening Brief on Appeal, except to suggest that in the interpretation of a statute, the words of the statute are to be given their plain meaning and to suggest that the Supreme Court, on review, will not substitute its opinion of the facts for that of the trier of fact and will construe all inferences in favor of upholding the verdict. The State seems to rely on the District Court's Memorandum Decision and Order on Appeal as its argument in this matter.

The State's posture necessarily focuses further argument on the issues addressed by the District Court in its Memorandum Decision and Order on Appeal. It is important to note that there was a primary issue raised before the District Court on intermediate appeal that has not

been pursued in this appeal to the Supreme Court. That issue was that the Defendant/Appellant, Richard W. Wright, had been denied the right to the assistance of counsel at his sentencing. That issue is not pursued on appeal to the Supreme Court and a discussion of that issue permeates throughout much of the District Court's decision below, which is relied upon by the State here.

The Appellant's argument to the Supreme Court on appeal is that he was wrongly convicted of a violation of Idaho Code § 49-1301 under the facts of the collision. Namely that he did not remain at the scene of a single vehicle collision with a speed limit sign, nor report the collision to law enforcement prior to the time that law enforcement called him the morning of the collision.

The Defendant pleaded not guilty to the charge that he violated Idaho Code § 49-1301 and he requested a trial to the court, rather than a trial by jury. The significance of that fact is that this Defendant was not required to object to jury instructions regarding Idaho Code § 49-1301 to preserve his position on appeal. There was no jury.

In its Memorandum Decision and Order on Appeal, the District Court concluded that because the Defendant had failed to argue to the trial court that Idaho Code § 49-1301 did not apply to the facts of his case, that he had waived that argument on appeal. The District Court then discussed why, in the District Court's opinion, the trial court's conviction of the Defendant of violating Idaho Code § 49-1301 did not rise to the level of fundamental error, which is essentially error so profound that it produces manifest injustice and cuts to the core of the conviction and which would be reviewed on appeal even if not raised below.

The District Court expressed its legal conclusion in this manner:

This Court concludes Wright failed to raise the issue of insufficient evidence at trial to support a conviction under Idaho Code § 49-1301, and accordingly, Wright has waived his right to hear that

issue on appeal.”

(R., pp. 83-101, Memorandum Decision and Order on Appeal, p. 6). It is clear from the briefing before the District Court on intermediate appeal that Mr. Wright raised precisely those issues before the District Court and so the District Court must be either mistaken in that regard, or be referring to the fact that Mr. Wright did not raise the issue of the applicability of Idaho Code § 49-1301 at trial. From the District Court’s discussion of the issue in its Memorandum Decision and Order on Appeal, the asserted failure to raise the issue at trial seems to be the focus of the District Court’s opinion.

The trial in this case was a trial to the court. There were no jury instructions to be objected to. It was incumbent on the trial court to correctly apply the applicable law to the facts which it found to be true, regardless of input from the Defendant. If the law does not support the conviction of the Defendant under the facts as found by the trial court, the conviction should be vacated.

The thrust of this appeal is exactly that urged by the Appellant to the District Court below; because Idaho Code § 49-1301 does not apply to a collision between a single vehicle and a speed limit sign, the trial court erred by finding that Mr. Wright was guilty of a violation of that statute. The Defendant is not arguing on appeal that the statute is unconstitutionally vague or overbroad, rather he is arguing as a matter of law that Idaho Code § 49-1301 applies only to collisions between a defendant’s vehicle and *another* vehicle driven or attended by any person.

Mr. Wright’s argument continues that because the State failed to prove at trial the involvement of a second vehicle in the collision, the State failed to prove an essential element of a violation of Idaho Code § 49-1301 and thus, the trial court erred when it convicted Mr. Wright of that offense.

Because the State seems to defer to the District Court's Memorandum Decision and Order on Appeal as its argument on appeal, it is necessary to address the District Court's overall analysis.

This Court has previously discussed some additional relevant standards which apply to the process of construing a statute beyond those discussed by the parties in their briefing to this point. Those standards include the following:

Where the legislature has not provided a definition, terms in a statute are given their commonly understood, everyday meanings.

Ada County Assessor v. Roman Catholic Diocese, 123 Idaho 425, 849 P.2d 98 (1993).

In construing a statute, this Court will not deal in any subtle refinements of the legislation, but will ascertain and give effect to the purpose and intent of the legislature, based on the whole act and every word therein, lending substance and meaning to the provisions.

George W. Watkins Family v. Messenger, 118 Idaho 537, 539-40, 797 P.2d 1385, 1387-88 (1990).

When interpreting a statute, the most important aim is to ascertain the Legislature's intent when considering all the applicable statutes, the reasonableness of the proposed interpretations, the policy behind the statute, and the legislative history.

State v. Piña, 149 Idaho 140, 144, 233 P.3d 71, 75 (2010).

The involvement of a speed limit sign in this accident is entirely irrelevant to whether or not the Defendant could have violated Idaho Code § 49-1301.

Because Idaho Code § 49-1301 clearly applies only to collisions causing damage to vehicles, the street sign is relevant only as the modality by which Mr. Wright's vehicle was damaged. The street sign could have been a rock, or a tree, or a bird, or a deer, or any other non-vehicle mechanism causing collision damage to Mr. Wright's vehicle.

The real issue is whether or not Idaho Code § 49-1301, when read together with the extraordinarily broad definition of the term “accident” contained in Idaho Code § 49-102(3), requires that a driver stop and remain at the scene of any event causing unintentional damage only to their own vehicle.

The cases from other jurisdictions cited by the Appellant in his Opening Brief on Appeal make clear that in those jurisdictions there is no duty to remain at the scene of a single vehicle accident involving only the driver’s own vehicle, under statutes of those states using substantially identical language to that of Idaho Code § 49-1301.

Depending on the extent of damage to one’s own vehicle, or resulting injury to a person, there may be a duty to immediately report the accident to law enforcement as required by Idaho Code § 49-1305, but otherwise no duty to remain at the scene of a single vehicle collision.

For a single vehicle accident, especially an not required to be immediately reported to law enforcement under I.C. § 49-1305, and especially a single vehicle collision with a cliff, or a rock or a tree limb, or a deer, what could be the point? As in Mr. Wright’s case, there is simply no other person at the scene with whom to share identification and insurance information. It seems very likely that it would be exactly those types of situations which compelled this Court in the case of Munns v. Swift Transportation Company, 138 Idaho 108, 111, 58 P.3d 92, 95 (Idaho 2002) to muse:

“In the case before us, where the property damage caused by the accident was to the front bumper of Swift’s truck and to a runaway horse, the applicability of the statute [I.C. § 49-1301] is not obvious.” [Brackets Added]

Munns, supra. 138 Idaho at 111.

The rules regarding statutory construction clearly suggest that it is improper to overlook

any operative word of a statute when construing that statute. Idaho Code § 49-1301 contains the operative word ‘only’ in a very important location. That statute reads in the relevant portion:

§ 49-1301. ACCIDENTS INVOLVING DAMAGE TO VEHICLE

(1) The driver of any vehicle involved in an accident, either on public or private property open to the public, resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop the vehicle at the scene of the accident, or as close as possible, and shall immediately return to, and in every event shall remain at, the scene of the accident until he has fulfilled the requirements of law.

Idaho Code § 49-1301(1). The phrase “resulting only in damage to a vehicle driven or attended by any person ” is a phrase that is clearly intended by the Legislature to limit the application of the punishment sections of that statute, and not to expand them. It is only in cases where an attended vehicle strikes and damages another attended vehicle that the one (1) year license suspension required by Idaho Code § 49-1301(4) applies. Such an interpretation is the only interpretation consistent with the clear language of Idaho Criminal Jury Instruction 1306, the instruction approved and provided for use in cases where a violation of Idaho Code § 49-1301 is alleged. That Instruction expressly requires proof by the state of the involvement of “another vehicle” as an essential element of the offense of violating Idaho Code § 49-1301.

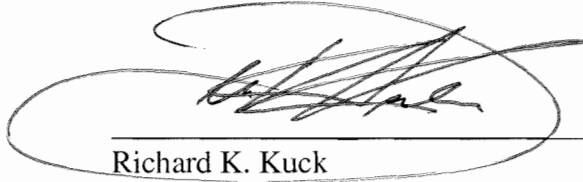
In order to convict Mr. Wright of a violation of Idaho Code § 49-1301, it was necessary for the State to prove the involvement of a second attended vehicle in the collision. Because the State’s evidence actually excluded the involvement of a second vehicle, that evidence did not support the trial court’s conviction of the Appellant of violating Idaho Code § 49-1301 and the judgment should have been entered for an acquittal and that is the simple thrust of this Appellant’s appeal.

CONCLUSION

For the reasons set forth above, the conviction of the Defendant, Richard W. Wright, for a violation of Idaho Code § 49-1301 should be vacated, which will also restore to Mr. Wright the first use of the withheld judgment granted to him by the trial court in this case in the unlikely event he should be found in violation of a criminal statute in the future, and restore to him the \$200.00 penalty which he has paid in this case.

RESPECTFULLY SUBMITTED this 20th day of September 2012.

RICHARD K. KUCK, PLLC

A handwritten signature in black ink, appearing to read "Richard K. Kuck", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Richard K. Kuck
Attorney for Defendant/Appellant
Richard W. Wright

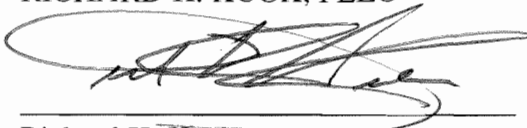
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of September 2012 I caused to be served a true and correct copy of the foregoing document, by the method indicated below, addressed to the following:

Lawrence G. Wasden
Jessica M. Lorello
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 83720
Boise, ID 83720-0010

- U.S. Mail, postage prepaid.
 Fax transmission
 Hand delivered.
 Other

RICHARD K. KUCK, PLLC



Richard K. Kuck
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