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AT \_\_\_\_\_ O'clock \_\_\_\_ M  
CLERK, DISTRICT COURT

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Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**STATE OF IDAHO,** )  
 )  
 ) *Plaintiff,* )  
 vs. )  
 )  
 **THOMAS LEE LONGINOTTI,** )  
 )  
 ) *Defendant.* )  
 \_\_\_\_\_ )

Case No. **CRF 2010 18516**

**MEMORANDUM DECISION AND  
ORDER ON DEFENDANT’S MOTION IN  
LIMINE**

Defendant THOMAS LEE LONGINOTTI's Motion in Limine  
**GRANTED** in part, **DENIED** in part.  
Marty Raap, Dep. Prosecuting Attorney, lawyer for the Plaintiff.  
Frederick G. Loats Coeur d'Alene, lawyer for Defendant Longinotti.

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**I. FACTUAL BACKGROUND.**

Defendant Thomas Longinotti (Longinotti) was arrested on September 14, 2010, and charged with driving under the influence (DUI) and driving without privileges. The State filed the Information in this matter on November 4, 2010, alleging in Part II that Longinotti had been convicted of two prior violations of a statute substantially complying with Idaho Code § 18-8004 within the previous ten years. The State alleges Longinotti had convictions in Spokane County, Washington on July 8, 2010, and March 14, 2002.

On December 13, 2010, Longinotti filed a “Motion in Limine” and a “Brief in Support of Motion in Limine”, asking the Court to: 1) exclude evidence of his previous DUIs because the Washington DUI statute is not substantially similar to Idaho’s, and 2) exclude testimony in the first part of his trial (the trial on the underlying charge, not the trial that

follows regarding whether there has been two prior convictions of a similar offense, making this crime a felony if there has been a finding of guilt on the underlying charge) regarding his having admitted to pleading guilty to a DUI in the past as such testimony is unduly prejudicial. Motion in Limine, Notice of Hearing, p. 1.

Oral argument was held on February 1, 2011. In spite of Longinotti's motions in limine being filed over six weeks ago, the State has chosen not to file any briefing on this issue. This matter is set for a jury trial to begin on February 9, 2011.

## **II. STANDARD OF REVIEW.**

"Trial courts have broad discretion when ruling on a motion in limine so we review the district court's decision to grant or deny a motion in limine for abuse of discretion." *Puckett v. Verska*, 144 Idaho 161, 167, 158 P.3d 937, 943 (2007). "The Court reviews trial court decision admitting or excluding evidence...under the abuse of discretion standard." *Morris v. Thomson*, 130 Idaho 138, 144, 937 P.2d 1212, 1218 (1997) An incorrect ruling only warrants a new trial if the error affected a substantial right of a party. *Id.* (citing I.R.C.P. 61; I.R.E. 103).

*Cramer v. Slater*, 146 Idaho 868, 878, 204 P.3d 508, 518 (2009).

## **III. ANALYSIS.**

### **A. The Washington DUI statute "substantially conforms" to the Idaho DUI statute, such that a Washington conviction could properly form the basis for enhancement of the Idaho charge.**

Longinotti argues Washington's DUI statute is not substantially conforming to Idaho's, "and the Motion in Limine, prohibiting use of the alleged prior DUI our [sic] of Spokane County, should be granted." Brief in Support of Motion in Limine, p. 2. Longinotti contends Washington's DUI statute differs widely from Idaho's in that it does not prohibit a prosecution if an evidentiary test is below .08 and does establish a violation if a test of a driver establishes a violation within two hours of driving. *Id.* The State has not replied.

The question of whether a foreign criminal violation is substantially conforming to one in Idaho is a question of law. I.C. § 18-8005(8). The construction of statutes also

involves a question of law. *State v. Shock*, 133 Idaho 753, 755, 992 P.2d 202, 204 (Ct.App. 1999). Reviewing courts exercise free review of the district court's determination in this regard. *State v. Moore*, 148 Idaho 887, 897, 231 P.3d 532, 542 (Ct.App. 2010) (citing *State v. O'Neill*, 118 Idaho 244, 245, 796 P.2d 121, 122 (1990)).

Idaho courts have not examined the Revised Code of Washington to determine whether its DUI statute substantially complies with Idaho's. However, the Idaho Court of Appeals has set forth the proper analysis in *State v. Moore*, 148 Idaho 887, 231 P.3d 532 (2010), a case involving an enhanced misdemeanor DUI based on one previous Idaho DUI and one previous North Dakota DUI in the ten years preceding the most recent charge. In *Moore*, the defendant argued a foreign DUI statute can never encompass conduct which would not be illegal under Idaho's DUI scheme; "Moore's arguments would require this Court to review how another state's statute has been interpreted by the courts of that state to determine if the statute is substantially conforming." 148 Idaho 887, 897, 231 P.3d 532, 542. The Idaho Court of Appeals in *Moore* discussed *State v. Schmoll*, 144 Idaho 800, 172 P.3d 555 (Ct.App. 2007) in some detail and wrote with regard to the substantial conforming nature of Montana's DUI statute in *Schmoll*:

On appeal, Schmoll had argued that he could not be charged with felony DUI in Idaho when the basis of the enhancement is a prior felony conviction from Montana that would not have been a felony conviction if it had occurred in Idaho. In deciding this issue of first impression, we stated that our legislature had expressly provided that *the focus of the comparison should be on the elements of the statutes and not the specific conduct giving rise to the prior violation*. We then noted that substantial conformity does not require exact correspondence between the two statutes...

*Moore*, 148 Idaho 887, 897, 231 P.3d 532, 542. (italics added). The Idaho Court of Appeals held the proper inquiry involves comparing the plain language of the two statutes, not taking into account foreign case law interpreting the foreign DUI statute as Moore had argued. 148 Idaho 887, 898, 231 P.3d 532, 543. The Idaho Court of Appeals determined

that although North Dakota criminalized driving or being in actual physical control with a blood alcohol concentration (BAC) above 0.1, both statutes, “prohibit the same essential conduct- driving under the influence of alcohol” and “frame their prohibitions using the same language, requiring substantially conforming elements to be met to sustain a violation.” *Id.*

Washington’s code states a person is guilty of driving under the influence of an intoxicating liquor or any drug if the person drives a vehicle within the state:

- a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person’s breath or blood made under RCW 46.61.506; or
- b) While the person is under the influence of or affected by intoxicating liquor or any drug; or
- c) While the person is under the combined influence of or affected by intoxicating liquor or any drug.

RCW 46.61.502. Idaho’s DUI statute reads:

It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.08, as defined in subsection (4) of this section, or more, as shown by an analysis of his blood, urine, or breath, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge or upon public or private property open to the public.

I.C. § 18-8004 (1).

The focus of the Court must be on the elements, not Longinotti’s underlying conduct. Both statutes prohibit the same conduct. Although they do not use the same language, they require substantially conforming elements to be met to sustain a violation. The Court finds the elements of each for each state’s charge to be substantially conforming. In Washington, the pattern jury instruction reads:

To convict the defendant of *[driving] [or] [being in actual physical control while]* under the influence, each of the following three elements of the crime must be proved beyond a reasonable doubt:

1. That on or about \_\_\_\_\_, the defendant *[drove] [or] [had actual physical control of]* a motor vehicle;

2. That the defendant at the time of *[driving] [or] [being in actual physical control of]* a motor vehicle
  - a. Was under the influence of or affected by *[intoxicating liquor] [or] [a drug]; [or]*
  - b. Was under the combined influence of or affected by intoxicating liquor and a drug; *[or]*
  - c. Had sufficient alcohol in *[his] [her]* body to have an alcohol concentration of 0.08 or higher within two hours of *[driving] [or] [being in actual physical control]* as shown by an accurate and reliable test of the defendant's *[breath] [blood]*; and
3. That this act occurred in the *[State of Washington] [City of \_\_\_\_\_] [County of \_\_\_\_\_]*...

11A Wash. Prac., Pattern Jury Instr. Crim. 92.02, 3d Ed. (2010). In Idaho, the pattern jury instruction reads:

In order for the defendant to be guilty of Driving Under the Influence the State must prove each of the following:

1. On or about [date]
  2. in the State of Idaho
  3. the defendant [name], [drove] [or] [was in actual physical control of]
  4. a [commercial] motor vehicle
  5. upon a highway, street or bridge or upon public or private property open to the public,
  6. [while under the influence of (a combination of) (alcohol) (or) (drugs) (or) (an intoxicating substance)]
- [or]
- [while having an alcohol concentration of 0.02 or more as shown by an analysis of the defendant's (blood) (urine) (breath), and the defendant was under the age of 21 years].
- [or]
- [while having an alcohol concentration of (0.04) (0.08) (0.10) (0.20) or more as shown by an analysis of the defendant's (blood) (urine) (breath).]

ICJI 1000.

While Washington's DUI statute does not utilize the same language as the Idaho Code with regard to the operation of a vehicle on a highway, street, bridge, or public or private property open to the public, substantial conformity does not require exact correspondence between the two statutes. *Moore*, 148 Idaho 887, 897, 231 P.3d 532, 542.

This Court finds the elements of the crime of driving under the influence Washington

substantially conform to the elements of the crime of driving under the influence in Idaho.

*Moore* dealt with a North Dakota statute, N.D. Cent. Code § 39-08-01 (1977). That statute has a similar concept of driving or being found with a blood alcohol content of .10 within two hours of driving, similar to the State of Washington, in the present case. The Idaho Court of Appeals quoted from the District Judge with approval:

And it appears to the court, and I do find, that the law does not require exact correspondence between foreign and Idaho DUI statutes for purposes of enhancements. And I do find that the North Dakota statute was substantially conforming to the Idaho DUI statute.

148 Idaho 887, 896, 231 P.3d 532, 541, and the Idaho Court of Appeals held:

Accordingly, examining the plain language of each statute, we conclude that the North Dakota statute was substantially conforming to the Idaho DUI statute such that *Moore's* North Dakota conviction could properly form the basis for an enhancement of his DUI charge. Thus, the district court did not err in this respect.

148 Idaho 887, 898-99, 231 P.3d 532, 543-44. Given that finding with a statute (North Dakota) very similar to the statute in the present case (Washington), this Court can think of no reason why the Idaho Court of Appeals would not come to the same conclusion with the Washington statute at hand.

Montana's DUI statute analyzed in *Schmoll* is quite a bit different from Idaho's statute. The Idaho Court of Appeals had no problem finding it substantially conformed to Idaho's statute, holding:

Although Idaho and Montana use the BAC test results differently, they both prohibit the same essential conduct-driving while under the influence of alcohol. Proving that a person is under the influence absent a BAC test requires a greater degree of impairment in Montana than in Idaho, since in Idaho, the ability to drive need only be impaired "to the slightest degree," while in Montana, the ability to drive "safely" is the quality that must be diminished. Impairment to the slightest degree is an equal or lesser standard than the diminished ability to drive safely test used by Montana; thus Montana's higher standard surpasses the elements required for a violation in Idaho. These two statutes frame their prohibitions using the same language, requiring substantially conforming elements to be met to sustain a violation.

144 Idaho 800, 804, 172 P.3d 555, 559. Essentially, all that is required is that the statutes “...prohibit the same essential conduct-driving under the influence of alcohol.” *Id.* That standard is clearly met in the present case.

**B. Statements as to any prior DUI are not relevant in the underlying offense in this matter, and even if relevant, would be unfairly prejudicial.**

The second portion of Longinotti’s Motion in Limine must be granted. The State conceded such at oral argument. Statements as to any prior DUI are not relevant in the underlying offense in this matter, and, even if they were relevant, would be unfairly prejudicial to Longinotti. I.R.E. 404(b). No exception under I.R.E. 404(b) could apply to make such statement admissible.

**IV. ORDER.**

For the reasons set forth above, it is proper for this Court to exercise its discretion and deny the first portion of Longinotti’s motion in limine.

IT IS HERBY ORDERED THAT THOMAS LEE LONGINOTTI’s Motion to Suppress is GRANTED as to any statements as to any prior DUI in the trial on the underlying offense in this matter, as such are not relevant; even if they were relevant, would be unfairly prejudicial to Longinotti;

IT IS FURTHER ORDERED THAT THOMAS LEE LONGINOTTI’s Motion to Suppress is DENIED as this Court finds the elements of the crime of driving under the influence in Washington substantially conform to the elements of the crime of driving under the influence in Idaho.

DATED this 1<sup>st</sup> day of February, 2011

\_\_\_\_\_  
JOHN T. MITCHELL District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the \_\_\_\_\_ day of February, 2011 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney - Frederick G. Loats  
Prosecuting Attorney – Marty Raap

**CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY**

BY: \_\_\_\_\_  
Deputy