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COURT OF APPEALS STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	
Moffat County District Court Honorable Michael O'Hara, Judge Case No. 14CA95	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff-Appellant, v. BRIAN J. GOOD, Defendant-Appellee.	▲ **COURT USE ONLY** ▲ Case No. 14CA2434
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PEOPLE'S OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains **5069** words.

The brief complies with the standard of review requires set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R. , p.), not to an entire document, where the issue was raised and ruled on.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32.

/s/ Jacob R. Lofgren

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INTRODUCTION

The People appeal from the Moffat County District Court's order, finding that the defendant, Brian J. Good, was entitled to immunity from prosecution under section 18-1-711, C.R.S. (2014) ["the overdose immunity statute"], and dismissing the case against him.

STATEMENT OF THE ISSUE PRESENTED

I. Whether, under section 18-1-711, a criminal defendant is entitled to immunity from prosecution where he reports his own drug use but he is not reporting an "emergency drug overdose event"?

STATEMENT OF THE CASE

After he told law enforcement officers that his wife and the Mafia had poisoned the methamphetamines that he had just used, the defendant was charged with: (1) possession of a controlled substance; (2) unlawful use of a controlled substance; and (3) possession of drug paraphernalia (R. CF, pp.1-3).

The defendant filed a motion to dismiss the case, arguing that he was immune from prosecution under section 18-1-711(2) (R. CF, pp.16-19; *see also* R.Tr.12/8/2014, p.67, l.25—p.74, l.25, p.83, l.6—p.89, l.2 (defendant's oral arguments at hearing)).

The prosecution responded that the defendant was not entitled to immunity from prosecution in this case because he was not reporting "an emergency drug or alcohol overdose event" and he did not request immediate medical attention (R. CF, pp.20-29; *see also* R.Tr.12/8/2014, p.75, l.1—p.83, l.5 (prosecution's oral arguments at hearing)).

The court held an evidentiary hearing on that motion where four law enforcement officers testified (R.Tr.12/8/2014). After that hearing, the district court dismissed the case, finding that the defendant was entitled to immunity from prosecution under the overdose immunity statute (R.Tr.12/9/2014, p.2, l.4—p.10, l.5; R. CF, pp.31-33).

STATEMENT OF THE RELEVANT FACTS

On June 22, 2014, the defendant rode his bicycle from his home in Craig to the Moffat County Public Safety Center (R.Tr.12/8/2014, p.8, ll.13-18, p.19, ll.13-16, p.57, l.24—p.58, l.6). There, he approached the employee's entrance at the back of the facility and started pounding his fists on the door (R.Tr.12/8/2014, p.8, ll.13-18, p.19, ll.13-16, p.57, l.24—p.58, l.6). Receiving no answer, the defendant walked up to an officer who was standing in a nearby parking lot (R.Tr.12/8/2014, p.7, l.3—p.8, l.18, p.10, ll.17-21; *see* PR. Env., Ex.A (officer's conversation with his dispatcher)). The officer was not wearing his typical uniform; thus, he was not easily identified as a law enforcement officer (R.Tr.12/8/2014, p.18, ll.4-18).

Unprompted, the defendant told the officer that he had smoked methamphetamines and that he believed *his methamphetamines* had been "poisoned" by his wife and the Mafia (R.Tr.12/8/2014, p.10, l.22—p.12, l.9, p.12, l.23—p.13, l.9, p.19, l.17—p.20, l.3, p.20, ll.12-14). Shortly after that, a second officer joined the conversation at the first officer's request (R.Tr.12/8/2014, p.12, l.2—p.13, l.24, p.23, l.18—p.26,

l.11, p.32, l.11—p.33, l.6). The officers walked the defendant over to a picnic table behind the Public Safety Center; however, when the defendant complained that the Mafia was still following him, the officers offered him shelter under a large tree (R.Tr.12/8/2014, p.14, ll.21-25, p.23, l.25—p.26, l.24; *see* R. CF, p.24 (written report)).

While the defendant waited under the tree with the second officer, the first officer went inside to get further assistance (R.Tr.12/8/2014, p.14, l.21—p.15, l.5, p.26, ll.2-6, p.38, l.22—p.41, l.11; *see* R. CF, p.24 (written report)). When the first officer returned with a third officer, the defendant reiterated that his methamphetamines had been poisoned by his wife and the Mafia (R.Tr.12/8/2014, p.26, ll.2-16, p.41, l.9—p.42, l.5; *see* R. CF, pp.24, 26 (written reports)).

The defendant then insisted on showing the officers "the evidence that he had that the Mafia was trying to kill him" (R.Tr.12/8/2014, p.12, l.6—p.13, l.22, p.23, ll.3-9, p.24, l.5—p.28, l.24, p.34, ll.21-22, p.35, l.14—p.36, l.18, p.38, l.22—p.42, l.16, p.49, ll.5-17, p.52, ll.12-16, p.59, l.8—p.61, l.7). He opened his backpack at which point a pipe fell out and was collected by the officers (R.Tr.12/8/2014, p.19, ll.8-12, p.20,

l.25—p.21, l.2, p.23, ll.10-17, p.26, l.11—p.27, l.1, p.42, ll.10-13). He also gave the officers a cassette tape that he said showed that his wife and the Mafia conspired to kill him (R.Tr.12/8/2014, p.27, ll.2-7; *see* R. CF, p.24 (written report)). Finally, the defendant pulled a small plastic baggie of methamphetamines out of his wallet and gave it to the officers (R.Tr.12/8/2014, p.12, l.6—p.13, l.22, p.27, ll.8-16, p.42, ll.6-9).

In sum, the defendant used this interaction with officers to report a crime—namely, his wife and the Mafia attempting to kill him—and to provide evidence of that crime (R.Tr.12/8/2014, p.27, l.24—p.28, l.2, p.48, l.12—p.49, l.17; *see* R.Tr.12/8/2014, p.62, ll.2-10; *see also* R. CF, pp.24-29 (written reports)). After the defendant provided the officers with his "evidence," he was invited inside the Public Safety Center (R.Tr.12/8/2014, p.28, ll.3-9, p.49, ll.14-24).

The officers testified that the encounter with the defendant lasted several minutes (R.Tr.12/8/2014, p.23, ll.18-20, p.27, ll.8-10, p.33, l.25—p.34, l.2, p.48, ll.20-22, p.79, ll.6-10). The officers also consistently testified that the defendant did not say that he was suffering a drug overdose, he did not request medical attention of his own volition, and

he did not exhibit any signs or symptoms of a medical emergency (R.Tr.12/8/2014, p.20, l.4—p.23, l.2, p.25, ll.3-5, p.25, ll.16-20, p.27, ll.17-23, p.28, ll.10-24, p.33, l.7—p.34, l.20, p.35, l.14—p.36, l.7, p.44, l.24—p.48, l.22, p.49, ll.18-21, p.51, l.17—p.52, l.11, p.57, ll.21-23, p.58, ll.7-10; *see* R.Tr.12/8/2014, p.16, l.7—p.18, l.3, p.31, l.14—p.32, l.10).

While the defendant was not suffering a medical emergency, it was apparent to the officers that he was under the influence of drugs (R.Tr.12/8/2014, p.23, ll.3-9, p.24, l.5—p.28, l.24, p.34, ll.21-22, p.35, l.14—p.36, l.18, p.38, l.22—p.42, l.1, p.49, ll.5-17, p.52, ll.12-16, p.59, l.8—p.61, l.7). Because the defendant was under the influence, the officers knew that he would have to be medically cleared before he could be booked into the county jail (R.Tr.12/8/2014, p.14, l.1—p.15, l.15, p.20, ll.15-21, p.29, ll.16-18, p.34, l.23—p.35, l.13, p.36, ll.19-25, p.42, l.17—p.43, l.4, p.46, ll.4-14, p.51, ll.4-16). Thus, at the end of their conversation with the defendant, one of the officers asked him if he wanted to go to the hospital (R.Tr.12/8/2014, p.14, l.1—p.15, l.15, p.20, ll.15-21, p.29, ll.16-18, p.34, l.23—p.35, l.13, p.36, ll.19-25, p.42, l.17—p.43, l.4, p.46, ll.4-14, p.51, ll.4-16). The defendant accepted that offer

(R.Tr.12/8/2014, p.14, l.1—p.15, l.15, p.20, ll.22-24, p.29, ll.19-21, p.37, ll.1-6, p.41, l.5—p.42, l.1, p.43, ll.5-6).

The officer radioed his dispatcher and requested an ambulance, stating there was a "possible methamphetamine overdose" (R.Tr.12/8/2014, p.43, l.7—p.44, l.19; *see* PR. Env., Ex.B (recording of call to dispatcher)). The officer referred to this as a "possible overdose" simply as "vernacular to prepare the ambulance crew for what they would be responding to," noting that he used this verbiage as a "better safe than sorry" approach to the entire situation (R.Tr.12/8/2014, p.44, ll.3-19, p.49, l.22—p.50, l.8, p.53, l.3—p.55, l.2).

However, the defendant never reported that he had overdosed on drugs or that he needed immediate medical attention, and none of the officers suspected that he needed medical attention during the course of their conversation with him (R.Tr.12/8/2014, p.27, l.2—p.28, l.24, p.50, l.9—p.51, l.3, p.52, ll.4-9, p.59, l.8—p.61, l.7, p.62, ll.2-10).

At the hospital, testing confirmed that the defendant had ingested methamphetamines, but there were no indications that he had suffered from an overdose (R.Tr.12/8/2014, p.58, l.11—p.61, l.7; PR. Env., Ex.1

(medical records)). In fact, he was treated only for dehydration (R.Tr.12/8/2014, p.59, l.8—p.61, l.7; *see* PR. Env., Ex.1).

While at the hospital, the defendant continued to rant about his wife and the Mafia poisoning his drugs, as well as his wife's long-plotted plan to "make him stupid" by switching out his drugs with a "bad batch" (R.Tr.12/8/2014, p.58, l.11—p.59, l.7; *see* R. CF, pp.28-29 (written report)).

After he was treated, the defendant was arrested (*see* R. CF, pp.29 (written report)). Later, when he was released on bond, the defendant called the police under the impression that, when he approached the officers, he had agreed to snitch on his dealer (R.Tr.12/8/2014, p.61, l.8—p.62, l.1, p.62, ll.12-17; *see* PR. Env., Ex.2 (recording of call)).

SUMMARY OF THE ARGUMENT

The district court granted the defendant immunity based on an erroneous interpretation and application of section 18-1-711.

The defendant, while high on methamphetamines, contacted law enforcement officers and reported his own drug use, irrationally ranting that his wife and the Mafia had poisoned his drugs. Therefore, when he

approached the officers, the defendant was attempting to report a crime, and not "an emergency drug overdose event." Moreover, the defendant did not exhibit any indicia that he was suffering from a drug overdose and he never asked for medical attention of his own accord; thus, no reasonable person would have had reason to believe that he was suffering from or reporting an overdose.

By its plain language, the overdose immunity statute provides immunity from prosecution only where a person reports an "emergency drug or alcohol overdose event." Because the defendant was not reporting such an event, he was not entitled to immunity under that statute. Moreover, the legislature history of the statute shows that it was intended to save lives by encouraging individuals to report drug overdose events where there was a high risk of death resulting from an overdose. It accomplished this goal by providing the reporting party with immunity from prosecution where he reported an emergency that might not otherwise have been reported. The statute was not intended to provide sweeping immunity to a person who simply elects to report his or her own drug use for whatever reason, rational or irrational.

ARGUMENT

A defendant is not entitled to immunity from prosecution where he reports his own drug use but he is not reporting that he is suffering from "an emergency drug or alcohol overdose event."

The district court dismissed the charges against the defendant after finding that section 18-1-711 applied under the circumstances presented here. The court erred.

A. Standard of review and issue preservation.

This issue was preserved (R. CF, pp.20-29; R.Tr.12/8/2014, p.75, l.1—p.83, l.5).

This Court reviews issues of statutory interpretation de novo. *People v. Ruibal*, 2015 COA 55, ¶8.

Further, this Court reviews a district court's legal conclusions de novo and will reverse if the district court applied an erroneous legal standard or came to a conclusion that is not supported by the factual findings. *See People v. Sotelo*, 336 P.3d 188, 191 (Colo. 2014).

This Court generally defers to the district court's findings of fact if they are supported by competent evidence in the record. *See id.*

Finally, statutes granting immunity should be strictly construed. *See State v. Howland*, 484 A.2d 1076, 1078 (N.H. 1984) (the class of persons statutorily immune from criminal prosecution should be strictly construed); *see also State v. Nieto*, 993 P.2d 493, 506 (Colo. 2000) (strictly construing the immunity provided by the Colorado Governmental Immunity Act); *In re Brenda H.*, 402 A.2d 169, 171 (N.H. 1979) (statutory privileges relating to confidential communications are strictly construed).

B. The district court's order of dismissal.

After an evidentiary hearing, the district court orally granted the defendant's motion to dismiss (R.Tr.12/9/2014, p.2, l.4—p.10, l.5). The court's order briefly summarized the relevant facts (R.Tr.12/9/2014, p.2, l.4—p.3, l.23). Consistent with the prosecution's argument, the court found the defendant did not independently request medical assistance, and "was probably more concerned about having the police protect him from the Mafia and his wife at that moment than he might have been about getting assistance for a perceived emergency concerning his ingestion of methamphetamine" (R.Tr.12/9/2014, p.3, l.21—p.4, l.2).

Despite that finding, the court noted: (1) the officer who called for an ambulance reported that this was a "possible methamphetamine overdose;" and (2) the defendant was reporting that he had used methamphetamines laced with something that caused a detriment to him (R.Tr.12/9/2014, p.4, l.3—p.7, l.5). As a result, the court concluded that the defendant's report to officers was sufficient to trigger immunity under section 18-1-711(5) (R.Tr.12/9/2014, p.4, l.3—p.7, l.5). Thus, the court granted the motion to dismiss (R.Tr.12/9/2014, p.7, l.6—p.8, l.23).

The court also issued a written ruling expounding upon its oral order (R. CF, pp.31-33). Therein, the court rejected the argument that this was not an overdose situation within the meaning of the overdose immunity statute, stating:

> In applying [section 18-1-711(5)] to the facts of this case [the prosecution] correctly argues that no one who had contact with [the defendant] that day from law enforcement to medical personnel, concluded that he was suffering from an acute condition. However, as argued by [the defendant], he reported that his methamphetamine was laced with poison and, when offered, requested medical assistance. The officers admitted that they were not trained to conclude whether or not [the defendant] had been poisoned. To them he just

seemed like someone high on methamphetamine. The jail requires a medical clearance for persons under the influence before they can be booked into the jail. There is no question but that [the officer who requested the ambulance] referred to this event as a "possible methamphetamine overdose." The hospital was apparently alerted by someone that this patient was arriving for that purpose.

The definition of emergency drug or alcohol overdose event includes this language: "or another substance with which a controlled substance or alcohol was combined." This is essentially what [the defendant] reported to law enforcement officers.

Therefore, in summary, [the defendant] makes voluntary contact with a law enforcement officer and reports that he has consumed a controlled substance that was combined with poison; [the defendant] remains on the scene and cooperates with law enforcement officers; [the defendant] voluntarily turns over methamphetamine and a pipe in his possession.

The court finds it logical that [the officer who called the ambulance] would report this as a possible methamphetamine overdose on June 22, 2014. [That officer] attempted to explain at this hearing that he did not really mean what he admittedly said on June 22, 2014. The court finds that he made this statement both orally (on the recording) and in writing (in his report), and his position made its way to hospital staff as well.

> Given the report by [the defendant], there is no way that a reasonable lay person, much less a trained law enforcement officer designated as a drug recognition expert, could conclude that this was anything other than an emergency drug or alcohol overdose event, as defined. [That officer] acted reasonably and requested emergency medical services. The fact that it turned out not to be a true emergency does not mean that [the defendant's] motion should be denied.

(R. CF, p.33).

Consistent with those factual findings, the court concluded that the elements of the overdose immunity statute had been proven by a preponderance of the evidence, and granted the motion to dismiss (R. CF, p.33).

C. Law and analysis.

When interpreting a statute, the reviewing court's "primary goal is to ascertain and give effect to the legislative intent." *People v. Aryee*, 2014 COA 94, ¶8. To do this, the court first looks "to the plain language of the statute, giving words and phrases their commonly understood meanings." *Id.* If the language is clear and unambiguous, the court

applies it as written. *Id.* If that language is ambiguous, the court turns to extrinsic aids of construction. *Id.*

Indeed, if there is ambiguity on the face of the statute, the task of the reviewing court is to discern the legislative intent behind the law. *People v. Summers*, 208 P.3d 251, 254 (Colo. 2009). "In construing statutory language, [the court] read[s] the statute as a whole, with a goal of giving 'consistent, harmonious, and sensible effect to all its parts.' " *Id.* (quoting *People v. Dist. Court*, 713 P.2d 918, 921 (Colo. 1986)). Further, "[w]hen an ambiguity appears on the face of a statute, '[the court] may rely on other factors such as legislative history, the consequences of a given construction and the goal of the statutory scheme to determine a statute's meaning.' " *Summers*, 208 P.3d at 254 (quoting *Frazier v. People*, 90 P.3d 807, 811 (Colo. 2004)). In doing so, the court must remain "mindful that '[a] statute should not be construed in a manner which defeats the obvious legislative intent.' " *Summers*, 208 P.3d at 254 (quoting *Tacorante v. People*, 624 P.2d 1324, 1330 (Colo. 1981)).

Here, the plain language of the overdose immunity statute shows that the defendant is not entitled to immunity from prosecution. Even if the language of that statute is somehow ambiguous, the statute was not intended to provide immunity under the circumstances presented here. Indeed, the statute does not provide immunity where a defendant reports his own drug use while attempting to report a crime committed by someone else, but he: (1) does not tell law enforcement that he is suffering from an overdose; (2) does not request emergency medical attention; and (3) does not exhibit any indicia of a medical emergency.

1. The defendant is not entitled to immunity under the plain language of section 18-1-711.

By its title, the overdose immunity statute provides "[i]mmunity for persons who suffer or report an emergency drug or alcohol overdose event." § 18-1-711. In relevant part, that statute states:

> (1) A person shall be immune from criminal prosecution for an offense described in subsection (3) of this section if:
>
> (a) The person reports in good faith *an emergency drug or alcohol overdose event* to a law enforcement officer, to the 911 system, or to a medical provider;

(b) The person remains at the scene of the event until a law enforcement officer or an emergency medical responder arrives or the person remains at the facilities of the medical provider until a law enforcement officer arrives;

(c) The person identifies himself or herself to, and cooperates with, the law enforcement officer, emergency medical responder, or medical provider; and

(d) The offense arises from the same course of events from which the emergency drug or alcohol overdose event arose.

(2) The immunity described in subsection (1) of this section also extends to the person who suffered *the emergency drug or alcohol overdose event* if all of the conditions of subsection (1) are satisfied.

§ 18-1-711(1)-(2), C.R.S. (2014) (emphasis added).

An "emergency drug or alcohol overdose event" is defined as:

> an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of a controlled substance, or of alcohol, or another substance with which a controlled substance or alcohol was combined, and that a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance.

§ 18-1-711(5), C.R.S. (2014).

Thus, the plain language of the overdose immunity statute limits immunity from prosecution to situations where an individual reports "an emergency drug or alcohol overdose event." *See* § 18-1-711(1)(a), (2), (5). The statute does not provide blanket immunity to an individual who reports his own drug use while attempting to report someone else's crime. Indeed, the statute does not provide immunity where a reporting party: (1) does not report an emergency overdose event; (2) does not exhibit any signs or symptoms of a medical emergency—e.g., physical illness, coma, mania, hysteria, or death resulting from his consumption or use of a controlled substance; and (3) does not request immediate emergency medical attention.

Here, the defendant approached police officers, identified himself, reported his drug use, remained at the scene, and cooperated with law enforcement and medical providers. He did all of this so that he could provide the officers with "evidence" of the "crime" committed by his wife and the Mafia (R.Tr.12/8/2014, p.27, l.24—p.28, l.2, p.48, l.12—p.49, l.17, p.62, ll.2-10; *see* R. CF, pp.24-29 (written reports)). Indeed, the district court specifically found that the defendant's actual reason to

approach the officers was to report a "crime"—namely, his wife and the Mafia poisoning his methamphetamines (R.Tr.12/9/2014, p.3, l.21—p.4, l.2). To that end, the defendant's motion to dismiss should have failed at the outset because the record demonstrates that he approached law enforcement to report a crime, not an "emergency overdose event."

Moreover, the defendant did not report that he was suffering from a drug overdose, he did not request immediate medical attention, and he did not exhibit any signs or symptoms suggesting he was in the throes of a medical emergency. Indeed, during his lengthy conversation with officers, the defendant repeatedly told them that his wife and the Mafia had poisoned the methamphetamines that he had used, but he never requested immediate medical attention of his own accord and he never exhibited any indicia that he was suffering from an overdose or any other medical emergency (R.Tr.12/8/2014, p.20, l.4—p.23, l.2, p.25, ll.3-5, p.25, ll.16-20, p.27, ll.17-23, p.28, ll.10-24, p.33, l.7—p.34, l.20, p.35, l.14—p.36, l.7, p.44, l.24—p.48, l.22, p.49, ll.18-21, p.51, l.17—p.52, l.11, p.57, ll.21-23, p.58, ll.7-10; *see* R.Tr.12/8/2014, p.16, l.7—p.18, l.3, p.31, l.14—p.32, l.10).

Put simply, the defendant's admission that he had used drugs, while reporting his wife's "crime," was not the same as reporting an actual "emergency drug or alcohol overdose event" because: (1) he did not complain of any physical illness; (2) he did not state that he was slipping into a coma; (3) he was neither manic nor hysterical; and/or (4) he did not claim that he was dying as a result of his methamphetamine use. *See* § 18-1-711(5). Thus, nothing the defendant said or did when he approached the officers suggested that he was reporting "an emergency drug or alcohol overdose event" within the meaning of the overdose immunity statute. *See* § 18-1-711(1), (5).

Moreover, the record shows that the defendant never asked for medical attention of his own accord; instead, he accepted an offer of an ambulance at the end of a lengthy conversation where he reported his wife's "crime." The defendant's comments, appearance, or behavior during that conversation did not prompt any of the officers to believe that he was suffering from any sort of medical emergency requiring immediate medical attention (*see* R.Tr.12/8/2014, p.16, l.7—p.18, l.3, p.20, l.4—p.23, l.2, p.25, ll.3-5, p.25, ll.16-20, p.27, ll.17-23, p.28, ll.10-

24, p.31, l.14—p.32, l.10, p.33, l.7—p.34, l.20, p.35, l.14—p.36, l.7, p.44, l.24—p.48, l.19, p.49, ll.18-21, p.51, l.17—p.52, l.11, p.57, ll.21-23, p.58, ll.7-10). Thus, no reasonable person actually concluded (or should have concluded) that the defendant was suffering from or was reporting an overdose under the circumstances presented here.

In sum, when the defendant approached police officers to report his wife's "crime," he had obviously used drugs, but he did not complain of any illness or medical issues, let alone report that he was suffering from an actual drug overdose. Additionally, he did not exhibit any symptoms that caused any of the officers to believe that he required immediate medical attention. Therefore, under the plain language of the overdose immunity statute, the defendant was not reporting "an emergency drug overdose event." Instead, he was reporting a "crime"—namely, that his wife had poisoned the drugs that he had used.

Under these circumstances, the overdose immunity statute is inapplicable. *See* § 18-1-711(1), (2), (5).

The district court's erroneous conclusion to the contrary was based heavily upon two facts: (1) the defendant accepted an ambulance after it

was offered to him; and (2) the officer who called for the ambulance passingly referred to this situation as a "possible methamphetamine overdose" (R.Tr.12/9/2014, p.2, l.4—p.10, l.5; R. CF, pp.31-33).

The court clearly erred by relying on those two facts to support the conclusion that immunity was required. The record reflects that the ambulance was offered to the defendant primarily as a precautionary measure, and, more importantly, to ensure that he, having obviously used drugs, was medically cleared so that he could be booked into the county jail (R.Tr.12/8/2014, p.14, l.1—p.15, l.15, p.20, ll.15-21, p.27, l.2—p.29, l.18, p.34, l.23—p.35, l.13, p.36, ll.19-25, p.42, l.17—p.46, ll.4-14, p.49, l.22—p.55, l.2, p.59, l.8—p.61, l.7, p.62, ll.2-10). The ambulance was not offered to treat any medical emergency, *let alone any medical condition reported by the defendant* as required by the statute. Indeed, as outlined above, the defendant never reported that he was suffering a drug overdose and he exhibited no indicia of "an emergency drug or alcohol overdose event."

Moreover, the record reflects that, when the officer radioed his dispatcher, he called this a "possible methamphetamine overdose"

simply to alert his dispatcher that this situation involved drugs (R.Tr.12/8/2014, p.44, ll.3-19, p.49, l.22—p.50, l.8, p.53, l.3—p.55, l.2). This passing reference was not based upon any of the defendant's own words or actions when he told the officer's about his drug use in an attempt to report his wife's "crime" (*see* R.Tr.12/8/2014, p.27, l.2—p.28, l.24, p.50, l.9—p.51, l.3, p.52, ll.4-9, p.59, l.8—p.61, l.7, p.62, ll.2-10). In any event, the overdose immunity statute only applies to an individual's reported "emergency overdose event," not to another person's belief or precautionary actions.

Consequently, the competent evidence in the record shows that the defendant never reported that he was suffering from "an emergency overdose event," he did not request any immediate medical attention, and he did not exhibit any signs or symptoms that he was suffering from a medical emergency. Thus, the court erred in its interpretation and application of section 18-1-711 in this case.

Accordingly, the plain language of the overdose immunity statute does not provide this defendant with immunity, and the district court erred by granting the defendant's motion to dismiss.

2. Even if the plain language of section 18-1-711 is somehow ambiguous, that statute was not intended to provide immunity from prosecution under the circumstances presented here.

The legislative history of the overdose immunity statute shows it was intended to save lives by providing immunity from prosecution where an individual reports an actual emergency medical situation—i.e., that he or someone he is with has consumed a toxic or lethal dose of drugs or alcohol. The statute was not intended to provide immunity from prosecution to an individual who reports that he has used drugs while attempting to report someone other person's crime.

When senate bill 12-020 was introduced, its sponsor explained that the goal was to "save lives" by providing immunity to individuals who sought medical assistance by calling 911 in the event of a drug overdose, rather than simply running away. *See* Hearing on S.B. 12-020 in the Senate Judiciary Committee, 68th Gen. Assemb., 2nd Sess. (Feb. 1, 2005) (comments by bill sponsor Sen. Irene Aguilar); *see* Debate on S.B. 12-020 on the Senate Floor, 68th Gen. Assemb., 2nd Sess. (Feb. 13, 2005) (comments by bill sponsor Sen. Irene Aguilar); *see also* Debate

on S.B. 12-020 on the House Floor, 68th Gen. Assemb., 2nd Sess. (Mar. 9, 2012) (comments by bill sponsor Rep. Ken Summers) (explaining the bill attempts to ensure individuals who are suffering from an overdose obtain immediate medical attention by providing immunity to those who report overdose events).

This goal was accomplished by providing limited immunity to the reporting party to ensure that the person suffering an overdose would receive timely and life-saving medical assistance. Debate on S.B. 12-020 on the Senate Floor, 68th Gen. Assemb., 2nd Sess. (Feb. 13, 2005) (comments by bill sponsor Sen. Irene Aguilar). To that end, immunity from prosecution was extended only to individuals who were reporting an identifiable medical emergency. Debate on S.B. 12-020 on the Senate Floor, 68th Gen. Assemb., 2nd Sess. (Feb. 13, 2005) (comments by Sen. Shawn Mitchell).

In the most basic sense, this bill was proposed to remove the fear of calling 911 that often arises in life or death overdose situations. Debate on S.B. 12-020 on the Senate Floor, 68th Gen. Assemb., 2nd Sess. (Feb. 13, 2005) (comments by Sen. Morgan Carroll).

Initially, the Attorney General's Office and the Colorado District Attorney's Council urged legislators to vote against the overdose immunity bill, fearing that it could be misapplied to provide blanket immunity from felony prosecution where an individual simply reported his or her own drug use to escape prosecution. *See generally* Debate on S.B. 12-020 on the Senate Floor, 68th Gen. Assemb., 2nd Sess. (Feb. 13, 2012) (comments by Sen. Steve King) (outlining the reservations expressed by the District Attorney's Council and the Attorney General's Office). To alleviate that concern, the bill specifically limited immunity to only "emergency alcohol or drug overdose events." *See generally* Debate on S.B. 12-020 on the House Floor, 68th Gen. Assemb., 2nd Sess. (May 8, 2012) (Rep. Ken Summers).

The legislative history shows that the overdose immunity statute was specifically intended to provide immunity from prosecution *only* where an individual reports an "emergency drug or alcohol overdose event." The statute was never intended to provide immunity where an individual simply reports his or her own drug use for whatever reason, and, in fact, the statute was intentionally drafted to avoid that result.

Given the legislature's intent, the district court erred here when it found the defendant was entitled to immunity from prosecution. In this case, the defendant rode his bicycle to the Public Safety Center and told officers that he believed the methamphetamines that he had just used were poisoned by his wife and the Mafia. While reporting this "crime," the defendant did not tell the officers that he was suffering from a drug overdose, he did not request medical attention of his accord, and he did not exhibit any indicia that he was suffering from a medical emergency. The legislative history of the overdose immunity statute shows that it was not intended to shield the defendant from prosecution under these circumstances.[1]

Accordingly, the district court erred by granting the defendant's motion to dismiss.

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[1] *See* § 18-1-711(4), C.R.S. (2014) ("Nothing in this section shall be interpreted to prohibit the prosecution of a person for an offense other than an offense listed in subsection (3) of this section or to limit the ability of the district attorney or a law enforcement officer to obtain or use evidence obtained from a report, recording, or any other statement provided pursuant to subsection (1) of this section to investigate and prosecute an offense other than an offense listed in subsection (3) of this section.").

CONCLUSION

For these reasons, this Court should reverse the district court's order dismissing this case, and remand with instructions to reinstate the charges against the defendant.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **OPENING BRIEF** upon **BENJAMIN C. CARRAY**, **LISA MARIE WEISZ**, **BRET D. BARKEY**, and **KATHRYN L. BROWN**, via Integrated Colorado Courts E-filing System (ICCES) on July 27, 2015.

/s/ Tiffiny Kallina