No. SC98546

In the Supreme Court of Missouri

STATE OF MISSOURI,

Respondent,

v.

MATTHEW J.L. MCCORD,

Appellant.

Appeal from Circuit Court of Greene County
Thirty-first Judicial Circuit
The Honorable David C. Jones Judge

RESPONDENT'S SUBSTITUTE BRIEF

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STATEMENT OF FACTS

Matthew J.L. McCord (Appellant) appeals his conviction for the class E felony of residing within 1,000 feet of a school or child care facility as a sex offender, § 566.147 ("Count II"). During the same proceeding, Appellant was convicted of the class E felony of failure to register as a sex offender, §§ 589.400 and 589.425 ("Count I"), as well as the class D felony of failure to register as a sex offender, §§ 589.400 and 589.425 ("Count III"). (L.F. at 30, 31). Appellant was found guilty by the Honorable David C. Jones following a May 2018 bench trial in the Circuit Court of Greene County, Missouri. (L.F. at 31). He was sentenced to serve four years on each count with the sentences to run concurrently. (L.F. 32). Appellant appeals his conviction on Count II, arguing that the 1,000-foot distance should have been measured from the building in which he resided to the building of Carver Middle School, rather than from the property line of both parcels. (App. Br. at 8).

Appellant had previously pleaded guilty to statutory rape in the second degree, § 566.034, and was required to register as a sex offender. The Greene County sex offender registrar, Lisa Simmons, required sex offenders to "register a frequented address," and such an address cannot be registered if it was within 1,000 feet of a school or daycare or 500 feet of a park. (Tr. 81-82). A "frequented address" is one that a sex offender spent the night at or was going

to be at "quite frequently," such as the home of a significant other or a family member. (Tr. 82).

Ms. Simmons received an anonymous tip in May 2017, that Appellant was living at 3241 W. Glenwood in Springfield, and this was not an address Appellant had registered with the Greene County sex offender registry. (Tr. 17-18, 52, 93). Ms. Simmons referred the tip to law enforcement to investigate, and two officers visited the home around 5:00 p.m. (Tr. 17-18, 52, 93). Teresa Utterback spoke with the officers and identified herself as the homeowner. (Tr. 17-19). She told the police that Appellant was living in the home with his girlfriend and that he had lived in the home since January 2017. (Tr. 17-19, 24, 41, 53, 109). Ms. Utterback signed an affidavit attesting that Appellant had lived in the home since January 2017. (Tr. 17-18). She further stated that Appellant was friends with her daughter and that she had known Appellant for many years. (Tr. 15). Appellant was present in the home when the police went to do a residency check and was arrested.[1] (Tr. 42, 54).

At trial, both Ms. Utterback and Appellant's wife, Karie McCord, testified that Appellant knew the property was "too close to a school" and that they "measured it out and then called (Ms. Simmons) to have it checked out."

[1] When Utterback told Appellant that "somebody was there and that they wanted him to come out," Appellant said: "Tell them I'm not here." (Tr. 20). Utterback then let the deputies into her house and they went to Appellant's bedroom door and arrested him. (Tr. 20, 42).

(Tr. 109, 117-118). Karie McCord called prior to Appellant's arrest and Ms. Simmons informed her that the address was too close to the school. (Tr. 118). Ms. Utterback testified that she had conversations with Appellant where he acknowledged that Sherwood Elementary school "was close" and that he knew that he could only live within so many feet of a school or daycare. (Tr. 21). Appellant and Ms. Utterback measured the distance between Sherwood Elementary and her house and found that it was more than 1,000 feet. (Tr. 21-22). Later on, Appellant said that he investigated the issue further and found out the Carver Middle School was too close to the residence. (Tr. 21).

Ms. Simmons testified that 3241 W. Glenwood was 839.05 feet from Carver Middle School, measuring property line to property line.[2] (Tr. 42-43, 85, 96). She made this calculation using GIS software developed for the Greene County Sex Offender Registry that was accurate within three feet. (Tr. 82). She further testified that if the measurement was made building-to-building, "it would be outside the thousand feet" required by section 566.147. (Tr. 99).

The trial court, in convicting Appellant, stated: "In reviewing the law, I believe that the legislature clearly intend[ed] to protect children not only inside

[2] She further testified that the residence was 967.56 feet from Whaley's World of Fun Daycare measuring from the property line of the home to the property line of the daycare facility. (Tr. 43, 96). From the property line of the Glenwood address to the actual daycare was 977 feet. (Tr. 96).

the building but also on the school grounds, which is why they arriv[ed] at that 1,000 feet." (Tr. 162).

ARGUMENT

The trial court did not err in convicting Appellant of violating section 566.147 because the only reasonable and practical construction of the 1,000-foot distance is to measure from property line to property line.

Appellant argues that the trial court erred in overruling Appellant's motion for a judgment of acquittal and in finding him guilty of Count II, the class E felony of residing with 1,000 feet of a school or child care facility as a sex offender, § 566.147. (App. Br. at 8). Appellant argues that the distance between his residence and Carver Middle School should be measured building-to-building, rather than from the property lines, and as such there was insufficient evidence to sustain his conviction. (App. Br. at 13-16). But the only reasonable and practical construction of the 1,000-foot distance is to measure from property line to property line. The purpose of the statute is not to merely separate the buildings, but rather to establish a predator-free zone around the school and day care facilities. As such, the judgment of the trial court should be affirmed.

a. Standard of Review

Appellate review of a claim that there was insufficient evidence to support a criminal conviction is limited to a determination of "whether the [S]tate has introduced sufficient evidence from which a reasonable juror could have found each element of the crime beyond a reasonable doubt." *State v.*

Hosier, 454 S.W.3d 883, 898 (Mo. banc 2015). In making that determination, great deference is given to the trier of fact, and an appellate court will not weigh the evidence anew. *State v. Nash*, 339 S.W.3d 500, 509 (Mo. banc 2011). "An appellate court 'faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.'" *State v. Chaney*, 967 S.W.2d 47, 53 (Mo. banc 1998) (quoting *Jackson v. Virginia*, 443 U.S. 307, 326 (1979)).

Additionally, all evidence and inferences favorable to the State are accepted as true, and all contrary evidence and inferences are disregarded. *Id*. This is not an assessment of whether the Court believes that the evidence at trial established guilt beyond a reasonable doubt but rather a question of whether, in the light most favorable to the finding of guilt, any rational fact-finder could have found the essential elements of the crime beyond a reasonable doubt. *Id*. at 509.

Appellant disputes the trial court's interpretation of section 566.147. (App. Br. at 15-17). Statutory interpretation is a question of law, which this Court reviews *de novo*. *State v. Fikes*, 597 S.W.3d 330, 333 (Mo. App. W.D. 2019); *Nelson v. Crane*, 187 S.W.3d 868, 869 (Mo. banc 2006). "The primary rule in statutory construction is to ascertain the intent of the legislature from

the language used, to give effect to that intent if possible, and to consider the words in their plain and ordinary meaning." *Id.* at 869-870.

b. Underlying Facts

The Greene County sex-offender registrar testified at trial that it was 839 feet from the property line of 3241 W. Glenwood to the property line of Carver Middle School. (Tr. 85). That calculation was made using software that was accurate within three feet. (Tr. 82). The registrar further testified that if the measurement was made building-to-building, "it would be outside the thousand feet" required by section 566.147. (Tr. 99).

Acting on a tip, law enforcement investigated whether Appellant was living at a property owned by Ms. Utterback, and she testified that Appellant had lived there with his girlfriend (Ms. Karie McCord) since January 2017. (Tr. 17-18, 52, 93). Appellant was present when the officers did a residency check and was arrested. (Tr. 54). At trial, Ms. McCord testified that she and Appellant knew that the property was "too close to a school" and that they had "measured it out and then called to have it checked out." (Tr. 109).

c. Principles of statutory interpretation provide that section 566.147's prohibition on sex offenders living within 1,000 feet of schools and daycare facilities is to be measured property line to property line.

Section 566.147.1 provides that certain sex offenders convicted after July 1, 1979, "shall not reside within one thousand feet of any public school as

defined in section 160.011…where the school or facility is in existence at the time the individual begins to reside at the location." Section 160.011 defines a "public school" as "all elementary and high schools operated at public expense." Section 566.147 was amended in 2018 to add a new subsection 4 which provided: "For the purposes of this section, one thousand feet shall be measured from the edge of the offender's property nearest the public school, private school, child care facility, or former victim to the nearest edge of the public school, private school, child care facility, or former victim's property."

Appellant had a prior conviction of statutory rape in the second degree under section 566.034 and was thus required to register as a sex offender. (Tr. 75). Accordingly, under section 566.147.1, he was not permitted to reside within 1,000 feet of a school. There is no dispute that Carver Middle School is a public school, nor is there a dispute that the school was in existence at the time Appellant began to reside at the residence in question.

Appellant argues that the 1,000-foot distance in section 566.147.1 is ambiguous and should be measured from building to building. (App. Br. at 17). The trial court, in convicting Appellant, relied on a measurement from property line to property line, stating: "In reviewing the law, I believe that the legislature clearly intend[ed] to protect children not only inside the building but also on the school grounds, which is why they arriv[ed] at that 1,000 feet."

(Tr. 162). Because this issue is purely a matter of statutory construction, the appropriate standard of review is de novo. *Fikes*, 597 S.W.3d at 333.

The aim of statutory construction "is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words in their plain and ordinary meaning." *Id*. (quoting *Crane*, 187 S.W.3d at 869-870). "The rules of statutory interpretation are not intended to be applied haphazardly or indiscriminately to achieve a desired result. Instead, the canons of statutory interpretation are considerations made in a genuine effort to determine what the legislature intended." *Parktown Imports, Inc. v. Audi of America, Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009).

The only reasonable and practical construction of the 1,000-foot distance is to measure from property line to property line. The purpose of the statute is to separate children from sex offenders, not simply to separate the buildings. Schools have playgrounds, sports fields, and other outdoor facilities on which children are educated and play. The actual building is only part of the "school," as children frequently occupy other parts of the school grounds for physical activity and instruction. Appellant's building-to-building approach would lessen the legislature's intended protection of children. This is especially true given that sex offenders may also use the whole of their property. If Appellant's argument were to prevail, sex offenders could easily reside on properties adjoining a school, eliminating the predator-free zone the legislature clearly

sought to enact. *See generally F.R. v. St. Charles City. Sheriff's Dep't*, 301 S.W.3d 56, 67 (Mo. banc 2010) ("The residency restrictions provide a 1,000–foot buffer zone between sex offender residences and the schools and daycares that are entrusted with the daily care of thousands of Missouri children[.]") (analyzing a prior version of § 566.147) (Russell, J. dissenting).

The Missouri Court of Appeals has construed section 566.147.1 as encompassing the whole of the entire school property and not just the building or buildings. In *State v. Gonzales*, a defendant appealed a jury verdict finding him guilty of violating section 566.147. 253 S.W.3d 86, 87 (Mo. App. E.D. 2008). The Court rejected the offender's argument that there was insufficient evidence to prove beyond a reasonable doubt that he knew that his residence was within 1,000 feet of a school, noting that there were three playgrounds on the school property, and some of these were visible from the defendant's home. *Id*. at 900. The Court, in holding that the defendant acted knowingly, stated that the presence of the playground and other aspects of the property constituted sufficient evidence to permit a reasonable inference that the defendant knew of the location and distance of the school when he established his residence. *Id*. at 91. In doing so, the Court relied on a construction that the language of section 566.147 means more than just the school building, implying that a school encompasses the entirety of the property, including the playgrounds and playground equipment. *Id*.

The Court of Civil Appeals of Oklahoma answered a similar question in *Western Heights Independent School District No. I-41 v. Avalon Retirement Centers, L.L.C.*, 37 P.3d 962, 963 (Okla. Civ. App. 2001). An Oklahoma school district sought to enjoin the operation of a halfway house for inmates, arguing that doing do so would violate a statutory prohibition on operating a correctional facility within 1,000 feet of a school. *Id.* The halfway house sought for the measurement to be from building to building, whereas the school district sought to measure from property line to property line. *Id.* at 964. The court held for the school district, noting that "the purpose is to separate the residents of correctional facilities from elementary and secondary school students. The purpose is not merely to separate the buildings of the facilities, particularly since students use the areas outside the school buildings and the inmates would use the areas outside the halfway house building." *Id.*[3]

Courts in other jurisdictions have interpreted similar statutes in a way that preserved the creation of predator-free zones. The Court of Appeals of Ohio recently held that a similar statute disallowing sex offenders from living

[3] The statutory prohibition at issue in this case was not limited to sexual offenders but instead enjoined all facilities where state, county, or municipal inmates were housed from being within 1,000 feet of any public or private elementary or secondary school. *Id.* at 964. However, the issue decided by the Court of Civil Appeals—whether the legislature meant to measure the distance between a included facility and a school property-line-to-property-line or building-to-building—is the same as the one presented in this case.

within 1,000 feet of a school was to be measured using a "straight line" approach—instead of a "reasonably navigable path" approach—because the alternative approach would "nullify" the statute and "permit sex offenders to live in close proximity to the restricted premises." *City of Parma v. Burgos*, 139 N.E.3d 553, 555-556 (Ohio Ct. App. 2019), citing *State ex rel. O'Brien v. Messina*, 2010 WL 3835795, at *4-5 (Ohio Ct. App. 2010) (holding the same, and also holding that under Ohio's statutory provisions "the appropriate measurement is from property line to property line rather than from the nearest wall of defendant's individual apartment unit."). The California Court of Appeals reached a similar result, holding that the "straight-line method provides a predictable, objectively cognizable measurement which enables the statute to achieve 'predator free zones' around schools." *People v. Christman*, 176 Cal. Rptr. 3d 884, 889 (Cal. Ct. App. 2014) (see also *City of Parma*, 139 N.E.3d at 555 ("The straight-line measurement offers uniformity in application. It is for this reason that courts generally favor a straight-line method of measuring distances in statutes that do not specify the particular method of distance calculation.").[4]

[4]*See also People v. Leroy*, 357 Ill. App. 3d 530, 535, 828 N.E.2d 769, 777 (2005)("Although it is not clear from the record how the distance of 500 feet was decided upon, we believe that 500 feet is a reasonable distance. We note that among the 13 states that have enacted some form of residency restriction applicable to sex offenders, the 500–foot restriction of subsection (b–5) is the least restrictive in geographical terms. Ala.Code § 15–20–26 (Supp. 2000)

One of the fundamental rules of statutory construction is that "[s]tatutory provisions relating to the same subject matter are considered in pari materia." *Preston v. State*, 33 S.W.3d 574, 579 (Mo. App. W.D. 2000) (quoting *EBG Health Care III, Inc. v. Mo. Health Facilities Review Comm.,* 12 S.W.3d 354, 360 (Mo. App. W.D. 2000)). This Court presumes that statutes relating to the same subject matter are intended to be read harmoniously.[5] *See*

(2000 feet); Ark.Code Ann. § 5–14–128 (Lexis Supp.2003) (2000 feet); Cal.Penal Code § 3003(g) (Deering Supp.2005) (certain sex offenders on parole may not live within a quarter mile from a primary school); Fla. Stat. Ann. § 947.1405(7)(a)(2) (West 2001) (1000 feet); Ga.Code Ann. § 42–1–13 (Supp.2004) (1000 feet); Iowa Code Ann. § 692A.114 (West 2003) (2000 feet); Ky.Rev.Stat. Ann. § 17.495 (West 2003) (1000 feet); La.Rev.Stat. Ann. § 14.91.1 (West 2004) (1000 feet); Ohio Rev.Code Ann. § 2950.034 (2003) (1000 feet); Okla. Stat. Ann. tit. 57, § 590 (West 2004) (2000 feet); Or.Rev.Stat. §§ 144.642, 144.643 (1999) (general prohibition on supervised sex offenders living near places where children reside); Tenn.Code Ann. § 40–39–211 (Supp.2004) (1000 feet).").

A majority of states have enacted similar statutes prohibiting convicted sex offenders from living within so many feet of schools, day cares, and public parks. *See* Ariz. Rev. Stat. § 13-3727 (2007); Idaho Code Ann. § 18-8329 (2006); Ind. Code § 35-42-4-11 (2006); Mich. Comp. Laws § 28.735 (2005); Minn. Stat. § 244.052 (2005); Miss. Code Ann. § 45-33-25 (2006); Mont. Code Ann. § 46-18-255 (2001); Neb. Rev. Stat. § 29-4017 (2006); Nev. Rev. Stat. § 176A.410 (2007); Nev. Rev. Stat. § 213.1243 (2007); N.C. Gen. Stat. § 14-208.16 (2006); Ohio Rev. Code Ann. § 2950.034 (2003); Ohio Rev. Code Ann. § 5321.051 (2003); R.I. Gen. Laws § 11-37.1-10 (2008); S.C. Code Ann. § 23-3-535 (2008); SD Codified Laws § 22-24B-23 (2006); Tex. Gov't Code Ann. § 508.187 (1997); Wash. Rev. Code § 9.94A.712 (2006); W. Va. Code § 62-12-26 (2003); Wis. Stat. § 980.08 (2001).

[5] *See also* Scalia, Antonin & Bryan A. Garner, READING LAW 180 (1st ed. 2012) ("Any word or phrase that comes before a court of interpretation is part of a whole statute, and its meaning is therefore affected by the other provisions of the same statute. It is also, however, part of an entire *corpus juris*. So, if

State ex rel. Evans v. Brown Builders Elec. Co., Inc., 254 S.W.3d 31, 35 (Mo. banc 2008).

Other Missouri statutes indicate that when the legislature creates a zone of safety around a school, they intend to measure from the property line. For instance, it is illegal to distribute a controlled substance "[i]n, on, or within two thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school, or on any school bus." Section 579.030.1. Similarly, sexually oriented businesses shall not be established "within one thousand feet of any preexisting primary or secondary school," and that distance is measured "in a straight line…from the closest portion of the parcel containing the sexually oriented business to the closest portion of the parcel containing" the school. Section 573.531.1. The loitering statute provides that sex offenders shall not loiter within 500 feet of a child care facility, which includes the building and real property. § 566.148. Because these statutes deal with the same matter as section 566.147—namely creating safe zones around schools—they are in pari materia and should be interpreted harmoniously if possible, which means that a property-line basis should be used. *State ex rel. Evans*, 254 S.W.3d at 35; *Crawford v. Division of Employment Sec.*, 376 S.W.3d

possible, it should no more be interpreted to clash with the rest of that corpus than it should be interpreted to clash with other provisions of the same law.").

658, 664 (Mo. banc 2012) (citing *Baldwin v. Director of Revenue*, 38 S.W.3d 401, 405 (Mo. banc 2001).

Defendant asserts that the legislature could have used more exacting language in section 556.147, but he does not—and is unable to—show that the legislature somehow intended the boundary restriction of section 566.147 to be less restrictive than that of other statutes creating predator-free zones around schools. In a similar effort, he asserts that the statute's recent amendment confirms that the legislature was "capable of inserting more specific language." (App. Br. at 18, 21). But this argument misses the mark, as nothing indicates that the change by the legislature was intended to do anything other than clarify and restate the previous law. "While an amendment to a statute must be deemed to have been intended to accomplish some purpose, that purpose can be clarification rather than a change in existing law." *Andresen v. Bd. of Regents of Missouri W. State Coll.*, 58 S.W.3d 581, 589 (Mo. App. W.D. 2001) (quoting *State v. McGirk*, 999 S.W.2d 298, 301 (Mo. App. W.D. 1999)). "Statutory amendments may be used to clarify or restate legislative intent…and subsequent statutes may be considered in construing previously enacted statutes…in order to ascertain the uniform and consistent purpose of the legislature." *Missouri Hosp. Ass'n v. Air Conservation Com'n*, 874 S.W.2d 380, 398 (Mo. App. W.D. 1994); *see also State v. Bradshaw*, 81 S.W.3d 14, 22 (Mo. App. W.D. 2002).

In *Andresen v. Board of Regents of Missouri Western State College*, the Western District rejected a similar claim. There, the appellants claimed that an ambiguity existed between multiple statutes because it was unclear whether "state agencies" included state colleges. 58 S.W.3d at 588. In 1996, the legislature amended one of the statutes in question to include a definition of "state agency" that excluded academic institutions. *Id.* at 589. This amendment made plain that the legislature intended to exclude academic institutions from the State Personnel Law. *Id.* The appellants argued that since the legislature had not expressly excluded academic institutions from the statute until 1996, the court should find that prior to that amendment, the statute applied to state colleges. *Id.* The Western District rejected this argument, concluding that this amendment "was intended only to clarify an existing law and the legislature did not mean to include academic institutions within [the statute] prior to the 1996 amendment." *Id.* (citing *Flipps Nine, Inc. v. Missouri Property and Casualty Insurance Guaranty Ass'n*, 941 S.W.2d 564, 568 (Mo. App. E.D. 1997)) (holding that an amendment to an existing statute explicitly excluding coverage of claims of certain nonresident members did not imply that the legislature intended to include these nonresident members prior to the amendment.).

Similarly, here, the legislature's amendment to section 566.147 expressly stating that the distance should be measured property line to

property line, was not a substantive change in state policy but merely a clarification of how the legislature intended the distance to be measured.

Finally, measuring property line to property line leaves no ambiguity, whereas the Appellant's building-to-building approach creates additional problems. For instance, it is unclear how the building-to-building standard would be applied in the case of multiple buildings, and it is further unclear what part of the building it would be applied to. Measuring from property line to property line is a straightforward, simple approach that leaves little doubt about permissible residences for sex offenders.

Measuring from the property line is clearly what the legislature intended as it sought to create predator-free zones around schools and day care facilities.

d. The rule of lenity is inapplicable in this case.

Defendant invokes the "rule of lenity," which requires that criminal statutes "be strictly construed against the state." *State v. Salazar*, 236 S.W.3d 644, 646 (Mo. banc 2007); *J.S. v. Beaird*, 28 S.W.3d 875, 877 (Mo. banc 2000) (the "rule of lenity" provides "that ambiguity in a penal statute will be construed against the government or party seeking to exact statutory penalties and in favor of persons on whom such penalties are sought to be imposed."). Lenity only applies, however, when there is ambiguity in a criminal statute that cannot be resolved by applying other canons of statutory construction. *State v. Liberty*, 370 S.W.3d 537, 547 (Mo. banc 2012) (But

"[t]he rule of lenity applies to interpretation of statutes only if, after seizing everything from which aid can be derived, [the court] can make no more than a guess as to what the legislature intended.") (quoting *Fainter v. State,* 174 S.W.3d 718, 721 (Mo. App. W.D. 2005) (citing *United States v. Wells,* 519 U.S. 482, 499 (1997)).

The rule of lenity has no application when, after applying other canons of statutory construction, a criminal statute is not ambiguous. *Turner v. State*, 245 S.W.3d 826, 828-829 (Mo. banc 2008) (describing the "rule of lenity" as a "default rule" to be employed only when other canons of statutory construction fail to reveal legislative intent) (superseded by statute on other grounds). "[T]he rule of lenity applies to interpretation of statutes only if, after seizing everything from which aid can be derived, we can make no more than a guess as to what the legislature intended." *Fainter,* 174 S.W.3d at 721 (citing *United States v. Wells,* 519 U.S. at 499). In short, this rule is only applicable after all other canons of statutory construction have been applied and have failed to resolve the ambiguity.

Moreover, the rule does not mandate that a court "dispense with common sense or disregard an evident statutory purpose." *State v. Liberty*, 370 S.W.3d 537, 549 (Mo. banc 2012) ("But before finally deciding that a statute is ambiguous, a court is permitted to apply rules of statutory construction, for the rule of lenity 'in no wise implies that language used in criminal statutes should

not be read with the saving grace of common sense with which other enactments, not cast in technical language, are to be read.'") (quoting *Bell v. United States*, 349 U.S. 81, 83 (1955)); *See State v. Myers*, 248 S.W.3d 19, 27 (Mo. App. E.D. 2008); *see also State v. Stewart*, 113 S.W.3d 245, 249 (Mo. App. E.D. 2003); *State v. Condict*, 65 S.W.3d 6, 12 (Mo. App. S.D. 2001) (the rule of lenity "does not require a reviewing court to dispense with common sense or to ignore an evident statutory purpose.").

Here, as discussed above, other canons of statutory construction reveal the evident intent of the legislature was to create predator-free zones around schools. The legislature recently clarified the extent of the predator-free zone around schools, and it is not necessary for this Court to "guess . . . what the legislature intended." Accordingly, the Court need not resort to the rule of lenity.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the trial court.

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CERTIFICATE OF COMPLIANCE

The attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains 5,335 words, excluding the cover, certification and appendix, as determined by Microsoft Word 2016 software; and that pursuant to Rule 103.08, the brief was served upon all other parties through the electronic filing system.

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