

## Supreme Court affirms part of Olsen's conviction

By TOM HOLM Post Register December 22, 2016

The Idaho State Supreme Court affirmed one count of Blair Olsen's conviction on misuse of public funds but ordered District Court to vacate convictions on two other counts in an opinion published Wednesday. A Twin Falls County jury convicted the former Jefferson County Sheriff in May 2015 on three counts of misuse of public funds for the years 2010, 2011 and. Olsen's wife, Marie Olsen, used a county-paid cellphone mainly for personal use during those years. Olsen was sentenced to serve 15 days in jail and three years of probation. The Supreme Court heard arguments on Olsen's appeal Dec. 7. Olsen's attorney, Gary Cooper, presented three arguments for why the convictions should be vacated. Cooper argued that the statute used to prosecute Olsen was unconstitutionally vague, that the three counts violated Olsen's right against double jeopardy saying the conduct was made with one decision and should be made into one count. And finally that the separation of governmental powers had been violated since Olsen was prosecuted after the Jefferson County Commissioners decided to retroactively authorize the phone's payments when it was learned Olsen's wife used the phone. Justice Daniel Eismann wrote the opinion saying the three counts should have been treated as one. Chief Justice Jim Jones and justices Roger Burdick, Warren Jones and Joel Horton concurred. Eismann wrote that Olsen did not suffer from double jeopardy by being convicted on the three counts because the wording of the statute made clear that each purchase by the commissioners for the phone bill constituted a violation of the statute. However, Eismann noted that the District Court's decision to allow prosecutors to aggregate the years under indictment into three counts was in error. Eismann wrote that due to the small amount of money — bills for the phone over three years added up to about \$900 — the statute dictated that the sum value of public money taken can be aggregated into separate counts if it exceeds \$300. Since some of the years separated by Olsen's indictment did not meet that \$300 threshold it could not be aggregated into separate counts, Eismann wrote. The Justices refuted all of Cooper's other arguments. Eismann wrote that the Jefferson County Commissioners decision to allow the "backup" cellphone that Marie Olsen carried did not absolve Olsen of "any criminal liability." "This prosecution did not violate the separation of powers," Eismann wrote. Pertaining to Cooper's argument that the statute is vague, Eismann wrote that the wording at issue in Idaho Code 18-5701 was whether public money was used for "personal purpose." Eismann wrote that despite there being a lack of legal definition for the term personal purpose, this argument did not prove the statute was vague. He wrote that the prescient phrases are "public" officer using "public" money.

## Mother sentenced to 12 years in baby's meth death

By LAURA ZUCKERMAN Post Register December 22, 2016

SALMON — Calling the death of a baby from methamphetamine an unimaginable crime that "breaks my heart," an Idaho judge on Thursday handed down a 12-year sentence to a Salmon woman for her role in the infant's demise. Heather Elam, 26, in September pleaded guilty to voluntary manslaughter in the death last year of her 6-month-old baby, Serenity, who was administered a lethal dose of methamphetamine. In pronouncing Elam's prison term, 7th Judicial District Judge Alan Stephens said there was "no joy" in a sentence that will see Elam serve a minimum of eight years with an additional four to be determined by state Department of Correction officials. "I'm a father of seven and a grandfather of 25 and cannot imagine this crime; it breaks my heart," said Stephens. The judge said he initially intended Elam's punishment to be more severe but his decision was tempered by proof she had reformed to some degree by completing a substance abuse program while in prison on a separate illegal drug charge and because she was remorseful and had accepted full responsibility for the crime. In advance of the judge's decision, Lemhi County Prosecutor Bruce Withers read a statement by Serenity's father, who said he was shattered by the death of a daughter he named and with whom he had a bond like no other. Withers reiterated for the court events that unfolded on Jan. 14, 2015, the day the baby girl perished. Elam phoned the Lemhi County Sheriff's Office early that afternoon to report her daughter was not responsive, he said. The baby was taken to the hospital and pronounced dead shortly thereafter. A search of the home by authorities led them to seize the baby's feeding bottle and a children's cold remedy bottle, both found near the infant's crib. Lab analyses of the bottles' contents showed they contained meth and an autopsy later found meth in Serenity's blood and stomach matching the dose found in the children's cold remedy. A toxicologist determined Serenity succumbed to a meth overdose likely administered several hours before the child's death, Withers said. "Serenity would have been in extreme discomfort after being poisoned," a state that should have alarmed her mother and driven her to act swiftly to secure her child's safety, he said. A probe by the Lemhi County Sheriff's Office and the Idaho State Police found that Elam, in the hours before her baby's death, had texted her mother expressing frustration with Serenity, perhaps for crying. The messages included one in which Elam wrote, "Come get this child. I will throw her out. She won't quit." Withers said Elam had wrongfully chosen drugs and a lifestyle over the well-being of her baby. Jim Archibald, Elam's attorney, had sought probation for a client he argued was a different person but Withers said incarceration was the needed penalty. "Anything less than prison means no consequences if you meth your kid to death. This is a bad message for the community," Withers said. As Elam, her family members and even her attorney wept, Withers acknowledged that the case was emotionally fraught but emphasized, "Empathy and sympathy should be for the suffering child." Archibald described the case — which began with a murder charge that ultimately was reduced based on court mediation — as both difficult and tragic. He said his client had been clean and sober for months and was now accepting responsibility for the death. Archibald submitted to the court letters of recommendation tied to Elam and called two character witnesses. One of those was the defendant's father, Mike Elam, of California, who said that if his daughter was given probation, he was prepared to offer her a home with him or with her uncle in Utah, who also could provide her with a job. He suggested his daughter had changed for the better since she completed drug treatment. Bonnie Elam, of Salmon, the defendant's mother, wept as she pleaded with the judge for leniency, saying of her daughter, "She has come a long way. It's been very rough for her and for us for the last few years." The defendant told the judge she wanted to transform her life. "I need a lot of treatment. I want to grow and learn and get therapy," she said, sobbing as she added, "I want to apologize to my family and especially apologize to my baby." After the hearing, Withers said achieving the prison term he had sought was no victory given the nature of the case. "The bottom line is, a child lost her life because of meth and her mother's conduct," he said. "It's a tragedy for the baby, it's a tragedy for her family, it's a tragedy for the community. "It underscores the poison that meth is and why we need to continually try to stamp it out."