

SUMMARY STATEMENT
State v. Kevin Zachary Michaelson
Docket No. 51772

Kevin Zachary Michaelson was charged with felony driving under the influence (DUI), Idaho Code §§ 18-8004, 8005(6); and driving without privileges, I.C. § 18-8001. The State alleged that Michaelson's DUI was a felony because he had pled guilty to or had been found guilty of at least two violations of I.C. § 18-8004 or a substantially conforming foreign statute within the previous ten years. I.C. § 18-8005(6). At the preliminary hearing, the State presented evidence of Michaelson's prior DUI convictions in Idaho and California. Michaelson filed a motion in limine claiming that probable cause had not been established to charge a felony because the California DUI statute was not substantially conforming to the Idaho statute. The district court granted the motion in limine, concluding that the California DUI statute applies regardless of where the vehicle is driven, including private property, whereas the Idaho statute is limited to public property or property open to the public and, therefore, the California statute is not substantially conforming. The district court, therefore, reduced the charge from a felony to a misdemeanor and ordered remand to the magistrate court.

The district court found that prior Court of Appeals' precedent implicitly adopted the test from *United States v. Thomas*, 367 F.3d 194 (4th Cir. 2004), that a statute is substantially similar if any actions violating the statute necessarily would violate the other statute as well. In other words, the district court determined that another state's statute is substantially similar to Idaho's if the other state's statute is an included offense of Idaho's statute. The Court of Appeals reversed, stating that it had not implicitly adopted the *Thomas* test. The Court noted that a substantially conforming statute does not require the elements to strictly match and permits non-substantive differences so long as the substantive essence mirrors the Idaho statute. In the substantially conforming context for DUIs, statutes align when they prohibit essentially the same conduct--driving under the influence of alcohol. *State v. Schmoll*, 144 Idaho 800, 804, 172 P.3d 555, 559 (Ct. App. 2007). While the California statute includes driving on private property and the Idaho statute does not, the statutes are substantially conforming.

***This summary constitutes no part of the opinion of the Court but has been prepared
by court staff for the convenience of the public.***