

U, TUESDAY, SEPTEMBER 19, 2017, AT 10:30 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 43967

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 JAMES PATRICK STELL JR.,)
)
 Defendant-Appellant.)
 _____)

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Christopher S. Nye, District Judge.

Eric D. Fredericksen, State Appellate Public Defender; Jenevieve C. Swinford, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

A jury found James Patrick Stell guilty of aggravated assault with a deadly weapon, malicious injury to property, possession of drug paraphernalia, and carrying a concealed weapon while under the influence. Stell filed a motion for judgment of acquittal on the charge of carrying a concealed weapon while intoxicated. The district court denied the motion.

Stell appeals from the district court's judgment of conviction on all four offenses. Stell argues the district court erred by admitting an audio recording of his arrest where he invoked his right to counsel following *Miranda* warnings because: (1) the audio recording of the right to counsel was irrelevant and prejudicial; and (2) the audio recording of his invocation of the right to counsel violated his constitutional right to remain silent, guaranteed by both the Fifth Amendment of the United States Constitution and Article I, § 13 of the Idaho Constitution. Stell also argues the district court erred by denying his motion for judgment of acquittal on the charge of carrying a concealed weapon while intoxicated because the State failed to present sufficient evidence of his intoxication.