

## **SUMMARY STATEMENT**

*State v. James Patrick Stell Jr.*

Docket No. 43967

James Patrick Stell Jr. was charged with assault with the intent to commit murder, grand theft, malicious injury to property, possession of drug paraphernalia, and carrying a concealed weapon while under the influence. During trial, the prosecution introduced a redacted version of an audio recording of Stell's arrest, in which Stell requested an attorney. Stell's objection to the evidence was overruled. A jury returned a verdict of not guilty on the charges of assault with the intent to commit murder and grand theft. A verdict of guilty was returned on the lesser included offense of aggravated assault, with a deadly weapons enhancement, and on the misdemeanors of malicious injury to property, possession of drug paraphernalia, and carrying a concealed weapon while under the influence. Stell filed a motion for acquittal pursuant to Idaho Criminal Rule 29 for carrying a concealed weapon while under the influence which was denied.

On appeal, Stell challenged the admission of the audio recording on both evidentiary and constitutional grounds. Stell also challenged the district court's denial of his acquittal motion arguing there was not sufficient evidence to find Stell was intoxicated at the time he carried a concealed weapon. The Court of Appeals held that any error, evidentiary or constitutional, made by the trial court in admitting the redacted version of the audio recording was harmless beyond a reasonable doubt. Error is not reversible unless it is prejudicial. Since there was overwhelming evidence to convict Stell of the four offenses, the admission of the audio recording had little to no effect on the outcome of the trial. The Court also held that based on the plain meaning of the word "intoxication," there was sufficient evidence for the jury to find beyond a reasonable doubt that Stell was intoxicated at the time that he carried a concealed weapon.