

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0112

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STATE OF MONTANA

Plaintiff and Appellee,

v.

MARK JAY PRICHARD,

Defendant and Appellant.

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DEFENDANT/APPELLANT INITIAL BRIEF ON APPEAL

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On Appeal from the Montana First Judicial District Court,  
Lewis and Clark County, The Honorable Michael McMahon, Presiding on Appeal  
from the Justice Court for Lewis and Clark County.

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## **ISSUE PRESENTED**

Whether the Justice Court for Lewis and Clark County failed to require the State of Montana to meet its burden to prove each and every element beyond a reasonable doubt when it found the Defendant guilty of violating a speed limit established pursuant to Section 61-8-309, MCA.

## **STATEMENT OF FACTS AND PROCEDURAL BACKGROUND**

On March 4, 2020, Deputy Chris Norris of the Lewis and Clark County Sheriff's Department cited the Defendant, Mark Prichard, with exceeding a speed limit established pursuant to Section 61-8-309(1), MCA on Floweree Drive in Lewis and Clark County. (see Citation DC doc 4) On October 23, 2020 a bench trial was held in the Justice Court for Lewis and Clark County on the alleged offense. The State's evidence consisted solely of the testimony from the citing officer, Chris Norris. When asked by the State Attorney about the speed limit on Floweree Drive, Officer Norris simply testified that he had personal knowledge that the speed limit was "Thirty-five, it's thirty five", (Appendix C, Trial Transcript, Page 3, Line 3, October 22, 2020) with no additional testimony. The State did not present any other evidence to suggest, let alone support a finding beyond a reasonable doubt, that the alleged speed limit on Floweree Drive was established pursuant to any provision of

Section 61-8-309, MCA or that the alleged speed restriction was permanent or temporary.

After the close of the State's Case-in-Chief, the Defendant entered an oral Motion for Judgment of Acquittal ("Motion") based upon the State's complete lack of evidence as to whether the alleged speed limit on Floweree Drive was established pursuant to Section 61-8-309, MCA as alleged in the citation. (Appendix C, Trial Transcript, Page 8, Ln 4 & 5, Oct 22, 2020) Said Motion was denied by the Justice of the Peace even before the Judge had heard the substance of the Motion. (Appendix C, Trial Transcript Page 8, LN 6, Oct 22, 2020) While the Defendant persisted in presenting the Motion despite the Justice Court's automatic denial, the Justice of the Peace denied the Motion without explanation and without asking for a response from the State's Attorney by simply stating, "I disagree". (Appendix C, Trial Transcript, Page 9, Ln 4, Oct 22, 2020).

Later in the trial when the Defendant renewed his argument about the lack of evidence in regards to whether the alleged speed limit was established pursuant to Section 61-8-309, MCA, the Justice Court referred to "court cases that have gone up on this. This has been settled long ago", but did not appropriately disclose the

identity of the alleged legal authority when requested by the Defendant.<sup>1</sup> (Appendix C, Trial Transcript, Page 12 Ln 6 through Ln 9, Oct 22, 2020). On November 9, 2020, the Justice Court entered a written order finding the Defendant guilty of the charge. (Appendix A, Attached). On November 13, 2020, the Defendant filed an appeal to the District Court for Lewis and Clark County.

The Defendant's Appeal to the District Court consisted of three issues; (1) whether the state met its burden of establishing each element of the alleged offense beyond a reasonable doubt, (2) whether the Justice Court impermissibly restricted the Defendant's cross-examination of the citing officer and (3) whether the Justice of the Peace was not impartial to the Defendant. On February 11, 2021 the District Court issued its opinion in support of the Justice Court order.

The Defendant is declining to bring forth on appeal the last two issues and is only bringing one issue before the Supreme Court. The issue brought before this Court is whether the State met its burden of establishing each and every element of the alleged offense beyond a reasonable doubt as required by due process. The basis of this Appeal is the total lack of analysis by both the Justice Court and the District

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<sup>1</sup> At this point in the process the Defendant/Appellant is still unsure what case law the Justice of the Peace was referring as no case pertaining to Section 61-8-309, MCA has been cited by either the State Attorney at trial, in the District Court Response Brief or by the District Court Judge in its Order on Appeal.

Court on the plain language of the Section 61-8-309, MCA. As set forth in the trial transcripts, the Justice Court made no analysis of the Section 61-8-309, MCA and the District Court relied upon *State v. French*, 2018 MT 289, 393 Mont. 364 431 P.3d 332 (2018), which addressed the general statewide speed limit statute Section 61-8-303(b), MCA in making its determination to affirm the Justice Court's judgement of guilty.

### **STANDARD OF REVIEW**

In a criminal case, an appeal from a Justice Court of record is governed by Section 3-10-115 and 46-17-311(1), MCA. Pursuant to Section 3-10-115(1), MCA a party may appeal a judgment or order from a Justice Court of record to the district court. The appeal is confined to review of the record and questions of law. Section 3-10-115(1), MCA. "The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken". Section 3-10-115(3), MCA. The Montana Supreme Court's "constitutional power and obligation of final appellate review confer jurisdiction to hear an appeal from a district court's ruling. Thus, both the District Court and this Court review the



Justice Court's factual findings for clear error and its legal conclusions for correctness." *State v. Seaman*, 2005 MT 307, 329 Mont. 429, 124 P.3d 1137 (2005)

### **SUMMARY OF ARGUMENT**

- I. The Plain Language of Section 61-8-309, MCA Requires a Showing Beyond a Reasonable Doubt that the Alleged Speed Limit Violated was Established Pursuant to the Statute.**
- II. The State Failed to Present Evidence Beyond a Reasonable Doubt That the Alleged Speed Limit Violated Was Established Pursuant to Section 61-8-309, MCA as Alleged in the Violation.**
- III. The State Failed to Present Evidence Beyond a Reasonable Doubt That the Alleged Speed Limit Violated Was Either Permanent or Temporary.**

### **ARGUMENT**

- I. The Plain Language of Section 61-8-309, MCA Requires a Showing Beyond a Reasonable Doubt that the Alleged Speed Limit Violated was Established Pursuant to the Statute.**

"A state legislature certainly has the authority to identify the elements of the offenses it wishes to punish, but once its laws are written, a defendant has the right to insist that the State prove beyond a reasonable doubt every element of an offense charged. See *McMillan v. Pennsylvania*, 477 U.S. 79, 85 (1986); *Patterson v. New York*, 432 U.S. 197, 211, n. 12 (1977) Furthermore, "[t]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."

*Montana v. Egelhof*; 518 US 37 (1996), citing *In re Winship* 397 US 358 (1979).

Therefore, the State of Montana was obligated in this case to prove beyond a reasonable doubt every element of the crime it alleged against the Defendant as set forth in Section 61-8-309, MCA.

In Montana, the judge's role in statutory interpretation is to "ascertain and declare what is in terms or substance contained therein, not to insert what has been omitted or to omit what has been inserted." Section 1-2-101, MCA. A court's function is to determine legislative intent, and where that can be determined from the plain meaning of the words used, the plain meaning controls and a court need not go further or apply other means of interpretation. *Gulbrandson v. Cary*, 272 Mont. 494, 500, 901 P.2d 573, 577 (1995); *State v. Ankeny*, 2010 MT 224, ¶ 21, 358 Mont. 32, 243 P.3d 391. Statutory terms must be interpreted reasonably and logically, and given the natural and popular meaning in which they are usually understood. *Jones v. Judge*, 176 Mont. 251, 254, 577 P.2d 846, 848 (1978); *Maney v. La. Pac. Corp.*, 2000 MT 366, ¶ 19, 303 Mont. 398, 15 P.3d 962.

The Defendant was charged with traveling 50 mph in a 35 mph speed zone on Flowerree Drive, in Lewis and Clark County. The specific statute alleged to have been violated was Section 61-8-309, MCA (See Appendix A, attached).

Section 61-8-309, MCA, is an administrative statute that allows the Transportation Commission, or other local authorities, to adjust speed limits from those general statewide speed limits set forth in Section 61-8-303 or 61-8-312, MCA. The statutory authority to adjust speed limits pursuant to the statute is dependent upon whether an engineering or traffic investigation has been completed under Section 61-8-309(1), MCA or whether the engineering study is pending under Section 61-8-309(2), MCA. If the required engineering study has been completed, the speed limit may be adjusted permanently based upon that study. Section 61-8-309(1), MCA. If the engineering study is pending completion, the speed limit may be adjusted temporarily until the study is completed. Section 61-8-309 (2), MCA. The key phrases in these subsections is whether the alleged speed limit is a permanent speed limit "*established*" under this subsection (1) or a temporary speed limit "*established*" under subsection (2). Presenting evidence as to whether the alleged speed limit violated was established under subsection (1) or (2) is necessary in order to determine whether a person is guilty of a misdemeanor criminal offense under Section 61-8-309(6)(a), MCA, or a lesser offense under Section 61-8-309(6)(b), MCA as those penalty provisions are so different.

The penalty for violating a speed restriction established under Section 61-8-309, MCA is set forth in Section 61-8-309(6)(a) &(b), MCA. These penalties differ dependent upon whether the alleged speed limit is a permanent speed limit established pursuant to Section 61-8-309(1), MCA or a temporary speed limit established pursuant to Section 61-8-309(2), MCA.

Section 61-8-309(6)(a), MCA, states in pertinent part, "[t]he violation of a speed limit established under this section, except subsection (2), is a misdemeanor offense and is punishable as provided in 61-8-711." Section 61-8-711, MCA, is the general penalty provision for traffic violations which makes a violation a misdemeanor criminal offense and recordable against a motorist's driving record.

Section 61-8-309 (6)(b), MCA, states that a "violation of a speed limit established under subsection (2) is punishable as provided in 61-8-725". Section 61-8-725, MCA, is a specific penalty imposed on violations of the general speed limits (as well as Section 61-8-309(2), MCA) that removes such violations as criminal offenses, and prohibits the recording of the offense on the driver's record.

As set forth in the Procedural Background of this Brief, the Defendant entered an Oral Motion for Judgment of Acquittal ("Motion") at trial based upon the State's complete lack of evidence as to whether the alleged speed limit on

Floweree Drive was established pursuant to Section 61-8-309, MCA. (Appendix C, Trial Transcript, Page 8, Ln 4 & 5, Oct 22, 2020) Said Motion was denied *sua sponte* by the Justice Court without requiring a response from the State's Attorney, by simply stating "I disagree". (Appendix C, Trial Transcript Page 8, LN 6 through Page 9, Ln 4, Oct 22, 2020) Later in the trial, the Justice Court referenced generally to "court cases that have gone up on this. This has been settled long ago", but failed to disclose the identity of the alleged legal authority even when requested by the Appellant. (Appendix C, Trial Transcript, Page 12 Ln 6 through Ln 9, Oct 22, 2020). In the written order dated November 9, 2020 the Justice Court did not address the factual or legal issues brought by the Defendant during the trial but simply found him guilty. (Appendix A, Attached)

On appeal, the District Court similarly failed to address the elements of the alleged crime as set forth in the plain language of Section 61-8-309, MCA. In its Justice Court Appeal Order (Appendix B), the District Court made fleeting reference to the relevant parts of Section 61-8-309(6)(a), MCA, by recognizing that a "violation of a speed limit established under this section....is a misdemeanor", then proceeded to give that clause no weight in its analysis. (Appendix B, District Court Appeal Order, Page 3 through 4) Instead, the District

Court ignored the clause (thus omitting it) by deciding that Section 61-8-309, MCA was “merely an exception to the speed limits set forth in Section 61-8-303, MCA” (Appendix B, District Court Appeal Order Page 4), then incorrectly relied on *State v. French*, 2018 MT 289, 393 Mont 364, 431 P.3d 332 (2018), a case interpreting Section 61-8-303(1)(b), MCA for the proposition that all the State had to show for a violation of Section 61-8-309, MCA was that the Defendant was traveling in excess of the speed limit. (Appendix B, District Court Appeal Order Page 5).

*French* is not on point and it is not controlling, as the appropriate interpretation of a violation of Section 61-8-309, MCA. Section 61-8-303, MCA sets the general speed limits for the entire state. The Defendant agrees that in the case of an alleged violation of a general speed limit under Section 61-8-303, MCA, that simply showing beyond a reasonable doubt that a driver was traveling in excess of the general speed limit would be appropriate. However, where the legislature has inserted specific language that imposes penalties based upon whether the alleged violated speed limit was established as a permanent speed limit or a temporary speed limit, such as is the case with Section 61-8-309, MCA, the evidentiary standard set forth in *French* is inappropriate. It is important to

note that “[a] violation of a speed limit imposed pursuant to 61-8-303 is not a criminal offense” and “may not be recorded or charged against a driver’s record”.

Section 61-8-725, MCA. While violation of a speed limit established under Section 61-8-309(1), MCA is a misdemeanor and can be recorded against the driver’s record. Section 61-8-711, MCA.

The penalties for violating a speed limit established under Section 61-8-309(1), MCA are higher than those imposed for violating Section 61-8-303, or Section 61-8-309(2), MCA. That is indicative of why the legislature chose to add a specific language to requiring a showing that the alleged speed limit violated was actually established under either Section 61-8-309(1), MCA or Section 61-8-309(2), MCA and not under some other method or provision of law. Therefore, it is clear from the plain language of the statute that the State must present evidence, beyond a reasonable doubt, that the alleged speed limit violated was established pursuant to either Section 61-8-309(1) or Section 61-8-309(2), MCA.

**II. The State Failed to Present Evidence Beyond a Reasonable Doubt That the Alleged Speed Limit Violated Was Established Pursuant to Section 61-8-309, MCA as Alleged in the Violation.**

A review of the record (Appendix C, Trial Transcript, Oct 22, 2020), shows that the totality of the State's evidence was presented by Officer Chris Norris of the

Lewis and Clark County Sheriff's Department. Officer Norris testified that he visually estimated the Defendant's speed at 50 mph, he activated his radar unit, that the radar unit indicated that the vehicle was traveling 50 mph, that he initiated a traffic stop based upon the measurement taken by the radar unit and the Defendant was the driver. (Appendix C, Trial Transcript, Page 2, Line 4, through Page 3, Line 15, Oct 22, 2020). When questioned by the State's Attorney if he knew what the speed limit is on Floweree Drive, Officer Norris simply stated, "Yes. Thirty-five, it's thirty-five". (Appendix C, Trial Transcript, Page 3, Line 3, Oct 22, 2020). The State closed his case without submitting any additional evidence as to proper signage, whether the alleged speed limit was established under Section 61-8-309, MCA or whether it was a permanent or temporary speed limit under Section 61-8-309(1) or (2), MCA. (Appendix C, Trial Transcript, Page 3, Ln 15, Oct 22, 2020)

Based upon the evidence and testimony presented at trial, it cannot be reasonably determined that the alleged 35 mile per hour speed limit was established, or even associated with Section 61-8-309, MCA as alleged. The State's sole witness only testified that he had personal knowledge that the speed limit was "Thirty-five, it's thirty five", (Trial Transcript, Page 3, Line 3, October



22, 2020) with no testimony in regards to signage, or whether it was established pursuant to the statute alleged to have been violated.

Therefore, when the Justice Court denied the Defendant's Motion for Judgment of Acquittal, and found him guilty of violating Section 61-8-309, MCA, he did so without regard to whether the State had met its burden of proof on each and every element of the offense charged.

### **III. The State Failed to Present Sufficient Evidence at Trial to Determine Whether the Defendant was Guilty of a Misdemeanor or Lesser Offense.**

As set forth previously, the plain language of Section 61-8-309, MCA clearly requires the State to present evidence that the alleged speed limit violated was established or posted pursuant to either Section 61-8-309(1) or Section 61-8-309(2), MCA. This requirement is not just a technicality that can be omitted and ignored, it is essential in determining the appropriate penalty to be imposed for the alleged violation. Pursuant to Section 61-8-309(6)(a) & (b), MCA, the penalties for a violation of a speed limit differ significantly based upon whether the alleged speed limit is a permanent speed limit established under subsection (1), or a temporary speed limit established under subsection (2). A violation of a permanent speed limit established pursuant to subsection (1) is a misdemeanor and may be recorded against

the driver's record. See Sections 61-8-309(6)(a) and 61-8-725, MCA. While a violation of a temporary speed restriction pursuant to subsection (2) is not a criminal misdemeanor offense and may not be recorded against the driver's record. See Sections 61-8-309(6)(b) and 61-8-711, MCA.

Based upon the evidence presented by the State at the trial, it cannot be reasonably determined whether the alleged 35 mph speed limit violated on Floweree Drive was a permanent speed limit established under subsection (1) or a temporary speed limit established under subsection (2). Furthermore, it cannot be determined whether the proper penalty to be imposed is a misdemeanor under Section 61-8-711, MCA or a lesser offense under Section 61-8-725, MCA.

It is important to note that this vagueness was apparent during the Defendant's Sentencing Hearing. During the Sentencing Hearing, it was unclear whether the Justice Court imposed a misdemeanor penalty under Section 61-8-711, MCA or the lesser penalty under Section 61-8-725, MCA, as neither the Justice Court nor the State's Attorney seemed able to pinpoint the sentencing statute when asked to do so by the Defendant. Rather, both kept referencing Section 61-8-309, MCA but not the specific sentencing statute. (Appendix D, Sentencing Hearing Transcript, Page 1, Ln 20 through Page 2, Ln 16, Dec 23, 2020). Although the Defendant assumes that the


Justice Court imposed a misdemeanor pursuant to Section 61-8-711, MCA, the Defendant is still not sure with any certitude what penalty was actually imposed by the Justice Court.

### CONCLUSION

It is clear from the plain language of the statute that it is necessary for the State to present evidence that the speed limit alleged to be violated was actually established pursuant to Section 61-8-309, MCA, and whether the alleged speed limit violated was either a permanent speed limit under subsection (1) or temporary speed limit under subsection (2), at the time of the alleged violation. The element of showing how the speed limit was established is necessary because the rules of statutory construction mandate it, and the statute states as much in plain language. Furthermore, the element is essential in determining which penalty should be imposed for a violation is a whether it is a criminal misdemeanor under Section 61-8-711, MCA or a lesser offense under Section 61-8-725, MCA.

Based upon the foregoing, the undersigned Defendant respectfully requests that this Court reverse the findings of the Justice Court and the District Court Appeal Order that the State met its burden of proof that the Defendant violated a speed limit established pursuant to Section 61-8-309, MCA.

Respectfully submitted this 14<sup>th</sup> day of May, 2021.

By:   
MARK PRICHARD  
*Pro Se Defendant/ Appellant*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3789 words, excluding certificate of service and certificate of compliance.

By   
MARK PRICHARD  
*Pro Se Defendant/ Appellant*

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0112

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STATE OF MONTANA

Plaintiff and Appellee,

v.

MARK JAY PRICHARD,

Defendant and Appellant.

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APPENDICES

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Justice Court Order dated November 7, 2021 (D.C. Doc. 1)..... Appendix A

Justice Court Appeal Order Dated February 11, 2021 (D.C. Doc. 9)...Appendix B

Trial Transcript Dated October 22, 2020 (Exhibit A, D.C. Doc 4).....Appendix C

Sentencing Hearing Transcript dated December 23, 2020 (Exhibit B, D.C. Doc 4)  
.....Appendix D

**CERTIFICATE OF SERVICE**

I hereby certify that on May 17<sup>th</sup>, 2021, a true and accurate copy of the foregoing document, **DEFENDANT/APPELLANT INITIAL BRIEF ON APPEAL** was personally served in person as follows:

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