IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0066

CITY OF KALISPELL,

Plaintiff and Appellee,

v.

SARAH TARESU OLDS,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, the Honorable Dan Wilson, Presiding

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STATEMENT OF THE ISSUE

Montana Code Ann. § 45-2-103 says that a person is not guilty of any criminal offense unless they are shown to have acted knowingly, negligently, or purposely as to each element defining the offense.

As a matter of first impression, does the offense of Habitual Offender Operating a Motor Vehicle meet the narrow exception to this rule, outlined in Montana Code Ann. § 45-2-104, which establishes "strict limitations" for the elimination of a mental state, even though the penalty for the offense imposes twice the $500 maximum fine contained in Montana Code Ann. § 45-2-104 and nowhere indicates a clear legislative intent to impose absolute liability?

STATEMENT OF THE CASE

On April 28, 2021, Sarah Taresu Olds was charged in the Municipal Court of the City of Kalispell with the misdemeanor offense of Habitual Offender Operating a Motor Vehicle, pursuant to Montana Code Ann. § 61-11-213, as well as for driving without insurance or registration. (D.C. Doc. 0.03.) The matter was set for jury trial.

Olds submitted proposed jury instructions, which included instructions defining knowingly, negligently, and purposely in the

context of the charged offense. The City responded by filing a motion *in limine*, characterizing a mental state jury instruction as an "affirmative defense" and asserting, as a matter of first impression, that the habitual offender offense charged imposed absolute liability. (D.C. Doc. 0.16.)

Olds filed a brief responding to the City's motion, advancing the argument that the habitual offender offense must include a *mens rea* element because (1) Montana Code Ann. § 45-2-103(1) requires proof of a mental state of knowingly, negligently, or purposely as to each element for all offenses; and (2) the narrow exception of absolute liability defined in Mont. Code Ann. § 45-2-104 did not apply. (D.C. Doc. 0.17.)

At the start of Olds's jury trial, the municipal court rejected Olds's proposed instructions and granted the City's motion *in limine*, concluding Montana's habitual offender statute was an absolute liability offense despite no explicit designation by the legislature. (8/25/2021 Municipal Court Audio Record, "8/25/2021" at 8:30–8:44 & 11:30–11:45.) The municipal court found, therefore, that knowledge or notice of having been declared a habitual offender is irrelevant to the

commission of the crime. (8/25/2021 at 8:40–8:42.) The jury later returned a verdict of guilty to the charge. (D.C. Doc. 0.20.) Ms. Olds was sentenced to 14 days of jail time, and a $1,000 fine, both stayed pending appeal. (10/5/2021 Sentencing Hearing; D.C. Doc. 0.22; Attached as Appendix A.)

Olds appealed to the Flathead District Court, who affirmed the municipal court ruling on the basis that *City of Kalispell v. Omyer* was controlling precedent. (D.C. Doc. 0.23; D.C. Doc. 8; Attached as Appendix B.) Ms. Olds timely appeals to this Court. (D.C. Doc. 10.)

STATEMENT OF THE FACTS

Sarah Olds was pulled over on April 28, 2021, on her way to work, after a Kalispell police officer noticed her vehicle stopped at an intersection without a license plate displayed on the rear bumper. Sarah said she lived nearby. She told the officer she did not currently have insurance on her vehicle and her driver's license was suspended. The officer ran Ms. Olds's driving record and confirmed Sarah's suspension was due to several citations for driving without vehicle insurance. The officer issued a citation for operating a motor vehicle while being declared a habitual traffic offender, per Mont. Code Ann.

§ 61-11-213, as well as for driving without insurance or vehicle registration. (8/25/2025 at 11:00–11:20.)

The Kalispell Municipal Court set Sarah's case for a jury trial. At trial, the court orally ruled the habitual offender driving offense one of absolute liability and refused Ms. Olds's proposed jury instructions introducing the mental states of knowingly, negligently or purposely. (8/25/2021 at 8:30–8:44 & 11:30–11:45.)

Prior to the start of trial, Olds requested to make an offer of proof. Defense counsel stated the City would not show that letters from the Department of Motor Vehicles notifying Ms. Olds of her declaration as a habitual offender and of her driver's license suspension were ever mailed. (8/25/2021 at 8:35–8:44). Counsel further proffered the letters, without proof of mailing would reflect an address in Billings different than the addresses listed as "mailing," "alternate mailing," and "residency," in Ms. Olds's certified driving record, all of which are Kalispell addresses. (*See* City's Exhibit 1.) An "alterative residency" address in Olds's driving record reflects a Billings address, but not the one on the habitual offender declaration. Counsel asserted the City would not show the Billings address on the letters, which contained no

proof of mailing anyway, was associated with Ms. Olds. The City responded if the court had not ruled the offense one of absolute liability, it would have presented evidence Ms. Olds had the required notice of having been declared a habitual offender. (8/25/2021 at 8:40–8:45.)

STANDARD OF REVIEW

In an appeal from a municipal court, the district court functions as an appellate court and the appeal is confined to a review of the record and questions of law. *City of Missoula v. Zerbst,* 2020 MT 108, ¶ 8, 400 Mont. 46, 462 P.3d 1219. In a subsequent appeal, this Court reviews the case as if the appeal had been filed directly with this Court, without deferring to the district court's order on appeal. *Zerbst,* ¶ 8.

"Jury instructions that relieve the State of its burden to prove every element of the charged offense beyond a reasonable doubt violate the defendant's due process rights." *Carella v. California*, 491 U.S. 263, 265, (1989). Whether a defendant's due process rights were violated is a question of law that this Court reviews for correctness. *Zerbst,* ¶ 10.
A preserved instructional error that prejudices the accused's substantial rights requires reversal. *State v. Neiss*, 2019 MT 125, ¶ 15, 396 Mont. 1, 443 P.3d 435.

This Court reviews a lower court's evidentiary rulings, including rulings on motions *in limine* for an abuse of discretion. *City of Missoula v. Paffhausen,* 2012 MT 265, ¶¶ 11–12, 367 Mont. 80, 289 P.3d 141. An abuse of discretion occurs when a court acts arbitrarily, without employing conscientious judgment, or exceeds the bounds of reason, resulting in substantial injustice. *Paffhausen,* ¶¶ 11–12.

SUMMARY OF THE ARGUMENT

A person is not guilty of the misdemeanor offense of operating a motor vehicle after being declared a habitual offender, per Montana Code Ann. § 61-11-213, unless they are shown to have acted knowingly, negligently, or purposely as to each element defining the offense. Mont. Code Ann. § 45-2-103. Although a matter of first impression, straightforward statutory interpretation guides this analysis: the Montana Legislature made no explicit exception to the mental state requirement for this offense and expressed no clear intent to impose absolute liability here. Therefore, the municipal court erred by failing to instruct Sarah Olds's jury that she must have acted knowingly, negligently, or purposely as to each element of the charged offense. As the City of Kalispell failed to prove each element of driving after being

declared a habitual offender beyond a reasonable doubt, Sarah Olds's conviction on this count must be reversed and remanded for a new trial.

ARGUMENT

The municipal court failed to instruct the jury on every element of the offense of Habitual Offender Operating a Motor Vehicle when despite no clear legislative intent, the court declared the offense one of absolute liability and so declined to instruct the jury on a mental state of knowingly, negligently, or purposely.

The Fourteenth Amendment of the United States Constitution and Article II, Section 17 of the Montana Constitution guarantee due process of law. Due process requires the prosecution prove every element of a charged offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970); *State v. Clark*, 1998 MT 221, ¶ 29, 290 Mont. 479, 964 P.2d 766. "Jury instructions relieving States of this burden violate a defendant's due process rights." *Carella v. California*, 491 U.S. 263, 265 (1989) (per curiam).

Juries are to be instructed on the mental state pertinent to the crime charged. *State v. Rothacher*, 272 Mont. 303, 901 P.2d 82 (1995). Unless an exception applies, a person is not guilty of any crime until the prosecution proves with respect to each element of the offense, a person acted while having one of the mental states of knowingly, negligently,

or purposely. Mont. Code Ann. § 45-2-103(1). Offenses that do not explicitly contain a mental state within its elements are subject to Mont. Code Ann. § 45-2-103. *See e.g., State v. Starr*, 204 Mont. 210, 218, 664 P. 2d 893 (1983) ("[Mont. Code Ann.] § 45-9-101 defining criminal sale of dangerous drugs, has no internal requirement of mental state as an element of the crime. It is therefore subject to [Mont. Code Ann.] § 45-2-103, providing generally for mental states."); *See also*, Mont. Code Ann. § 45-2-104, 1973 Comm'n cmts.

Here, the City of Kalispell charged Sarah Olds under Montana Code Ann. § 61-11-213, a misdemeanor offense of driving a motor vehicle after having been declared a habitual offender. A "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points. Mont. Code Ann. § 61-11-203. A person commits a misdemeanor offense if, *after being declared to be a habitual offender*, that person "operates a motor vehicle in this state during the period of revocation of the person's driver's license or driving privileges." Mont. Code Ann. § 61-11-213.

As a matter of first impression, the City of Kalispell argued the offense was one which imposes absolute liability. The City, however, is wrong.

Absolute liability offenses, defined under Mont. Code Ann. § 45-2-104, are a rare exception for some primarily low-level offenses to the general requirement of Mont. Code Ann. § 45-2-103 that all criminal offenses require the prosecution prove a person acted as to each element defining an offense with a mental state of knowingly, negligently, or purposely. Mont. Code Ann. § 45-2-104, 1973 Comm'n cmts; Mont. Code. Ann. § 45-2-103. The exception under Mont. Code Ann. § 45-2-104 is restrictive, "intend[ing] to establish strict limitations" for the elimination of a mental state as an element of any offense. Mont. Code. Ann. § 45-2-104, 1973 Comm'n cmts. This exception may apply only if the offense is punishable by a fine not exceeding $500 or the statute defining the offense "clearly indicates a legislative purpose to impose absolute liability for the conduct described." Mont. Code Ann. § 45-2-104.

The habitual offender statute does not meet the first component of Mont. Code Ann. § 45-2-104, imposing a fine of $500 or less. Montana

Code Ann. § 61-11-213 authorizes a penalty upon a conviction whereby a person "shall be imprisoned for a period of not less than 14 days or more than 1 year or fined not more than $1,000, or both, and the department, upon receiving a record of the conviction…shall extend the period of revocation for an additional 1 year." Mont. Code Ann. § 61-11-213.

Neither does the statute reflect a clear legislative purpose to impose absolute liability.

The Montana Legislature has shown that it is quite capable of clearly indicating its intent to impose absolute liability when it so chooses. It does so, time and again, by explicitly saying so. *See*, Mont. Code Ann. § 61-8-406(2)(2019), DUI: "Absolute liability as provided in Mont. Code Ann. § 45-2-104 will be imposed for a violation of this section."; Mont. Code Ann. § 61-8-410(1)(2019), DUI Per Se: "Absolute liability, as provided in § 45-2-104, will be imposed for a violation of this section."; Mont. Code Ann. § 61-8-565(4)(2019), DUI Per Se Under 21: "Absolute liability, as provided for in § 45-2-104, is imposed for a violation of this section."; Mont. Code Ann. § 7-32-2302(3)(2019), Aggravated DUI: "Absolute liability, as provided for in § 45-2-104, is

imposed for a violation of this section."[1]; Mont. Code Ann. § 77-1-806(2) Recreational Use of State Lands: "Entry to private property from adjacent state lands without permission of the landowner or the landowner's agent is an absolute liability offense."; Mont. Code Ann. § 30-22-103, Nonferrous Metal Transactions: "Absolute liability, as provided for in § 45-2-104, is imposed for a violation of 30-22-102."; Mont. Code Ann. § 75-10-212(3), Licensing of Refuse Disposal: "A person in violation of this section is absolutely liable, as provided in § 45-2-104."; Mont. Code Ann. § 75-10-1007, Infectious Waste Management Act: "Absolute liability, as provided for in § 45-2-104, is imposed for a violation of this part or a rule adopted under this part."

Statutory construction requires a court to simply "ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code

[1] The above DUI statutes are those in effect at the time of Ms. Olds's habitual offender conviction and were repealed effective January 1, 2022. However, the legislature again clearly established its intent to retain absolute liability for DUI offenses by re-enacting the same explicit absolute liability designation in Mont. Code Ann. § 61-8-1002(5)(2021), *et seq*.

Ann. § 1-2-101; *City of Missoula v. Fox*, 2019 MT 250, ¶ 18, 397 Mont. 388, 450 P.3d 898. The analysis can end there: There is no more guesswork required, as the legislature expressed no such clear intent as that articulated in the above statutes for the habitual offender statute.

To go further, however, and examine the legislature's statutory intent as stated in Mont. Code Ann. § 61-11-202, it is plain that, the legislature did not impose absolute liability because it is not needed to accomplish the intended policy. The legislature has generally defined knowing conduct, in part, to say "a person acts knowingly with respect to conduct or to a circumstance when the person is aware of the person's own conduct or that the circumstance exists." Mont. Code Ann. § 45-2-101(35). It has determined, "[a] person acts negligently with respect to a circumstance when the person consciously disregards a risk that the circumstance exists." Mont. Code Ann. § 45-2-101(43). The legislature enacted the habitual offender statute to (1) "establish criteria and procedures by which persons who have demonstrated their apparent indifference for the safety and welfare of others and their disrespect for the laws of this state… may be adjudged habitual traffic offenders"; and

(2) to "impose increased deprivation of the privilege to operate a motor vehicle upon these persons." Mont. Code Ann. § 61-11-202.

Applying a knowing or negligent definition to the habitual offender statute, then, means a person may be guilty of the offense if they knowingly drive a motor vehicle after they are aware of the circumstance of having been declared a habitual offender. Or, this Court may also satisfy Mont. Code Ann. § 45-2-103 by finding the habitual offender statute may be satisfied with evidence a person drove while negligently unaware that they have been declared a habitual offender.

The habitual offender statutory scheme requires a knowingly or negligent *mens rea* because the statute already assigns the Department of Motor Vehicles affirmative duties in order to designate a person a habitual offender, a required element of the offense. These duties are outlined in Mont. Code Ann. § 61-11-204. Prior to designating a person a habitual offender, the Department of Motor Vehicles must first give proper notice to a person they have been declared a habitual traffic offender, properly revoke the person's driver's license, and notify the person in writing of the declaration and revocation. Mont. Code Ann.

§ 61-11-204(1)(a-c). The notice of declaration and revocation must be sent by first-class mail to the most current address on record with the department. The notice must include a record of the convictions and bond forfeitures upon which the habitual traffic offender designation was based and inform the person of the right under Mont. Code Ann. § 61-11-210 to appeal the declaration and revocation. Mont. Code Ann. § 61-11-204(2). The statute indicates that service of the notice is complete upon mailing. Mont. Code Ann. § 61-11-204(2). Proof of the above is needed to show a person was properly declared a habitual offender, itself a necessary element of Mont. Code Ann. §61-11-213, and may constitute evidence of a knowingly or negligently mental state.

Another indicator that the Montana Legislature did not intend the habitual offender statute to be an absolute liability offense is the legislature's inclusion of an affirmative defense, whereby a habitual offender may not be found guilty if they drove a motor vehicle in a "situation of extreme emergency" for the purpose of "sav[ing] life, limb, or property." Mont. Code Ann. § 61-11-213.

This Court has found in other contexts that if a trier of fact is satisfied that a required notice provision has been satisfied, then

knowledge can be presumed. In *State v. Trujillo*, this Court agreed that a statute requiring a person act knowingly may be proven with evidence of proper notice. There, the defendant was charged with criminal trespass to property, an offense requiring knowing conduct, after driving his four-wheeler onto Plum Creek property while hunting with his son. *State v. Trujillo,* 2008 MT 101, ¶ 12, 342 Mont. 319, 180 P.3d 1153. The requirements for how a landowner must place no-trespass markings on private land in order to adequately notify the public the land is private is outlined in the criminal trespass statute. Mont. Code. Ann. § 45-6-201(1); *Trujillo,* ¶ 11. Like motor vehicle traffic laws, knowledge of the regulations related to hunting in Montana is presumed. *See* e.g., *State v. Boyer*, 2002 MT 33, ¶ 22, 308 Mont. 276, 42 P.3d 771. ("Those who apply to the State for permission to harvest or remove Montana's natural game are on notice that they are rightfully subject to ... regulations [of the Department].") This Court determined a knowingly mental state was satisfied if the State proved (1) Trujillo knowingly entered the property by being "aware of [his] own conduct" when he drove his four-wheeler on Plum Creek property and, (2) that the land was effectively posted. *Trujillo,* ¶ 12. There, the needed mental

state was established although the evidence showed Trujillo was unaware that the main access points to Plum Creek property were on the other side of the ridge from where he entered. Once the State showed the land was effectively posted, Trujillo was responsible for knowing about those postings and was on legal notice of their existence. Therefore, in a prosecution for criminal trespass to property, once the State proves private land was properly posted, a person's knowledge of their criminal trespass into private land can be presumed. Thus, this Court affirmed the district court's finding that Trujillo knowingly entered Plum Creek property. *Trujillo,* ¶ 15.

Here, a requirement that a person drive while knowingly aware or negligently unaware of having been declared a habitual offender satisfies the legislature's explicitly stated intent, as well as satisfies the due process notice requirements contained in the habitual offender statute. Just as knowledge of trespass to private land in *Trujillo* was established by proof the Plum Creek property was properly posted, in a prosecution for driving as a habitual offender, the City could prove knowledge by showing it had satisfied the notice requirements of the statute.

Montana Code Ann. § 45-2-104 does not apply to the habitual offender statute because the legislature did not express a clear intent, or any intent, to remove the mental state requirement from the offense. The municipal court erred in its application of Mont. Code Ann. § 45-2-103, erred in finding the offense was one of absolute liability, and ultimately erred in declining to instruct the jury on a knowingly, negligently, or purposely mental state for each element of the offense.

Ms. Olds was prejudiced by the municipal court's error. Because the court adopted the City's argument that the habitual offender statute is an absolute liability offense, the City therefore simply admitted Sarah Olds's certified driving record together with the arresting officer's testimony to prove its case. The City offered no evidence in Ms. Olds's trial that a letter indicating she had been declared a habitual offender, or a notice of license revocation, were ever sent to Ms. Olds by first class mail, or sent to her most recently reported address, as the statute requires. Ms. Olds's pretrial offer of proof reflected that her "mailing address" and "residency" recorded in her certified driving record was a Kalispell address, while the address on the declaration of habitual offender was a Billings address. (*See*

City's Exhibit 1.) By declaring the offense one of absolute liability, the municipal court determined this evidence of knowledge, or lack thereof, was irrelevant. The court's decision meant the City offered no evidence the motor vehicle division gave proper notice under the statute, and Ms. Olds's due process protections regarding her property interest in her driver's license could not be assured.

Ms. Olds made an offer of proof that she would show that the City could not prove the motor vehicle division ever mailed her a copy of the letter declaring her a habitual offender. Without the mental state required by Mont. Code Ann. § 45-2-103, the City had no need to, and failed to prove, that the Department of Motor Vehicles in fact mailed the notices to Ms. Olds by first class mail or to her last reported address. The court's holding meant the City had no need to account for why the declaration letter in Ms. Olds's certified driving record reflected a Billings address, when the same certified record reflected her official "mailing address" and "residency," according to the department's own records, was in Kalispell.

Furthermore, the municipal court's application of the reasoning from *City of Kalispell v. Omyer* to the habitual offender statute is

unavailing. *Omyer* was a case where this Court concluded Mont. Code Ann. § 61-5-212, a separate and lesser offense of driving with a suspended or revoked license, was a strict liability offense. *City of Kalispell v. Omyer*, 2016 MT 63, ¶17, 383 Mont. 19, 368 P. 3d 1165. The district court likewise mistook *Omyer* for binding precedent and erred when it affirmed on that basis.

This Court's logic in *Omyer* was flawed and should not be extended to the habitual offender statute. This is because 1) the *Omyer* Court's conclusion is premised on a failure to follow the legislature's statutory requirement that Mont. Code Ann. § 45-2-103 apply to all offenses unless an exception applies, and 2) because the habitual offender statute is different than driving with a suspended or revoked license.

The *Omyer* Court failed to first apply Mont. Code Ann. § 45-2-103, as it must, in reaching its conclusion. Montana Code Ann. § 45-2-103 directs courts that a mental state of knowingly, negligently, or purposely is both implied and required for every element of any charged offense, unless an exception is shown to apply. Yet the *Omyer* Court started from the opposite premise, stating that if the legislature

intended to require a mental state for the offense of driving with a suspended or revoked license, "it would have done so" within the language of the statute. *Omyer*, ¶ 16. This analysis contradicts the letter and purpose of Mont. Code Ann. § 45-2-103.

Then, importantly, the habitual offender statute has a penalty upon conviction of up to $1,000, far beyond the absolute liability threshold, whereas the penalty for driving with a suspended or revoked license satisfies the $500 cap of Mont. Code Ann. § 45-2-104. *Omyer*, ¶17. This critical distinction necessarily sets this appeal apart from the holding in *Omyer*.

The flawed logic in *Omyer* should not be extended to impose absolute liability in a statute where the legislature has indicated no clear intent to eliminate a mental state requirement. "The starting point for interpreting a statute is the language of the statute itself." *State v. Christensen*, 2020 MT 237, ¶ 95, 401 Mont. 247, 472 P.3d 622. The trial court in *Omyer* did apply Mont. Code Ann. § 45-2-103 and required a knowingly mental state to prove the offense, and Omyer's appeal was premised on this evidentiary requirement. That is why, on appeal, Omyer raised a constitutional question challenging the

admissibility of the evidence admitted to prove he *knowingly* drove with a suspended license. There, Omyer asserted the municipal court violated the confrontation clause when it admitted a driving record into evidence which was stamped with language that contained an ink-stamped declaration. Without a witness, the stamp made assurances that the letter had been deposited by an employee of the motor vehicle division into a United States Postal Service mailbox, in an envelope with postage prepaid, addressed to his last reported address. *Omyer,* ¶ 5. The *Omyer* Court applied only Mont. Code Ann. § 45-2-104, ultimately determining driving with a suspended or revoked license was an absolute liability offense. The *Omyer* Court thusly avoided the constitutional question briefed by the parties by finding driving during a suspension or revocation period did not require a culpable mental state and thus did not require proof of notice by mail of one's driving status. *Omyer*, ¶18. Lastly, *Omyer* applies to a separate offense, one which imposes no more than a $500 dollar fine, and therefore meets the requirement of Mont. Code Ann. § 45-2-104 on that basis alone; the flawed logic employed therein should bear no application here.

CONCLUSION

Montana Code Ann. § 45-2-104 does not apply to Mont. Code Ann. § 61-11-213 because the offense both exceeds the maximum penalty permitted, and the Montana Legislature expressed no clear intent for this offense to be exempt from the requirement that a person is not guilty unless they act knowingly, negligently or purposely. Accordingly, this Court should hold the offense of Habitual Offender Operating a Motor Vehicle is not an absolute liability offense. Resultingly, this Court should reverse Sarah Olds's conviction and remand to the municipal court for a new trial.

Respectfully submitted this 21st day of August, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook 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 4,339, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Kathryn Grear Hutchison
KATHRYN GREAR HUTCHISON

APPENDIX

CERTIFICATE OF SERVICE

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