

DA 22-0066

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 138

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CITY OF KALISPELL,

Plaintiff and Appellee,

v.

SARAH TARESU OLDS,

Defendant and Appellant.

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APPEAL FROM: District Court of the Eleventh Judicial District,  
In and For the County of Flathead, Cause No. DC-21-403D  
Honorable Dan Wilson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Kathryn Gear Hutchison,  
Assistant Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Katie F. Schulz,  
Assistant Attorney General, Helena, Montana

Johnna Preble, Kalispell City Attorney, Kalispell, Montana

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Submitted on Briefs: January 24, 2024

Decided: July 2, 2024

Filed:



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Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Defendant Sarah Taresu Olds appeals the Eleventh Judicial District Court’s order affirming her designation as a habitual traffic offender after a jury trial in Kalispell Municipal Court. We address the dispositive issue on appeal:

*Whether the Municipal Court erred by concluding that § 61-11-213, MCA, is an absolute liability offense.*

¶2 We affirm.

### **PROCEDURAL AND FACTUAL BACKGROUND**

¶3 On April 28, 2021, Olds was charged with three misdemeanors. The only charge at issue in this appeal is the offense of Habitual Offender Operating a Motor Vehicle, pursuant to § 61-11-213, MCA. At her jury trial in Kalispell Municipal Court, Olds submitted a proposed jury instruction defining the mental states of knowingly, negligently, and purposely in the context of the habitual offender statute, advancing the theory that the City was required to prove that Olds knew she was a habitual offender at the time of the traffic stop.

¶4 In response to Olds’s proposed instruction, the City filed a motion in limine to preclude Olds from raising arguments regarding her knowledge of whether or not she was a habitual traffic offender. The City argued that § 61-11-213, MCA, is an absolute liability offense and that any argument regarding Olds’s knowledge would require the City to prove an element not required or contemplated by the Legislature when it enacted the statute.

¶5 The Municipal Court granted the City’s motion. Since she could not argue she lacked a required mental state to be convicted of Habitual Offender Operating a Motor

Vehicle, Olds argued that she had not been properly declared a habitual offender because the notices from the Motor Vehicle Department had been mailed to an old address in Billings rather than to her current address in Kalispell.<sup>1</sup> The jury found Olds guilty.

¶6 Olds appealed her conviction under § 61-11-213, MCA, to the Eleventh Judicial District Court. On appeal to the District Court, Olds argued that under § 45-2-103(1), MCA, “[w]here a criminal statute fails to provide for mens rea, the Montana [L]egislature has adopted a general rule that proof of negligence, knowledge, or purpose is required to sustain a conviction.” Olds argued that the Legislature “assumed that mens rea would be implied” because no language in § 61-11-213, MCA, affirmatively indicates an intent to impose absolute liability. Olds asserted that our holding in *City of Kalispell v. Omyer*, 2016 MT 63, 383 Mont. 19, 368 P.3d 1165 (holding that the offense of Driving While License Suspended or Revoked pursuant to § 61-5-212, MCA, was an absolute liability offense)—upon which the Municipal Court relied in concluding that § 61-11-213, MCA, imposes absolute liability—was wrongly decided. Olds contended that her right to due process was violated because § 61-11-213, MCA, “requires proof of a culpable mens rea under § 45-2-103(1), the trial court was required to instruct the jury on that element of the offense . . . [a]nd failure to instruct the jury on an element of the offense will virtually always impact the substantial rights of the defendant.”

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<sup>1</sup> Section 61-5-115, MCA, provides in relevant part that “[w]henver a person after applying for or receiving a driver’s license moves from the address named in the application or in the issued license, the person shall within 10 days notify the department . . . of the old and new addresses and of the number of any license then held by the person.” There is no indication Olds updated her address with the Department.

¶7 The District Court affirmed Olds’s conviction. Citing *Peters v. Hubbard*, 2020 MT 282, ¶ 11, 402 Mont. 71, 475 P.3d 730, the District Court declined to address two arguments it determined were being raised for the first time on appeal: (1) the constitutionality of imposing criminal liability without adequate notice and without any degree of criminal culpability; and (2) whether failing to instruct the jury that the offense of Habitual Offender includes a mens rea element violated Olds’s due process rights. Addressing the merits of the remaining claims, the District Court concluded: (1) the Municipal Court’s interpretation and application of *Omyer* to § 61-11-213, MCA, was correct; (2) even if Olds’s claim of constitutionally deficient notice was not waived, § 61-11-204, MCA, requires notice and the opportunity to appeal imposition of habitual offender status; and (3) *Omyer* constitutes binding precedent and the District Court is without the authority to overrule it.

### STANDARDS OF REVIEW

¶8 “In an appeal from a municipal court, a district court acts as an intermediate court of appeal; the appeal is confined to review of the record and questions of law.” *City of Missoula v. Zerbst*, 2020 MT 108, ¶ 8, 400 Mont. 46, 462 P.3d 1219 (citation omitted). “In a subsequent appeal, we review 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 (citations omitted).

¶9 Trial courts have broad discretion in formulating jury instructions, subject to the requirement that “jury instructions must fully and fairly instruct the jury regarding the applicable law.” *Zerbst*, ¶ 9 (citations omitted). A defendant’s due process rights are

violated if the jury instructions “relieve the State of its burden to prove every element of the charged offense beyond a reasonable doubt.” *Zerbst*, ¶ 10 (citation omitted).

### DISCUSSION

¶10 *Whether the Municipal Court erred by concluding that § 61-11-213, MCA, is an absolute liability offense.*

¶11 Olds argues the City was required to prove a culpable mental state before she could be convicted of the misdemeanor offense of Habitual Traffic Offender Operating Motor Vehicle under § 61-11-213, MCA, and that our holding in *Omyer* is either inapplicable or should be overturned. Olds’s argument would require the City to prove that she was actually aware that she had been previously declared a habitual offender. The City argues the offense is one of absolute liability, meaning a conviction under § 61-11-213, MCA, does not require proof of a culpable mental state.

¶12 In *Omyer*, we held that the offense of Driving While License Suspended or Revoked, enacted under § 61-5-212, MCA, was an absolute liability offense. *Omyer*, ¶ 17.

We noted that § 45-2-104, MCA, provides:

A person may be guilty of an offense without having, as to each element of the offense, one of the mental states of knowingly, negligently, or purposely 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.

*Omyer*, ¶ 15 (citing § 45-2-104, MCA) (emphasis added). We explained that “[t]o determine whether the [L]egislature intended an offense to be an absolute liability offense we look to the language of the statute and the statute’s apparent purpose.” *Omyer*, ¶ 14 (citing *State v. Huebner*, 252 Mont. 184, 827 P.2d 1260 (1992)).

¶13 Applying this analytical framework to the driving while suspended statute, we concluded that because “the statute does not contain any reference to a mental state,” and because of the numerous other statutes requiring proof of a specific mental state, “had the Legislature intended to require one for this statute, it would have done so.” *Omyer*, ¶ 16. We also stated that “the legislative purpose of the statute is not difficult to discern” given the State’s “compelling interest in keeping unsafe drivers off the road, especially drivers whose privileges have been suspended for various reasons such as unsafe driving, driving while under the influence of alcohol or drugs, or driving without liability insurance.” *Omyer*, ¶ 16.

¶14 Section 61-11-213, MCA, reads, in relevant part:

A person who is declared to be a habitual traffic offender under this part who operates a motor vehicle in this state during the period of revocation of the person’s driver’s license or driving privileges is guilty of a misdemeanor and upon conviction 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[.]

Section 61-11-213, MCA.

¶15 Because the statutory penalty exceeds \$500, we consider “the language of the statute and the statute’s apparent purpose.” *Omyer*, ¶ 14 (citation omitted). Like the driving while suspended statute at issue in *Omyer*, § 61-11-213, MCA, does not contain any reference to a mental state. *See Omyer*, ¶ 16. The Legislature’s purpose in enacting the law at issue here is even more apparent than the statute at issue in *Omyer*. Section 61-11-201, MCA, states:

This part is predicated upon the belief and philosophy that innocent drivers and other innocent passengers and pedestrians have a constitutional right to live, free from fear of death or injury from *habitual traffic offenders*. Further,

it is the purpose of this part to reduce the number of motor vehicle accidents in this state and to provide greater safety to the motoring public and others by denying to the *habitual traffic offenders* the privilege of operating a motor vehicle upon the public streets and highways of this state.

Section 61-11-201, MCA (emphasis added). Section 61-11-202, MCA, states, in relevant part:

It is the legislative intent of this part 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 and its political subdivisions and their disregard for the orders of its courts and administrative agencies may be adjudged habitual traffic offenders[.]

Section 61-11-202, MCA.

¶16 It is clear the Legislature intended to impose § 61-11-213, MCA, as an absolute liability offense. The statutory scheme explicitly addresses drivers who show “indifference for the safety and welfare of others . . . disrespect for the laws of this state and . . . disregard for the orders of its courts and administrative agencies[.]” Section 61-11-202, MCA. Providing alleged offenders of this section with a defense based on lack of knowledge when their own indifference, disrespect, and disregard for the laws of this state and orders of its courts is what provided the basis for their designation as habitual offenders in the first place is nonsensical considering the Legislature’s professed purpose and intent.

¶17 In her reply brief, Olds contends the complexity of how an individual is declared a habitual offender makes the imposition of absolute liability for operating a vehicle while a habitual offender inherently unfair. Olds describes the system by which points are assigned as confusing. If the onus was on the defendant to navigate this system and add up the points to make the determination herself as to when she had reached habitual offender

status, Olds's argument might have some validity. But that responsibility falls expressly on the State. Section 61-11-204, MCA, entitled "Department's duties" states:

- (1) If the records maintained by the department show that a person's driving record brings the person within the definition of a habitual traffic offender, the department *shall*:
  - (a) declare the person a habitual traffic offender;
  - (b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and
  - (c) notify the person in writing of the declaration and revocation.
- (2) *The notice 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. *The notice must inform* the person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing.

Section 61-11-204, MCA (emphasis added).

¶18 Section 61-11-213, MCA, prohibits "[a] person *who is declared to be a habitual traffic offender* under this part" from "operat[ing] a motor vehicle in this state during the period of revocation of the person's driver's license or driving privileges[.]" Section 61-11-213, MCA (emphasis added). Since § 61-11-204, MCA, is the mandatory process by which an individual is declared to be a habitual traffic offender, it necessarily is an element the State must establish in order to convict an individual of violating § 61-11-213, MCA. Therefore, while § 61-11-213, MCA, does not require proof of a culpable mental state as Olds contends, the statute does require proof of proper notice pursuant to § 61-11-204, MCA, in order to sustain a conviction.

¶19 As the City notes in its briefing, Olds has not contested the sufficiency of the evidence. The City admitted Olds's Certified Driving Record, showing both the revocation

date of her driver's license and the date of her declaration as a habitual offender. The City admitted a copy of the February 24, 2021 letter from the Motor Vehicle Department, addressed to Olds's most current address, declaring Olds a habitual traffic offender and informing her that she was not authorized to drive any motor vehicle requiring a license during her revocation period, she was required to take specific corrective actions for reinstatement, and the offenses and point totals of each offense leading to the declaration. The City admitted a copy of the February 25, 2021 letter notifying Olds that her license was suspended as a result of the February 22, 2021 traffic ticket underlying her conviction. Defense counsel made extensive efforts to convince the jury that the City had not met its burden of proving that Olds had properly been declared a habitual offender, arguing that the mailing address on the declaration letter was not current. But the jury was not convinced.

¶20 In light of the plain language of the statute and the Legislature's intent in enacting § 61-11-213, MCA, we conclude that the statute imposes absolute liability and that the Municipal Court did not err in refusing to instruct the jury on any mens rea element. Because the jury was properly instructed, Olds was not denied due process.

### **CONCLUSION**

¶21 Section 61-11-213, MCA, is an absolute liability offense and the mental states listed under § 45-2-104, MCA, do not apply to the offense. The Municipal Court did not err in declining to give Olds's proposed jury instruction. We affirm.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ LAURIE McKINNON  
/S/ INGRID GUSTAFSON  
/S/ BETH BAKER  
/S/ JIM RICE