IN THE SUPREME COURT OF THE STATE OF MONTANA
NO. DA 24-0668

TRISTIN FAHRNOW,

Appellant,

v.

E-5 OILFIELD SERVICES, LLC

Appellee.

APPELLANT'S PETITION FOR REHEARING

On Appeal From
The Montana Seventh Judicial District Court, Richland County
The Honorable David Cybulski, Presiding

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ARGUMENT

Pursuant to Mont. R. App. P. 20, Appellant Tristin Fahrnow ("Fahrnow") respectfully files this Petition for Rehearing regarding (I) ¶ 20 of the Court's opinion of the opinion where it states "Fahrnow … violated multiple traffic statutes" and (II) ¶ 22 where it stated again that Fahrnow purported "violated multiple traffic statutes". As discussed below and in Fahrnow's prior briefing, it is undisputable that Fahrnow did not violate MCA §§ 61-8-354(1), 61-9-412(4), 61-8-506. While the Court correctly vacated the District Court's summary judgment order in E-5 Oilfield Services, LLC's ("E-5") favor, it made incorrect factual findings in ¶ 20 and ¶ 22; an error which may unduly impact Fahrnow on remand at trial.

In addition, Fahrnow requests rehearing on the issue of E-5's liability. In its opinion, the Court failed to address or acknowledge that 49 CFR §392.14 applied to E-5 at the time and required E-5 to drive with "[e]xtreme caution". There can be no dispute that E-5 failed to drive with extreme caution in addition to its breach of duties under *Walden*, *Craig*, and MCA §§ 61-8-302(1), 303(3), 321.

Fahrnow contacted counsel for E-5 for its position on the Petition. E-5 opposes.

LEGAL STANDARD

Mont. R. App. P. 20 allows for petitions for rehearing if the Court (I) overlooked some fact material to the decision; (II) overlooked some question

presented by counsel that would have proven decisive to the case; or (III) the decision conflicts with a statute or controlling decision not addressed by the Court. The Court may entertain petitions for rehearing regarding factual and legal conclusions within the decision even if the petitioner does not take issue with the ultimate relief and conclusion in the decision. *See Shilhanek v. D-2 Trucking, Inc.*, 2003 MT 122A, 79 P.3d 1094, 1094-95 ("Canal does not seek rehearing from this decision. Canal does, however, take issue with our ensuing conclusion that Canal's failure to pay the plaintiffs' undisputed medical expenses was in violation of subsections (6) and (12) of § 33–18–201, MCA… IT IS HEREBY ORDERED that Canal's Petition for Rehearing is GRANTED."). The Court may modify or delete portions of its decision in granting a petition for rehearing. *Id.*

ARGUMENT

The Court overlooked material facts in reaching its conclusion in ¶ 20 and part of ¶ 22 of the decision that Fahrnow purportedly violated MCA §§ 61-8-354(1), 61-9-412(4), 61-8-506. The Court also overlooked material facts concerning the crashes and 49 CFR §392.14 which required E-5 to drive with "extreme caution".

A. Factual Record

After the first crash, Fahrnow, Harrell and Averett all exited their vehicles to assess the damage. (Fahrnow Motion for Summary Judgment on Liability and Spoliation of Evidence ("Fahrnow MSJ") at Exh. C at 141:09-20, 142:22-24, Exh.

D at 16:02-15, Exh. F at 94:01-07). Averett left the XTO vehicle either in the middle of CR350 or the northbound lane. (*Id.* at Exh. C 151:25-152:04, Exh. F at 71:22-72:04, 94:12-19). Regarding Fahrnow's truck there was no immediate area for Fahrnow to park the vehicle off the road. (*Id.* at Exh. C at 151:03-11). This is clear from photographs taken by E-5's expert, which show no shoulder and a drop-off near the stop sign:

(Fahrnow Opposition to E-5 Motion for Summary Judgment ("Fahrnow Opp. to MSJ") at Exh. 1 at Exh. D). Fahrnow and Harrell did not immediately move the truck because it was unclear the extent of damage and if the truck could move because it had a trailer hitched near the point of impact. (Fahrnow MSJ at Exh. C at 149:24-150:17). Fahrnow kept the truck in the southbound lane of CR350 at the stop sign, before the intersection, and in the appropriate lane for the truck. (*Id.* at Exh. C at 145:22-146:01, 151:19-24, Exh. D at 22:12-15). Even Trooper Woodland testified that to him, upon arriving at the scene, it was clear that Fahrnow was

"legally stopped in traffic". (*Id.* at Exh. E at 34:09-16). After 2-5 minutes had passed where Fahrnow, Harrell, and Averett were able to assess the crash, determine Fahrnow's truck was drivable, and exchanged information, Fahrnow was walking back into the cab of this truck when he was struck by E-5's out-of-control hot oil truck which had improperly entered the southbound lane. (*Id.* at Exh. C at 145:08-11, Exh. D at 25:02-07, Exh. F at 96:25-97:06). Fahrnow testified, at that time, that he was walking back into the cab of his truck and was, in fact, a moment from stepping into his truck when he heard the E-5 truck horn and attempted to get out of the way. (*Id.* at Exh. C 147:02-11).

B. MCA § 61-8-354(1)(c)

Fahrnow did not violate MCA § 61-8-354(1). The statute provides:

> A person may not stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer, highway patrol officer, or official traffic control device, in any of the following places:
> …
> (c) within an intersection[1]

MCA § 61-8-354(i)(c) does not apply because:

- Fahrnow and his vehicle were not "within an intersection"[2], but stopped before a stop sign in the appropriate lane of traffic. The Court's decision states

[1] In the District Court, E-5 only argued that Fahrnow violated MCA § 61-8-354(i)(c). (E-5 Motion for Summary Judgment and Brief at p. 13-14). E-5's appellate brief does not make any more specific argument that Fahrnow purportedly violated this code.
[2]"Intersection" is defined in MCA § 61-8-102(k).

that Fahrnow parking his vehicle "near the intersection" violates § 354. However, § 354 is clearly conditioned upon being "within an intersection". Fahrnow and his vehicle undisputedly were not within the intersection, but stopped before the stop sign. It is not illegal to stop a vehicle at a stop sign under § 354 or otherwise.

- Fahrnow had stopped in compliance with the law and to verify if the first crash had disabled his vehicle given that the trailer was hitched. *See* MCA § 61-7-103 ("The driver of any vehicle who knows or reasonably should have known that the driver has been in an accident with another person or a deceased person shall immediately stop the vehicle at the scene of the accident or as close to the accident as possible but shall then return to and in every event remain at the scene of the accident until the driver has fulfilled the requirements of 61-7-105."). The Montana Driver Manual also provides (I) "If you are involved in an accident you must stop"; (II) "It is a crime for you to leave a crash site where your vehicle is involved if there is an injury or death before police have talked to you and gotten all the information they need about the crash."; and (III) "Stop your vehicle at or near the accident site." (Fahrnow Opp. to MSJ at Exh. 1 at Exh. B at pp. 78-79)

To construe § 354 to unwaveringly require Fahrnow to immediately move a potentially disabled vehicle and prohibit any possibility of documenting how the

crash occurred by moving it without anyone leaving their vehicle would also produce an absurd result and incentivize people to always move their vehicles after impact regardless of the circumstances and destroying potentially relevant evidence. *See State v. Levine*, 2024 MT 169, ¶ 18, 417 Mont. 410, 553 P.3d 416 ("'We construe, interpret[,] and apply the law so as to avoid absurd results. Statutory construction should not lead to absurd results if a reasonable interpretation would avoid it.'")

Therefore, Fahrnow did not violate § 354.

C. MCA § 61-9-412(4)

Fahrnow did not violate MCA § 61-9-412. The statute provides in relevant part:

> Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder of a highway outside of any municipality at any time when the display of fusees, flares, red electric lanterns, or portable red emergency reflectors is not required, the driver of the vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, or at a distance of approximately 100 feet in advance of the vehicle, and one at a distance of approximately 100 feet to the rear of the vehicle.

MCA § 61-9-412(4) does not apply because:

- The Montana CDL Manual, federal regulation, and case law have clarified that this should be accomplished within 10 minutes, and undisputedly less than 10 minutes occurred between the crashes. (Fahrnow Opp to Eiker MSJ at Exh. 1 at Exh. C); 49 CFR § 392.22(b)(1); *Florea v. Werner Enterprises, Inc.*, No. CV 08-52-M-DWM-JCL, 2009 WL 2421853, at *7–8 (D. Mont. July

29, 2009). The Court should not interpret § 412(4) to require drivers to instantaneously put out the flags upon impact (which would be impossible), but to place the flags within a reasonable time. *See Levine*, ¶ 18.

- Fahrnow's vehicle was not "disabled" as he was in the process of attempting to reenter the vehicle to move the truck when he was run over by E-5's truck. The Court's opinion in ¶ 20 also acknowledges the fact he was going to move the vehicle.
- Fahrnow's employer did not provide Fahrnow with any red flags, and, thus, this, at most, speaks to Fahrnow's employer's purported negligence.

Therefore, Fahrnow did not violate § 412.

D. MCA § 61-8-506

Fahrnow did not violate MCA § 61-8-506. This statute provides in relevant part:

> (2) Where sidewalks are not provided, a pedestrian, other than an intoxicated pedestrian referred to in 61-8-508, who is walking along and upon a highway may walk only on the shoulder, as far as practicable from the edge of the roadway.

§ 506 plainly does not apply. First, Fahrnow was not a pedestrian "walking along" a highway, but a person who quickly assessed his vehicle for damages and was walking back to enter the truck at the time he was struck. Moreover, there is no shoulder on CR 350 and, thus, this statute does not apply here. (Fahrnow Opp MSJ at Exh. 1 at Exh. D); *Grimes v. Michigan Dep't of Transp.*, 475 Mich. 72, 86, 715

N.W.2d 275 (Mich. 2006) (noting that "shoulder" defined in the state code is "that portion of the highway contiguous to the roadway generally extending the contour of the roadway, not designed for vehicular travel but maintained for the temporary accommodation of disabled or stopped vehicles otherwise permitted on the roadway.") (emphasis omitted); *see also* MCA § 61-8-102(v) ("'Roadway' means the portion of a highway that is improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.") (eff. before Oct. 1, 2025); MCA § 61-8-102(17) ("'Paved shoulder' means that portion of the shoulder that is adjacent to the edge of the roadway, continuous and level with the roadway, and paved") (eff. Oct. 1, 2025). In addition, Fahrnow was walking as far as practicable, but he nonetheless needed to reenter his vehicle and was doing so when he was struck. *See Gunnels v. Hoyt,* 194 Mont. 265, 272, 633 P.2d 1187, 1192 (1981) ("[w]hat is 'practical' in any situation clearly depends upon all of the surrounding facts and circumstances.").

If Fahrnow did violate the statute (which he did not), then any person attempting to reenter a vehicle on a street would be in violation of the traffic law under any circumstance. The Court must ask itself: if a person is reentering a vehicle on a highway, is that person always violating § 506(2)? That cannot be, and the Court should not construe § 506 to lead to such an absurd result. *See Levine*, ¶ 18 ("'We construe, interpret[,] and apply the law so as to avoid absurd results. Statutory construction should not lead to absurd results if a reasonable interpretation would

avoid it.'") (quoting *Rios v. Justice Court*, 2006 MT 256, ¶ 9, 334 Mont. 111, 148 P.3d 602).

Therefore, Fahrnow did not violate § 506.

E. E-5's Duty to Drive with "Extreme Caution".

The Court's opinion also ignored controlling law that Greg Brown, as E-5's commercial driver, had the duty to apply "extreme caution". Specifically, 49 CFR §392.14 provides:

> Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice…adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued…

See also MCA § 61-8-801(d); ARM 18.8.1502 (adopting 49 CFR parts 390 through 399); *see also Le Doux v. W. Express, Inc.*, 126 F.4th 978, 986 (4th Cir. 2025) ("the regulation creates "an expanded duty of care for the operation of commercial motor vehicles."); *Levene v. Staples Oil Co*., 685 F. Supp. 3d 791, 808 (D. S.D. 2023) (The Eighth Circuit has also recognized that 49 C.F.R. § 392.14 "[was] designed to protect against the possibility that as conditions become hazardous the truck driver will be more prone to lose control of his vehicle and cause an accident."). Thus, Brown was required to apply "extreme caution" in addition to his duties under *Craig*, *Walden*, MCA §61-8-303(3) and MCA §61-8-302 which were noted by the Court's opinion.

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While the Court noted that Brown testified that he drove 2 miles an hour in the time leading up to the crash such testimony has been scientifically proven to be false by the experts of both E-5 and Fahrnow (in addition to being absurd on its face). (Fahrnow MSJ at Exh. I at Exh. A at p. 3, 16, Exh. J 80:02-81:06). Moreover, the opinion fails to recognize the undisputed testimony that approximately 10 vehicles had made the same turn Brown made without losing control, including a large roustabout truck. (*Id.* at Exh. F at 145:06-22). Thus, 10 vehicles could make the turn without losing control; yet Brown who had the duty to apply extreme caution failed to maintain control, drove much faster than what he testified to under oath, and careened into the wrong lane of traffic striking Fahrnow.

Therefore, the Court failed to account for these undisputed facts and 49 CFR §392.14 in its opinion. For the foregoing reasons and the reasons stated in Fahrnow's prior briefing, E-5 should be found liable as a matter of law.

CONCLUSION

For the forgoing reasons, Fahrnow respectfully requests that this Court grant his Petition for Rehearing and modify the decision to delete both ¶ 20 and the part of ¶ 22 where it states "Fahrnow … violated multiple traffic statutes", and clarify that Fahrnow undisputedly did not violate these statutes. In addition, Fahrnow respectfully requests that the Court find E-5 liable as a matter of law.

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DATED this 15th day of October, 2025.

DRIGGS BILLS & DAY, P.C.
Attorney for Appellant Tristin Fahrnow

By: /s/ Ian P. Gillespie
Ian P. Gillespie

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that, pursuant to Mont. R. App. P. 11, this brief is proportionately spaced, 14-point font, and contains 2,460 words, as counted by the undersigned's word processing software.

DATED this 15th day of October, 2025.

DRIGGS BILLS & DAY, P.C.
Attorney for Appellant Tristin Fahrnow

By: /s/ Ian P. Gillespie
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CERTIFICATE OF SERVICE

I, Ian Philip Gillespie, hereby certify that I have served true and accurate copies of the foregoing Petition - Rehearing to the following on 10-15-2025:

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