

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF OWYHEE**

STATE OF IDAHO,
Plaintiff,

vs.

COLE HARCEY,
Respondent,

Case No. CR37-22-1541

MEMORANDUM DECISION

This matter comes before this Court on Defendant's Motion to Dismiss. Defendant has been charged with misdemeanor vehicular manslaughter in violation of Idaho Code Sections 18-4007(3)(c) and 18-4006(3)(c). After various pretrial hearings, the defense filed the previously-reference motion. In discussions prior to the filing, the Court had advised the parties that, absent stipulated facts, the Court could not render a decision regarding any motion to dismiss. Therefore, the parties stipulated to the facts set forth in the Facts section of this Memorandum.¹

The complaint in this matter alleges the defendant

did, while operating a motor vehicle, to-wit: a Humvee, at or near the Saylor Creek Bombing Range, commit the unlawful act of reckless or inattentive driving, and the unlawful act was committed without gross negligence and the defendant's operation of the motor vehicle in such unlawful manner was a significant cause contributing to the death of [the victim].

Criminal Complaint. The crux of Defendant's argument to dismiss is that if he is not guilty of reckless or inattentive driving,² he cannot be found guilty of vehicular manslaughter. Defendant

¹ In its response to the motion to dismiss, the State indicated it stipulated to the facts set forward in Defendant's motion. However, the facts were set forth in Defendant's memorandum filed in support of the motion. At oral argument on the motion, the State indicated it was stipulating the facts set forth in the memorandum in support.

² The remainder of this brief will focus on reckless driving only because inattentive driving is a lesser included offense for which, under Defendant's argument, if he is not guilty of reckless driving, he could not be guilty of inattentive driving.

argues that he cannot be found guilty of reckless driving because the alleged conduct occurred at a location where, under the statute, driving recklessly does not constitute an offense.

The defense has also argued that the complaint filed by the State fails to allege a legal claim against Defendant. Although that argument was Defendant's initial argument in briefing and at hearing, it will be the second argument addressed in this memorandum.

FACTS

1. The Defendant [sic], Cole Phillips Harcey, DOB 4/28/2003, is the defendant in the above-entitled action.
2. All acts complained herein occurred in Owyhee County, Idaho, on or about June 24th [sic], 2022.
3. At the time, Harcey was in Idaho conducting exercises as an ROTC cadet in conjunction with the Air Force at Saylor Creek Bombing range, also located within Owyhee County, Idaho.
4. Saylor Creek Bombing Range is an operational targeting range that the U.S. Air Force operates and uses, along with other U.S. military entities, for training in combat warfare. The entities use the range to drop and fire live munitions from fighter and bomber aircraft on targets set up across the range.
5. On the morning of June 24, 2022, as part of his ROTC exercises, Harcey was driving a military vehicle commonly referred to as a "Humvee," its formal nomenclature being a High Mobility Multipurpose Wheeled Vehicle (HMMWV).
6. Two other Cadets, Cameron Davila (DOB 2/10/2003) and Mackenzie Wilson (DOB 09/5/2022), were with Harcey in the vehicle.
7. At the time of the crash, the Humvee was being driven on a service road within the Exclusive Use Area of the bombing range that was not a highway and was not open to public use.
8. The property and roads within the Saylor Creek Range are not open to public use. In fact, the range has signage and fencing at its borders and entry points, which indicate that public access is prohibited.
9. All the portions of the road at issue were on property either owned, leased, and/or held in a trust by the Federal Government, the State of Idaho, or its political subdivision.

10. Harcey lost control of the Humvee, and it turned over. McKenzie Wilson, one of the cadets in the vehicle, subsequently passed away from the injuries sustained in the crash.
11. Following an investigation by ISP, Owyhee County charged Harcey with one count of vehicular manslaughter.

PLAIN READING v. AMBIGUITY

The statute defining reckless driving, Idaho Code Section 49-1401(1), reads in pertinent part, “Any person who drives or is in actual physical control of any vehicle upon a highway, or upon public or private property open to public use...shall be guilty of reckless driving.”

Statutory interpretation begins with ‘the literal words of the statute, and this language should be given its plain, obvious, and rational meaning.’ ” *Seward v. Pac. Hide & Fur Depot*, 138 Idaho 509, 511, 65 P.3d 531, 533 (2003) (quoting *Jen–Rath Co. v. Kit Mfg. Co.*, 137 Idaho 330, 335, 48 P.3d 659, 664 (2002)). “The objective of statutory interpretation is to give effect to legislative intent.” *State v. Yzaguirre*, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007). “Such intent should be derived from a reading of the whole act at issue.” *St. Luke's Reg'l Med. Ctr., Ltd. v. Bd. of Comm'rs of Ada Cnty.*, 146 Idaho 753, 755, 203 P.3d 683, 685 (2009). “If the statutory language is unambiguous, ‘the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction.’ *Id.* (quoting *Payette River Prop. Owners Ass'n v. Bd. of Comm'rs of Valley Cnty.*, 132 Idaho 551, 557, 976 P.2d 477, 483 (1999), overruled on other grounds by *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012)). A statute is ambiguous when:

[T]he meaning is so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning. However, ambiguity is not established merely because different possible interpretations are presented to a court. If this were the case then all statutes that are the subject of litigation could be considered ambiguous.... [A] statute is not ambiguous merely because an astute mind can devise more than one interpretation of it.

Farmers Nat'l Bank v. Green River Dairy, LLC, 155 Idaho 853, 856, 318 P.3d 622, 625 (2014) (alterations in original) (quoting *BHA Invs., Inc. v. City of Boise*, 138 Idaho 356, 358, 63 P.3d 482, 484 (2003)).

State v. McKean, 159 Idaho 75, 79–80, 356 P.3d 368, 372–73 (2015).

Neither party in this matter has argued that the statute in question is ambiguous. In fact, the State has argued that the wording of the statute “reduces [its] ambiguity.” The defense has argued the statute is plain on its face. Notwithstanding those assertions, both parties argued

