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Third Judicial District, Owyhee County
Angela Barkell, Clerk of the Court
By: Deputy Clerk -Eubanks, Jamie

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
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> 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 is 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:
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> > [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.
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> *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

legislative intent in their briefing and at oral argument. Therefore, this Court will begin with a plain reading of the statute, then look at legislative intent.

1. The Plain Wording of the Statute Shows That Both Public Property and Private Property Must Be "Open to Public Use."

As noted above, a statute is not ambiguous simply because it is capable of different interpretations. A plain, close reading of the statute in question can resolve the parties' opposing interpretations. The central issue at hand is whether the reckless driving statute provides that an individual can be guilty of reckless driving (and thus vehicular manslaughter in this case) when operating a vehicle on any public property, or only upon public property open to public use.

Such is a novel question. Certainly, this jurist has always assumed the reference to "public" in both the reckless driving and the DUI[3] statute refers to *any* public property. Such understanding likely extends from appellate cases wherein appellate courts, when referencing the DUI statute, which has very similar language to the reckless driving statute, have inserted the word "property" after the word "public." *See, e.g. State. v. Knott,* 132 Idaho 476 (1999). However, a close reading of the statutes reveals that the neither the code sections for DUI nor reckless driving include the term "public property." Rather, the statutes contain the phrases, "upon public or private property open to the public," (DUI) or "upon public or private property open to public use," (reckless driving).

In the case before the Court, the State has argued that the use of the word "or" in the phrase, "upon public or private property open to public use" makes the phrase disjunctive, and that the word "property" is impliedly assumed to follow "public." In aid of that proposition the State poses the grammatical example: "The payment shall be made in cash or by certified check," as an example of a disjunctive reading. Conversely, the defense argues that the language "public or private" must be read as modifying the noun "property," or the entire phrase would be rendered nonsense.

[3] The Court references the DUI statute because the "property" language in both statutes is very similar, and most of the cases dealing with "private property open to the public" are in the context of DUI cases.

In order to determine the meaning of "upon public or private property open to public use," it is important to first determine the various parts of speech present in the phrase. The 1935 Second Edition, Unabridged of the Webster's New International Diction of the English Language[4] contains the following entries:

"upon...*prep,*... 1. Upward so as to be on...."

p. 2800.

"public...*adj.*,... 1. Of or pertaining to the people; relating to, belonging to, or affecting, a nation, state, or community at large;--opposed to *private*....

2. Open to common or general use, participation, enjoyment, etc.; as, a *public* place, tax, or meeting...."

"public...*n.*,... 1. The general body of mankind, or of a nation, state, or community[5]....

2. A particular body or section of the people...."

p. 2005.

"or...*conj.*,... A co-ordinating [sic] particle that marks an alternative;...a. Substitution; as use olive oil or any light oil.[6]"

p. 1712

"private...*adj.*,... 1. Belonging to, or concerning, an individual person, company, or interest...not public; separate;... as...private property...."

"private...*n.*,... 4.[7] *Mil.* A solder below the grade of a noncommissioned officer[8]...."

p.1969.

"property...*n.*,... 5. That to which a person has a legal title; thing owned...."

p. 1984

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[4] The Court acknowledges that numerous editions of that dictionary have been published since 1935. However, the Court uses that edition because said edition is what is at hand in Murphy, Idaho. To the extent necessary, the Court takes judicial notice that the definitions of words and identifications of the various parts of speech are still the same eighty-three years later.

[5] This definition is included merely to show that "public" in the quoted statute is being used as an adjective rather than a noun.

[6] No numbers were used for "or," only the subset of letters.

[7] Definitions one through three were variously labeled archaic, obsolete, or profane.

[8] This definition is included merely to show that "private" in the quoted statute is being used as an adjective rather than a noun.

"open…*adj.*,… 1. Not shut to; not impeding or preventing passage…affording free ingress or egress.

2….Free to be entered, visited, or used."

"open…*v.*,… 1. To move…from its shut position[9]…."

p. 1705.

"use, (ūs) *n*[10],… 1. Act of employing anything, or state of being employed; application; employment; as, the *use* of a pen; his machines are in *use*.

p. 2806.

"to…adj., …*to* indicates the object or limit of application of the quality, character, capacity, or relation denoted by adjectives and equivalent phrases…esp. such as express relations of contiguity,…proportion…connection….[11]

1. …c. As far as; so far as to reach as [sic] limit in space; as, eighty feet *to* the ground."

p. 2657-2658.

Breaking the phrase down into its various parts of speech further helps render clear the phrase's meaning. When parsed, the sentence is "upon (adj.) public (adj.) or (conj.) private (adj.) property (n.) open (adj) to (prep.) public (n.) use (n.). More accurately, "to public use" is a prepositional phrases used as an adverb to modify the adjective, "open." Thus, the phrase is "(prep.) (adj.) (conj.) (adj.) (n.) (adj.) (prep. phrase used as an adverb.)"

Using this formula, it is apparent that State's "in cash or by certified check," is not an adequate example. That portion of the proffered sentence would be parsed as "(prep.) (n.) (conj.) (prep.) (adj.) (n.)." In other words, the State's suggestion is "…n. *or*…n. ...," whereas the statutory sentence is "…adj. *or*…n. ..." Hence, more appropriate comparisons to the statutory grammatical construct would be "with green or red shoes worn upon the feet," or "among dim-witted or slow-minded jurists clothed in black robes," or more pertinently, "along accessible or semi-accessible areas used by the drivers."

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[9] This definition is included merely to show that "open" in the quoted statute is being used as an adjective rather than a verb.

[10] Cf., use, (ūz), *v.*

[11] This portion occurs in the word's entry following the word, but preceding the enumerated definitions.

By deconstructing the sentence, it is clear that the defense's position is correct. In order for statute to make sense, the word "public" cannot stand in isolation. It is not a noun. Thus, a plain reading of the statute must be that the phrase "open to public use" modifies the noun "property," "Public" in this instance also modifies the word, "property." Hence, the statute must be applied to public property open to public use, and to private property open to public use.

2. Ambiguity: The Legislative Intent Derived From Statutory Interpretation Of the Language in the Statute Shows That Both Public Property and Private Property Must Be "Open to Public Use."

> The interpretation of a statute "must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole." *State v. Schwartz,* 139 Idaho 360, 362, 79 P.3d 719, 721 (2003) (citations omitted).

Verska v. Saint Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011).

> RECKLESS DRIVING. (1) 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, carelessly and heedlessly or without due caution and circumspection, and at a speed or in a manner as to endanger or be likely to endanger any person or property, or who passes when there is a line in his lane indicating a sight distance restriction, shall be guilty of reckless driving and upon conviction shall be punished as provided in subsection (2) of this section.

Idaho Code Section 49-1401.

Just as in the portion of the statute discussed in section one, the first lines of the reckless driving statute contain an "or." Reading those lines strengthens the section one analysis. That is true because in order for "any person" to be guilty of reckless driving, s/he must "drive." Were the Court to employ the State's supplied interpretation and proffered example (cash or credit card), the analysis would stop at "drive." In other words, one could be guilty of reckless driving simply by "driving." However, said interpretation begs the question, "Drive what?" Drive a car? Drive a hard bargain? Drive a judge crazy?

Clearly, the statute must be read as a whole, and the driver must drive "any vehicle," the operative adjective and noun identified after the "or." As argued by the defense about the latter

portion of the statute, any other reading would be nonsense. Thus, when including the language which follows "or," a person can be guilty of reckless driving for *driving any vehicle* or for *being in actual physical control of any vehicle*.

Continuing through the statute, the next portion contains another "or" construct which further solidifies the analysis in section one. The prepositional phrase "upon a highway" precedes the next "or." In order for the phrase to be parallel with the phrase following "or," the necessary reading of the latter portion is "upon…property," not "upon public." As noted above, the word "public," and the phrase "open to public use" both modify the noun "property."

Yet another use of "or" cements the initial analysis. The phrase, "at a speed or in a manner likely to endanger…" must be read as a whole. Just as with "drive," were the reader to read the phrase "at a speed" without consideration of "likely to endanger," the phrase would be meaningless. Thus, a reading of the statute as a whole shows that the use of "or" does isolate those terms surrounding "or," but that the reader must use the words preceding and following the conjunction to arrive at meaningful language.

3. Ambiguity: The Rule of the Last Antecedent Clause Shows That Both Public Property and Private Property Must Be "Open to Public Use."

"Under…the rule of the last antecedent clause, a referential or qualifying phrase refers solely to the last antecedent, absent a showing of contrary intent. *State v. Troughton*, 126 Idaho 406, 411, 884 P.2d 419, 424 (Ct. App. 1994), (*citing State v. Jennings*, 195 Neb. 434, 238 N.W.2d 477, 481 (1976)).

In *Troughton*, Defendant was convicted of possession of methamphetamine. On appeal, he argued that he should not have been convicted because the jury did not hear evidence of the quantity of methamphetamine he possessed. Troughton asserted that the language of Idaho Code Section 37-3707(d)(2) required a showing of an amount sufficient to have a stimulating effect on the possessor. The State countered that Troughton misread the statute, misapprehending to which word the "stimulant effect" language referred.

In its analysis, the Idaho Supreme Court quoted language in Idaho Code Section 37-2707(d)(2),

> Unless specifically excepted or unless listed in another schedule, [drugs and other substances listed under Schedule II include] any material, compound, mixture, or

> preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system: ... Methamphetamine, its salts, isomers, and salts of its isomers ...,

then went on to conduct a grammatical analysis. Troughton had argued that the words "having a stimulant effect..." modified the term "quantity." The appellate court upheld the district court's denial of Troughton's motion to dismiss, ruling that, based on the rule of the last antecedent, "having any stimulant effect" referred to the word "substance," not to the word "quantity."

The *Troughton* analysis is directly on point to the case before this Court. As previously identified, "upon public or private property open to public use" is the operative language. The words, "open to public use" refer to the antecedent "property." Both "public" and "private" are adjectives modifying the noun "property." Were "private property" a noun, or if the statute read "public property," as the state argues the court should imply, then the phrase "open to the public" would refer to only "private property." To quote radio talk show host and attorney, Bill Handel, "If my grandfather had different plumbing, he would have been my grandmother." None of the "ifs" are present, and this Court may not supply language the legislature did not provide. *See generally, State v. Morrison*, 143 Idaho 459 (2006), (*citing State v. Thompson*, 101 Idaho 430, 438 (1980)). Applying the antecedent rule, "open to the public" must refer to the word "property," and is thus applicable to both public property and private property.

4. Ambiguity: The Rule of Lenity Shows That Both Public Property and Private Property Must Be "Open to Public Use."

"If a criminal statute is ambiguous, the doctrine of lenity applies and the statute must be construed in favor of the accused." *State v. Morrison*, 143 Idaho 459, 461 (Ct. App. 2006) (*citing State v. Martinez*, 126 Idaho 801, 803, 891 P.2d 1061, 1063 (Ct.App.1995).

The *Morrison* Court was faced with construing language similar to that in the case at hand. Specifically, a legislative change in the law resulted in the grand theft statute (Idaho Code Section 18-2407(7)(1)(b)(7) being amended to read, ""[a] person is guilty of grand theft when he commits a theft as defined in this chapter and when ... [t]he property taken or deliberately killed is livestock or any other animal exceeding one hundred fifty dollars ($150) in value." *Morrison*, 143 Idaho at 459.

Morrison was charged with stealing several calves, each with a value of less than $150.00. He filed a motion to dismiss in the district court, arguing that the $150.00 value pertained to both the terms "livestock," and "to any other animal." "The district court disagreed and, relying largely on what it considered to be the disjunctive implication of the word 'or' in the statute's grammatical structure, interpreted the statute to mean that the taking of any livestock, regardless of value, amounts to felony grand theft." *State v. Morrison*, 143 Idaho 459, 461, 147 P.3d 91, 93 (Ct. App. 2006). Following that ruling, Morrison pled guilty to the grand theft, reserving his right to appeal the district court's ruling.

On appeal, Morrison renewed his argument. The Court of Appeals noted the rule of lenity required that an ambiguous statute must be construed in favor of the accused. *State v. Morrison*, 143 Idaho 459, 461 (Ct. App. 2006) (*citing State v. Martinez*, 126 Idaho 801, 803, 891 P.2d 1061, 1063 (Ct.App.1995). The Court of Appeals then referred to Idaho Supreme Court language:

> A statute defining a crime must be sufficiently explicit so that all persons subject thereto may know what conduct on their part will subject them to its penalties. A criminal statute must give a clear and unmistakable warning as to the acts which will subject one to criminal punishment, and courts are without power to supply what the legislature has left vague. An act cannot be held as criminal under a statute unless it clearly appears from the language used that the legislature so intended. (Citations omitted).
> *State v. Thompson*, 101 Idaho 430, 437, 614 P.2d 970, 977 (1980).

State v. Morrison, 143 Idaho 459, 461, 147 P.3d 91, 93 (Ct. App. 2006). Relying on that language, the Court of Appeals held that lenity required the statute to be read so that the $150.00 language modified both "livestock," and "any other animal."[12]

Of note, the Court of Appeals referenced the statement of purpose for the grand theft statute. That statement explicitly indicated the $150.00 amount applied to both "livestock" and "any other animal." However, the Court indicated that based on the following language from *Thompson,* it was constrained to look at the statute as written, and not to look at the statement of purpose: "we cannot make…an interpretation for the legislature when no such intention appears from the language of the statute. To hold otherwise would be supplying what the legislature left

[12] Ultimately, Morrison's conviction stood because the Court of Appeals said the value of the calves stolen should be aggregated to be more than $150.00

vague and this we cannot do." *State v. Morrison*, 143 Idaho 459, 461, 147 P.3d 91, 93 (Ct. App. 2006) (*quoting Thompson,* 101 Idaho at 438).

Morrison is particularly relevant to the case at bar. The State's "disjunctive" argument is precisely the argument the *Morrison* district court found persuasive, but which the Court of Appeals found insufficient to impart knowledge of prohibited conduct. Therefore, just as in *Morrison*, to extent the reckless driving statute can be considered ambiguous, it fails to sufficiently articulate prohibited conduct, and its ambiguity must be read to provide lenity to the accused.

5. Ambiguity: The Legislative Statement of Purpose Shows That Both Public Property and Private Property Must Be "Open to Public Use."

In 1980, the Idaho Legislature modified the language in the reckless driving statute to include the "actual physical control" language in now contains. State v. Knott, 132 Idaho 476, 478 (1999).

> The statement of purpose which accompanied the 1980 amendments to I.C. §§ 49–1102 and 49–1103[13] explained that the legislature believed that prior to 1980 only acts of reckless driving on streets, highways and bridges were punishable. Statement of Purpose, RS 5374, H.B. No. 502 (1980). The statement of purpose further explained that "[u]nder this act, school parking lots, park areas, and shopping mall parking lots, etc. would be included. It does not include private property not intended for public use." *Id.*[14]

State v. Knott, 132 Idaho 476, 478, 974 P.2d 1105, 1107 (1999). Additionally,

> In 1988 the legislature provided a definition of "private property open to the public" which was later codified in I.C. § 49–117(15) (Supp.1996). 1988 Idaho Sess. Laws ch. 265, § 2, p. 563. According to the statute,
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> > "[p]rivate property open to the public" means real property not owned by the federal government or the state [sic] of Idaho or any of its political subdivisions, but is available for vehicular traffic or parking by the general public with the permission of the owner or agent of the real property.

State v. Knott, 132 Idaho 476, 479, 974 P.2d 1105, 1108 (1999).

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[13] Now Idaho Code Sections 18-8004 and 49-1401, respectively. *See Knott*, 132 Idaho at 478-79; *and generally*, footnotes Idaho Code Sections 18-8004 and 49-1401.

[14] This "Id" refers to 1980 Idaho Sess. Laws ch. 165, § 1, p. 354.

Although Title 49 contains no definition of "public property," by using the definition of "private property open to the public," one may infer "public property" means any property "owned by the federal government or the state [sic] of Idaho or any of its political subdivisions." "Political subdivision" includes "school district." I.C. § 59-802(5).

When combining the 1980 Statement of Purpose with the various above-referenced statutes, it seems that the Legislature did not intend to include public property not open to public use as an area wherein reckless driving could constitute a criminal offense. The statement of purpose specifically mentions "school parking lots." A school parking lot is owned by a school district, i.e., a political subdivision of the State. By stating its intended to limit the affected area to "school parking lots" the legislature implicitly excluded other areas of a school which are public property but which would normally not be open for public vehicular use (football fields, open areas between parking lots and buildings, the hallways of buildings). Had the legislative intent been *any* public property rather than public property open to public use, the statement of purpose would have said precisely that. More important for this analysis, the resulting statute would say precisely that.[15]

Consider the following hypothetical. Were the legislature to have intended *any* public property to be property upon which reckless driving could be committed, then were Governor Little to recklessly drive an electric scooter inside his office in the Capitol, and were he in so doing to hit and kill an aide, the Governor could be guilty of vehicular homicide. It seems unlikely such was the intent of the legislature.

SUFFICIENCY OF THE COMPLAINT

> A jurisdictional defect exists: (1) when the alleged facts are not made criminal by statute; (2) there is a failure to state facts essential to establish the offense charged; (3) the alleged facts show on their face that the court has no jurisdiction of the charged offense; or (4) the allegations fail to show that the offense charged was committed within the territorial jurisdiction of the court.

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[15] Other State's laws do so: Maryland (for DUI: "The provisions of this subtitle apply throughout this State, whether on or off a highway." *See*, *Rettig v. State*, 334 Md. 419, 422, 639 A.2d 670, 672 (1994)); Georgia (for DUI: "OCGA § 40–6–391(a)(5) provides that it is unlawful for any person to 'drive or be in actual physical control of any moving vehicle' with a blood alcohol level of 0.08 or more. The statute draws no distinction between driving on public roads versus private thoroughfares. " *Madden v. State*, 252 Ga. App. 164, 166, 555 S.E.2d 832, 834 (2001)); Minnesota (for DUI: sections 169.09 to 169.13 "shall apply upon highways and elsewhere throughout the state" suggesting a broad application be given the provisions of chapter." *Schafer v. Comm'r of Pub. Safety*, 348 N.W.2d 365, 367–68 (Minn. Ct. App. 1984)).

State v. Izzard, 136 Idaho 124, 127 (Ct. App. 2001)(citing Hays v. State, 113 Idaho 736, 739 (Ct.App. 1987).

The defense argues in this case that, because the offense in this matter is alleged to have occurred on public property open to the public, and because such a locale is not a place where upon one can commit the offense of reckless driving, the complaint in this matter does not allege facts which are made criminal by statute.

That argument presupposes that the evidence in this case were not subject to a factual finding. Prior to making the above determination regarding the applicability of the phrase "public or private property open to the public use," this Court required the parties to present stipulated facts. Based on the facts so stipulated, this Court can make the determination that the Saylor Creek Bombing Range is in fact public property not open to public use. Absent those stipulated facts, however, the Court could have made no factual determination regarding the character of the property. Hence, the Complaint could not have been dismissed as defective absent said stipulated facts.

CONCLUSION

Based on the stipulated facts, this Court finds the Saylor Creek Bombing Range is public property not open to public use. Based on the forgoing analysis, this Court finds as a matter of law that public property not open to public is not property whereon the offense of reckless driving can be committed. The Court further finds based on the facts and law that the Complaint is legally sufficient and may not be dismissed as jurisdictionally defective.

Based on the Court's legal finding regarding the applicability of Idaho Code Section 49-1401 to the Saylor Creek Bombing Range, the Court HEREBY DISMISSES the allegations against Defendant.

Dated 11/13/2023

S. Darrington

Shane Darrington
Magistrate