STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. CUM-24-43

STATE OF MAINE,

Appellee

v.

CHRISTOPHER RAY,

Appellant.

On Appeal from the Bureau of Motor Vehicle Violations
Docket No. T4176631

BRIEF OF APPELLANT CHRISTOPHER RAY

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INTRODUCTION

This traffic infraction appeal focuses on the rights of bicycle riders to safely operate and position themselves on Maine roadways, paved shoulders, and other locations in accordance with 29-A M.R.S. § 2063, Maine's primary statute on bicycle rights and responsibilities. The appeal looks at this issue in the context of a District Court traffic trial arising out of a July 7, 2023 summons and complaint issued by Charles Rumsey ("Mr. Rumsey")[1] to Appellant Christopher Ray ("Mr. Ray") for allegedly not riding as far right as practicable on a Maine roadway. The District Court found Mr. Ray committed the offense, and Mr. Ray has appealed that decision. Mr. Ray's appeal focuses primarily on the District Court's statutory construction errors, but it also highlights the insufficiency of competent evidence in the Record to support the District Court's decision and raises other public policy grounds for the Law Court to vacate the District Court's clearly erroneous decision.

STATEMENT OF FACTS

The facts of this case should not be in dispute. On July 7, 2023, at approximately 7:45 a.m., Mr. Rumsey was traveling east in an unmarked Ford

[1] Charles Rumsey will be referred to two ways in this brief. He will be referred to as "Mr. Rumsey" when there is no competent evidence in the Record of him being in uniform and on the schedule of the Cumberland Police Department. He will be referred to as "Chief Rumsey" when referring to his testimony, acts, and omissions in the January 3, 2024 District Court trial.

Explorer on Tuttle Road in Cumberland, Maine. (Trial Tr. 4:18-21.) He observed two people riding bicycles ahead of him who were also traveling east. (Trial Tr. 4:20-21.)[2] One of those two bicyclists was Appellant Christopher Ray ("Mr. Ray"). (Trial Tr. 5:15-16.)

After observing the bicyclists ahead of him, Mr. Rumsey caught up with them. (Trial Tr. 4:23-24.) He then slowed down and drove behind the bicycle riders for a distance. (Trial Tr. 5:2-3.) As Mr. Rumsey (motor vehicle traffic) paced behind Mr. Ray and his companion (bicycle traffic), all three operators approached and entered a school zone. (Trial Video 00:07 to 00:18.) The surface of the way at that time and place had "school zone" wording and paint on it. (Trial Video[3] 00:10 to 00:16.) There were also eight yellow and black pedestrian zone warning signs and four marked crosswalks in that area. (Trial Video.) Further, the paved surfaces of the roadway and shoulder in that area were variable, with cracking, grates, and

[2] There is no evidence in the Record of other "traffic" -- as that term is defined in 29-A M.R.S. § 101(83) and used in 29-A M.R.S. § 2063(2) -- traveling east on Tuttle Road's roadway or shoulder at the time and place relevant to this appeal. (Trial Tr. 1:1-14:7).

[3] At the January 3, 2024 Zoom trial, the Court allowed Mr. Ray to share a demonstrative trial video (referred to herein as "Trial Video"). Mr. Ray made the video in advance of the January 3, 2024 proceeding to give the Court "more of an experience of what he was experiencing" and to show the court what the "road type (i.e. surface conditions on the shoulder and roadway) were like, and give it "the visual aspect of [Mr. Ray and the other cyclist] riding side-by-side down Tuttle Road." (Trial Tr. 6:22-25; 8:4.) However, when the Law Court accepted the appeal, the trial video was not contained within the Record. (R. 1-72.) As such, with consent from the State, the undersigned is filing an assented-to motion with her brief to include the demonstrative video used at trial within the Record. *See* May 6, 2024 Assented-to Motion to Include Trial Video in the Record.

other imperfections present on the shoulder and roadway at various times and places, but especially in the area around the fire barn. (Trial Video 00:07 – 00:15.)

Mr. Rumsey noticed that the bicyclists were traveling "about 17 miles an hour" (Trial Tr. 5:6-7) while he was pacing them. As Mr. Rumsey traveled behind the bicyclists, and as they were all approaching and traveling through the said school zone and pedestrian zones, the 17mph speed of the bicycle traffic and the 17mph speed of the unmarked Ford Explorer was the normal speed of traffic at that time and place. *See* 29-A M.R.S. § 2063(2); *see also* 29-A M.R.S. § 2057 (requiring all traffic to obey traffic control devices, including warning and yield signs), 29-A M.R.S. § 2063(11) (requiring bicyclists to obey traffic control devices, including warning and yield signs), *and see* 29-A M.R.S. § 2056 (requiring all traffic to exercise due care when approaching marked crosswalks and other pedestrian zones); 29-A M.R.S. § 2074 (requiring all traffic to operate at a speed that is careful reasonable and prudent for the time, place, surface conditions and traffic in the area) *and* 29-A M.R.S. § 2075 *with* 29-A M.R.S. 2063(5) (operators, including bicyclists, may reduce speed and impede other traffic when doing so to comply with the law).[4]

[4] At trial, Chief Rumsey did not testify, argue, or offer any evidence that the 17mph that he was clocking the bicyclists at while they were all approaching the school and pedestrian zones described above was not the normal speed of eastbound traffic at that time and place. (Trial Tr. 4:17-5:22). Nor is there any competent evidence in the record to suggest that the majority of known eastbound traffic at that time and place was traveling at a speed higher than 17mph. Further, there is a 15mph speed limit sign shown in the video around the location of the fire barn, which is where the Record establishes that Mr. Ray was

As Mr. Rumsey traveled behind the two bicyclists, he observed they were riding two abreast. (Trial Tr. 4:20-21.) Mr. Rumsey observed that both bicyclists were riding "on the right-hand side of the road." (Trial Tr. 4:22.) At trial, Officer Rumsey did not clarify what he meant by "the right-hand side of the road," but he did not object to or argue with Mr. Ray's testimony or demonstrative video about where the bicyclists were riding. (Trial Tr. 4:17 – 11:16.) There was a paved shoulder on the right-hand side of Tuttle Road. (Trial Video). The paved shoulder of Tuttle Road and the roadway were separated by a line of white paint that Mr. Ray referred to as the "fog line." (Trial Video; Trial Tr. 6:13.)

Mr. Ray was riding his bicycle alongside the shoulder's fog line and as far right as practicable on the roadway (i.e., the travel lane). *See* Trial Tr. 6:13-17; Trial Video; 29-A M.R.S. §§ 2063(2) and 2063(2)(D) (using the terms roadway and lane interchangeably). The other bicyclist was riding to the right of Mr. Ray within the paved shoulder, which "notwithstanding 2063(2)" was a permissible riding location ***in addition to*** the roadway locations referenced in section 2063(2). *See* Trial Tr. 4:25-5:2; Trial Video; *and* 29-A M.R.S. § 2063(2-A) ("***notwithstanding*** subsection 2, a person operating a bicycle or roller skis ***may***

"immediately" pulled over by Mr. Rumsey after a verbal interaction with Mr. Rumsey. (Trial Video; Trial Tr. 5:7-15; 8:2-18.)

travel on paved shoulders") (emphasis added) *with* 1 M.R.S. § 71 (9-A) ("'May' indicates authorization or permission to act.").

Mr. Ray chose to ride on the left edge of the shoulder's fog line and as far right as practicable on the roadway because he understood that his position was lawful and in conformity with section 2063. (Trial Tr. 11:5-16.) Mr. Ray had also determined that the area to his right where his fellow cyclist was riding (i.e., the paved shoulder), was unsafe. (Trial Tr. 11:5-16.) Mr. Ray also testified he was riding further left because doing so was necessary to avoid hazardous conditions, including "imperfections," "utilities," "bumps," "undulations," and "impediments" in the area to his right, and he showed a video to demonstrate the types of hazardous conditions he felt necessary to avoid. *See* Trial Tr. 6:13-17, 7:18-19, 11:4-16 & Trial Video at 00:05-06; 00:12-16; 00:22-29; 00:41; 00:50; *see also* 29-A M.R.S. §§ 2063(2) & 2063(2)(D).[5]

At trial, Officer Rumsey did not controvert, object to, or present any argument to establish or suggest that Mr. Ray had not made the threshold determination on July 7, 2023 that it was "unsafe" for him to ride further right (i.e., fully in the shoulder like the other rider). (Trial Tr. 4:17-5:22 & 9:14-15.) Similarly, Chief Rumsey did not controvert, object to, or present any argument that

[5] At trial, and while describing hazards in the paved shoulder area, Mr. Ray mistakenly referenced the paved shoulder area as "road." *See* Trial Tr. 7:16-12:16 *with* Trial Video. However, the Record is clear on where Mr. Ray was riding, and there were no disputes over the location. *See generally,* Trial Tr. Rather, the disputes were over whether the location was lawful. *See id.*

the hazardous conditions that Mr. Ray had planned for, and necessarily avoided by not riding further right, were not there on July 7, 2023. *Id.* Instead, what Mr. Rumsey took issue with was the bicyclists' election to ride two abreast. (Trial Tr. 5:8-9.)

"[A]t the fire barn," "slightly after the bicyclists passed the fire barn," or "thereabouts" there was a verbal exchange between Mr. Ray and Mr. Rumsey regarding Mr. Ray's election not to ride single file. (Trial Tr. 8:1-10.)[6] More specifically, Mr. Rumsey "pulled up beside [the bicyclists],"[7] "rolled [the] window [of the unmarked Ford Explorer] down," and began issuing directives at the bicyclists. (Trial Tr. 5:6-8.) More specifically, as Mr. Rumsey pulled up beside the bicyclists, he said to the bicyclists, "single file, guys, single file." (Trial Tr. 5:6-8 & 4:20.) In response, Mr. Ray "yelled, basically, 'you can go F yourself'" at Mr. Rumsey. (Trial Tr. 5:11-12.) Mr. Ray further testified that he considered Mr. Rumsey to have approached him in an "aggressive manner." (Trial Tr. 6:19-20.)

What happened next is important to this appeal because it affects Mr. Ray's substantial rights, the fairness and integrity of this specific traffic stop and traffic

[6] The Trial Video at 00:07 to 00:10 shows that the area surrounding the fire barn has surface hazards in and around the paved shoulder that include cracking and as grate. (Trial Video at 00:07 – 00:10.) The area surrounding the fire barn is also where there are pavement markings and signage indicating the start of the school and pedestrian zones. (*Id.*)

[7] As a matter of law, Chief Rumsey's operational choice to pull up alongside the bicyclists was dangerous and unlawful. *See* 29-A M.R.S. § 2070(1-A) (requiring that drivers traveling in the same direction as bicyclists keep a safe distance between bicycle riders and their vehicles of at least three feet).

enforcement proceeding, and the general reputations of Maine's law enforcement officers and judicial proceedings. "Immediately" after Mr. Ray engaged in constitutionally protected speech directed at Mr. Rumsey,[8] Mr. Rumsey applied the brakes of the unmarked cruiser he was driving, got behind the two cyclists with the cruiser, and activated the blue lights of the unmarked cruiser. (Trial Tr. 5:11-14.) After the cyclists pulled over, Mr. Rumsey exited his car, identified Mr. Ray, and issued him a summons and complaint for a violation of 29-A M.R.S. § 2063(2). (Trial Tr. 5:14-17 & R. 3.) There is no competent evidence in the Record of Mr. Rumsey being in uniform or having the requisite law enforcement authority to engage in those actions pursuant to 29-A M.R.S. §§ 105(1) & 2063(5) at that time.[9]

At trial, Chief Rumsey appeared in court via Zoom in his capacity as Chief of the Town of Cumberland's Police Department. He gave oath to the trial judge that he would swear "to tell the truth, ***the whole truth***, and nothing but the truth." (Trial Tr. 4:1-9 (emphasis supplied).) Chief Rumsey's trial testimony omitted material facts that went to the threshold statutory requirements that needed to have

[8] U.S. Const. Amend I; Me. Const. art. I, § 4.

[9] *See together* 29-A M.R.S. § 105(1) *and* 29-A M.R.S. § 2063(5). The former statute provides: "If a law enforcement officer ***has reasonable and articulable suspicion to believe that a violation of law has taken or is taking place***, that officer, ***if the officer is in uniform*** may stop a motor vehicle for the purpose of: A. Arresting the operator for a criminal violation; B. Issuing the appropriate written process for a criminal or civil violation or a traffic infraction; or C. Questioning the operator or occupants.")(emphasis added). 29-A M.R.S. § 105(1). The latter statute makes 29-A M.R.S. § 105(1) applicable to bicycle riders with this language: "***A person riding a bicycle*** or scooter or operating roller skis on a way ***has the rights and is subject to the duties applicable to the operator of a vehicle,*** except as to: A. Special regulations; and B. Provisions in this Title that by their nature can have no application.") 29-A M.R.S. § 2063(5) (emphasis added).

been in place for the underlying citation to be lawful. (Trial Tr. 4:17 – 5:22.) There is also no testimony or other evidence in the Record of Chief Rumsey making disclosures to the Court regarding the fact that there was cruiser footage of the July 7, 2023 stop available on and before January 3, 2024 establishing that the said threshold law enforcement requirements had not been met and that the Cumberland Police had not given Mr. Ray access to the footage as of that date, despite his Freedom of Access Act (FOAA) request for the same. (*Id*.)[10]

At trial, the District Court found Mr. Ray to be in violation of 29-A M.R.S. § 2063(2). (Trial Tr. 12:5-13:5.) Following the announcement of the District Court's

[10] In the summer of 2023, Mr. Ray made a FOAA request for all public information, including recordings, relating to the July 7, 2023 stop and citation. That FOAA request was made to the Cumberland Police Department, where Chief Rumsey presides as Chief of Police. The said police cruiser recordings were not part of the response sent by Chief Rumsey's Department to Mr. Ray in 2023. It was only when the undersigned was retained and made a January 2024 FOAA request (post trial and post appeal) to the Cumberland Town Manager and the Cumberland Police Department that the previously omitted recordings and other information responsive to Mr. Ray's Summer 2023 FOAA request surfaced. *See* 1 M.R.S. § 410 (1). As of now, the undersigned and the Cumberland County District Attorney's Office, which was not involved with the trial at the District Court or the earlier FOAA request, have the material evidence and information that Chief Rumsey failed to disclose to the Court at the January 3, 2024 trial. *See* Me. Dep't of State*, Law Enforcement Code of Ethics, located at: https://www.maine.gov/dps/sites/maine.gov.dps/files/inline-files/law_enforcement_code_of_ethics.pdf* (last visited April 30, 2024). The State has been asked to voluntarily file a consented-to motion to reopen the underlying District Court proceeding so that the disclosures and a request to have the judgment vacated by the District Court can be made by the State. *See* M. R. Prof. Conduct 3.3(3); M. R. Prof. Conduct 3.8 cmt. 1 ("A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence."). As of the time of this filing the undersigned is not aware of any response or action by the State in response to this request and Mr. Ray has not sought leave from this Court to file a 60(b) motion at the Violations Bureau. *See* M.R. Civ. P. 60(b).

decision, it imposed a fine of $151.00 on Mr. Ray which he paid. (Trial Tr. 13-5-10.)

On January 24, 2024, Mr. Ray timely appealed the District Court's decision.

SUMMARY OF THE ARGUMENTS

The Law Court should vacate the decision of the District Court (Cumberland County, *Goranites, J.*) because of one or more of the significant errors that the District Court made at the January 3, 2024 trial.

First, the District Court erred in its statutory interpretation of 29-A M.R.S. § 2063(2). At trial, the District Court explicitly misread, misstated, misinterpreted 29-A M.R.S. § 2063(2). (Trial Tr. 12:5-13:5.) It also failed to acknowledge threshold statutory criteria necessary for the mandate in section 2063(2) to apply, as well as overlooked the explicit exceptions to the statutory mandate. Further, it did not read or interpret subsection 2063(2) in the context of the entire statute or together with section 2063(2-A). The District Court also erred by reading conditions into 29-A M.R.S. § 2063(2) that do not exist.

Second, the District Court erred in finding Mr. Ray in violation of section 2063(2) because the record evidence was insufficient as a matter of law to support that result, the finding was based upon the District Court's clear misapprehension of the meaning of the evidence, and the "totality of the force and effect of the

evidence rationally persuades to a certainty that the District Court's finding does not represent the truth and right of the case." *See Harmon v. Emerson,* 425 A.2d 978, 982 (Me. 1981).

Third, the District Court committed obvious error by issuing a decision against Mr. Ray that arose out of an unlawful, retaliatory, and unconstitutional traffic stop and citation and a District Court proceeding where material omissions were made by Chief Rumsey that seriously impact Mr. Ray's substantial rights and harm the public reputations of the law enforcement community and judicial proceedings.

STANDARDS OF REVIEW

Issues of statutory interpretation are questions of law subject to de novo review. *McCarthy v. Guber,* 2023 ME 53, ¶ 10, 300 A.3d 804. When interpreting a statute, the Law Court's objective is "to give effect to the Legislature's intent." *Ashe v. Enterprise Rent-A-Car*, 2003 ME 147, ¶ 7, 838 A.2d 1157, 1159. Where the violation of a statute subjects a party to the imposition of a fine, the statute is penal, and the Law Court must strictly construe the statute. *State v. Santerre,* 2023 ME 63, ¶ 10, 301 A.3d 1244, 1248; *State v. Chittim,* 2001 ME 125, ¶ 5, 775 A.2d 381. However, the rule that the statute be construed strictly is "subordinate" to the rule "that the judicial interpretation must be reasonable and sensible, with a view to effectuating the legislative design and the true intent of the Legislature." *Santerre,*

2023 ME at ¶ 10 301 (citing *State v. Millett,* 392 A.2d 521, 525 (Me. 1978)). "All words in a statute are to be given meaning, and none are to be treated as surplusage if they can be reasonably construed." *Cobb v. Bd. of Counseling Pros. Licensure,* 2006 ME 48, ¶ 11, 896 A.2d 271.

Traffic violations must be proved by a preponderance of the evidence. 29-A M.R.S. § 103(4); M.R. Civ. P. 80F(j). “The burden of proof that a traffic infraction has occurred is on the State and must be established by a standard of a preponderance of the evidence.” 29-A M.R.S. § 103(4). When reviewing District Court adjudications of traffic infractions, the Law Court views the evidence in the light most favorable to the State to determine whether it supports a finding by a preponderance of the evidence that the threshold requirements for issuing a traffic infraction complaint have been met and then reviews whether the State has established every element of the infraction by a preponderance of the evidence. *See State v. Kremen*, 2000 ME 117, ¶ 13, 704 A.2d 964.

The Law Court reviews factual findings for clear error, and reviews legal conclusions based on those findings *de novo*. *See State v. Hall*, 2008 ME 174, ¶ 8, 960 A.2d 327. Legal issues do not include questions of weight to be given to evidence, but they do include whether the Record evidence was sufficient, as a matter of law, to support the result reached by the trial court. *See Withers v. Hackett,* 1998 ME 164, ¶¶ 7-10, 714 A.2d 798. Where there is no competent

evidence in the record to support the trial court decision, the Law Court must vacate the trial court's decision. *See id.* (vacating a decision on defamation where the record evidence was not sufficient, as a matter of law, to support a finding of defamation); *Rutland v. Mullen*, 2002 ME 98, ¶ 17, 798 A.2d 1104 (vacating a judgment finding tortious interference with a prospective economic advantage based on insufficiency of evidence); *State v. Tempesta*, 617 A.2d 566, 567 (Me. 1992).

Where parties to a Law Court appeal did not contest the accuracy or authenticity of a video recording used at trial, the Law Court may, in its appellate capacity, consider the recording in its entirety as it reviews the trial court's findings and conclusions. *See State v. Wilcox,* 2023 ME 10, ¶ 4, n. 2 (citations omitted) (holding that the Law Court may view the entirety of videos admitted in a trial court proceeding as it reviews the trial court's findings and conclusions).

In cases where an issue or an error was not raised or preserved in the District Court, but the Law Court determines that it cannot in good conscience allow an error to stand and a deprivation of a litigant's substantial rights to go uncorrected, the Law Court may also exercise its authority to overturn a District Court's decision on "obvious error" grounds. *See State v. Langley,* Me., 242 A.2d 688, 690 (1968). Under the obvious error standard of review, there must be (1) an error, (2) that is plain, and (3) that affects substantial rights. *See State v. Watson*, 2024 ME

24, ¶18. An error is plain if it is so clear under current law that the trial court can be expected to address it, even absent the defendant's timely identification and/or objection to it. *See State v. Dolloff*, 2012 ME 130, ¶ 36, 58 A.3d 1032. An error affects the defendant's substantial rights "if the error was sufficiently prejudicial to have affected the outcome of the proceeding." *Id.* ¶ 37 (quotation marks omitted). Once these three preliminary conditions are met, the Law Court then must determine whether the error also seriously affects the fairness and integrity or public reputation of judicial proceedings. *State v. Pabon*, 2011 ME 100, ¶ 29, 28 A.3d 1147.

ARGUMENT

I. THE DISTRICT COURT'S DECISION SHOULD BE VACATED BECAUSE IS IT PREMISED ON A MISTAKEN READ, INTERPRETATION, AND APPLICATION OF 29-A M.R.S. § 2063.

When interpreting section 2063 of Title 29-A *de novo*, the Law Court begins by examining the plain meaning of the statutory language because the fundamental rule of statutory interpretation is that the intent of the Legislature, as derived from the statutory language itself, controls. *See State v. Solomon*, 2015 ME 96, ¶ 9, 120 A.3d 661. “Stated succinctly, when the language chosen by the Legislature is clear and without ambiguity, it is not the role of the court to look behind those clear words in order to ascertain what the court may conclude was the Legislature's

intent." *Kimball v. Land Use Regulation Comm'n*, 2000 ME 20, ¶ 18, 745 A.2d 387. Likewise, it is not the role of the Law Court to read conditions into a statute that is otherwise clear and unambiguous. *Adoption of M.A.*, 2007 ME 123, ¶ 9, 930 A.2d 1088. In addition, the Law Court has a responsibility to interpret the entirety of section 2063, "giving due weight to design, structure and purpose as well as to aggregate language" and in a way that does not render any statutory language surplusage. *Dickau v. Vermont Mut. Ins. Co.*, 2014 ME 158, ¶ 22, 107 A.3d 621 (quoting *In re Hart*, 328 F.3d 45, 48 (1st Cir. 2003)).

Here, the District Court did not follow the basic rules of statutory interpretation and committed clear error by failing to examine the plain language of 2063 and, instead, explicitly misstated and misinterpreted it. Firstly, the District Court erred by ignoring the plain language of the statute and leaving essential elements of the statute, including the threshold requirement for the statute's applicability and the exceptions to the "ride to the right" requirement, out of its statutory analysis. (Trial Tr. 12:5-13:5.) Secondly, it erroneously interpreted the term "roadway" in section 2063 as including paved shoulders, which led to its misapprehension of the evidence it was viewing at trial. Finally, the District Court assigned a meaning to "traffic" that was different than the one in the Maine Motor Vehicle and Traffic Code and created a new statutory condition to find Mr. Ray in violation of the statute. (Trial Tr. 12:5-13:5.)

A. The District Court Mistakenly Overlooked the Plain Language of Section 2063(2), Which Does Not Require a Person Riding a Bike to Ride as Far Right as Practicable in the Roadway Unless the Initial Condition of Applicability Arises and None of the Exceptions Stated in the Preamble or Subsections (A) through (D) of Section 2063(2) Apply.

At trial, instead of reading section 2063 in its entirety and giving the unambiguous[11] statute its intended meaning, the District Court made the following proclamation regarding how to read and interpret the statute:

> I think the statute reads that you are -- as a cyclist, have an affirmative responsibility to move as far to the right as possible to let traffic pass. And if there's a companion cyclist, you have to make -- make accommodation for that by either slowing down or speeding up and then moving to the right. It's the way I read that statute. . . It says you are required to move as far to the right as practical to allow traffic to pass you. . . The statute says you have to move as far to the right as practical. . . . So that's my view of it. And that's how I read the statute. So I find the offense has been committed.

(Trial Tr. 12:5-13:5).

The District Court's clearly erroneous misstatement of Section 2063 of the Motor Vehicle and Traffic Code is sufficient basis for the Law Court to vacate the trial court's decision. *Compare id. with* 29-A M.R.S. 2063(2); *see McCarthy,* 2023 ME 53, ¶ 16, 300 A.3d 804 (vacating District Court's decision where it misstated child support statute). The District Court's "read" of what the statute "says" also

[11] *See Semian v. Ledgemere Transp., Inc.*, 2014 ME 141, ¶ 26, 106 A.3d 412 (holding that section 2063(2) is an unambiguous statute and, therefore, the Court need not look further than the plain language of the statute to interpret it).

omitted important language from the statute. Namely, the Court left out from its "read" the language that provides that the "riding as far right on the roadway" mandate is only triggered ***after the initial condition of applicably has been proven*** (i.e., when the cyclist's speed is 'less than the normal speed of traffic moving in the same direction at that time and place . . .'); ***and after a determination that none of the five exceptions described in the preamble and subsections (A) through (D) of the statute applies.*** *See* 29-A M.R.S. 2063(2);[12] *accord Semian v.*

[12] Section 2063(2) provides:

> 2. Riding to the right. A person operating a bicycle or roller skis upon a roadway at a speed less than the normal speed of traffic moving in the same direction at that time and place shall operate on the right portion of the way as far as practicable except when it is unsafe to do so as determined by the bicyclist or roller skier or:
>
> A. When overtaking and passing another roller skier, bicycle or other vehicle proceeding in the same direction;
>
> B. When preparing for or making a left turn at an intersection or into a private road or driveway;
>
> C. When proceeding straight in a place where right turns are permitted; and
>
> D. When necessary to avoid hazardous conditions, including, but not limited to, fixed or moving objects, vehicles, bicycles, roller skiers, pedestrians, animals, broken pavement, glass, sand, puddles, ice, surface hazards or opening doors from parallel-parked vehicles, or a lane of substandard width that makes it unsafe to continue along the right portion of the way. For purposes of this paragraph, "lane of substandard width" means a lane that is too narrow for a bicycle or roller skier and a vehicle to travel safely side by side in the lane.
>
> This subsection does not apply in a municipality that, by ordinance approved by the Department of Public Safety and the Department of Transportation, makes other provisions regarding the operating location of a bicycle or roller skier on a roadway.

29-A M.R.S. § 2063(2).

Ledgemere Transp., Inc., 2014 ME 141, ¶¶ 26-27, 106 A.3d 412.[13] In addition, the District Court's read of the statute ignores the language in the statute intended by the Legislature to give important protections and rights to bicyclists and other vulnerable users,[14] and reads bicyclists out of the definition of "traffic" as that term should be read in section 2063(2).[15] Finally, as discussed in greater detail below, the District Court's read was flawed because it explicitly and implicitly creates new conditions and obligations for bicyclists like requiring bicyclists to ride on paved shoulders, requiring bicyclists to always move over for motor vehicle traffic that wants to pass, and requiring bicyclists to ride as far right as "possible" or

[13] In *Semian*, the Law Court examined an earlier version of the statute with the same initial condition of applicability (i.e. that the bicyclist must be proven to be traveling less than the normal speed of traffic moving in the same direction at that time and place) but only with the four exceptions set forth in 2063(2)(A-D) in place. In 2013, the Legislature amended the statute to create a fifth exception to the mandate. Namely, it amended the statute to also make it clear that a bicyclist need not ride as far right as practicable in the roadway "when it is unsafe to do so ***as determined by the bicyclist***." *See* 29-A M.R.S. § 2063(2) (emphasis added); *see also* P.L. 2013, c. 241, §4; *and see* L.D. 1460 (126th Legis. 2013) ("This amendment does the following. . . 5. In the provision of law that requires a person operating a bicycle or roller skis upon a roadway to operate on the right portion of the way as far as practicable except when it is unsafe to do so, it specifies that the determination of safety is made by the bicyclist or roller skier.")

[14]Vulnerable users are people on Maine's roadways and paved shoulders—including bicyclists—who are more vulnerable to injury than people in automobiles, trucks, or other similar motor vehicles. *See* 29-A M.R.S. § 101 (92-A). Here, the language of 29-A M.R.S. § 2063 makes it clear that the Legislature appreciated that one of the ways to make bicyclists less susceptible to harm is to give them choices about where to ride. This is why there is a section in the statute that gives bicyclists the option of riding on paved shoulders in addition to the section that discusses roadway positioning. *See together* 29-A M.R.S. § 2063 (2) and 29-A M.R.S. § 2063(2-A). Further, this is why the ride as far right as practicable on the roadway mandate only applies when bicyclists are traveling less than the normal speed of traffic moving in the same direction at that time and place, when they haven't determined that it is unsafe to ride as far right as practicable on the roadway, and when none of the other exceptions to the mandate are present. *See* 29-A M.R.S. § 2063*; see also see* L.D. 1460 (126th Legis. 2013).

[15] "As used in [Title 29-A], unless the context otherwise indicates, the following terms have the following meanings . . . 'Traffic' means pedestrians, ridden or herded animals, vehicles, bicycles and other conveyances either singly or together using public way for travel." 29-A M.R.S. §§ 101 (preamble) & 101(83).

"practical" on whatever paved surface is available (instead of as far right as "practicable" on the roadway once the initial condition of applicability has been met and none of the five exceptions apply). *See Adoption of M.A.*, 2007 ME 123, ¶ 9, 930 A.2d 1088 (new conditions may not be read into an unambiguous statute).

Just as the Law Court concluded that the appellant's argument in the *Semian* case was based on a misapprehension of the plain meaning of section 2063 when it read language into section 2063(2) that did not exist, the Law Court should find that the District Court's conclusion that Mr. Ray violated section 2063(2) is based on the District Court's misapprehension of the statute. *See Semian,* 2014 ME 141, ¶ 28, 106 A.3d 412.

B. The District Court Mistakenly Read the Term "Roadway" in Section 2063 to Include Paved Shoulders, Thereby Leading to Its Erroneous Conclusion That Mr. Ray Was Not Riding as Far Right as Practicable on the Roadway.

The District Court's mistaken interpretation of the term "roadway" also led to its erroneous conclusion that Mr. Ray was in violation of subsection 2063(2) of the statute. More specifically, it is clear from the trial transcript that the District Court interpreted the term "roadway" in 2063(2) to include paved shoulders. Although the Legislature did not define the term "roadway" in section 2063 or in section 101 of the Maine Motor Vehicle and Traffic Code, this Court has already

established that 2063 is not ambiguous, and the language in it should be given its plain meaning. *See Semian,* 2014 ME 141, ¶ 26, 106 A.3d 412.[16]

"Roadway," as used in subsection 2063(2) of the statute, means travel lane and is distinct location from "paved shoulders," which are discussed in subsection 2063(2-A) of the statute. We know that roadway means travel lane because in subsection 2063(2)(D), the Legislature uses the terms "roadway" and "lane" interchangeably. *See* 29-A M.R.S. § 2063(2)(D) ("or a lane of substandard with that makes it unsafe to continue along the right portion of the way"). Further, reading "roadway" to mean travel lane is consistent with how the term "roadway" is defined in the Uniform Motor Vehicle Code, which is as follows:

> Roadway - That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the sidewalk, berm or shoulder even though such sidewalk, berm or shoulder is used by persons riding bicycles or other human powered vehicles.

National Committee on Uniform Traffic Laws and Ordinances*, Uniform Vehicle Code* §1-186 (2000) (last visited April 29, 2024) (available at http://iamtraffic.org/wp-content/uploads/2013/01/UVC2000.pdf).[17]

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[16] As noted earlier, the statute has been amended since the version referenced in the *Semian* opinion. However, the amended language did not involve any changes that involve the term roadway in section 2063(2) or the term "shoulder" in 2063(2-A). *See* P.L. 2013, c. 241, §4; *and see* L.D. 1460 (126th Legis. 2013).

[17] In addition, interpreting the term "roadway" the same way that the National Committee on Uniform Traffic Laws and Ordinances interprets it is consistent with Maine's statutory construction statute, which provides: "Technical words and phrases and such as have a peculiar meaning convey such technical or peculiar meaning." 1 M.R.S. § 72(3). Giving the term the same meaning assigned to it by the National

In contrast, defining "roadway" to include paved shoulders, which is what the District Court did when it found Mr. Ray to be in violation of 29-A M.R.S. § 2063(2) because he was not riding in the far right of the shoulder like the other cyclist, *see* Trial Tr. 12:24-13:3, renders the language of 29-A M.R.S. § 2063(2-A)[18] mere surplusage. Rendering language, or entire subsections of a statute, surplusage is inconsistent with the basic rules of statutory interpretation and Maine law. *See e.g. Howard,* 2024 ME 9, ¶ 11, 308 A.3d 213 ("Surplusage occurs when a construction of one provision of a statute renders another provision unnecessary or without meaning or force.")(citation and internal quotations omitted); *Dickau*, 2014 ME 158, ¶ 22, 107 A.3d 621 ("We reject interpretations that render some language mere surplusage."); *Labbe*, 404 A.2d at 567 (same).

Reviewing subsections 2063(2) and 2063(2-A) together, it becomes readily apparent that there would be no reason for the Legislature to enact section 2063(2-A) if the Legislature intended for the mandate in section 2063(2) to require bicyclists to ride as far right as practicable in paved shoulders. Put differently,

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Committee on Uniform Traffic Laws is also consistent with longstanding Maine statutory interpretation precedent. "In construing a statute, technical or trade expressions should be given a meaning understood by the trade or profession." *State v. Vogl*, 99 A.2d 66, 70 (Me. 1953).

[18] Section 2063 (2-A) provides:

> **Bicycle or roller skier traveling on shoulder.** Notwithstanding subsection 2, a person operating a bicycle or roller skis ***may*** travel on paved shoulders.

29-A M.R.S. § 2063(2-A) (emphasis added); *see also* 1 M.R.S. § 71 (9-A) ("'May' indicates authorization or permission to act.").

riding within paved shoulders is something bicyclists *may* do in addition to riding on the far right of the roadway or in other locations (e.g. in the center of the travel lane for safety, to the left side of the travel lane when preparing for a left turn, on the sidewalk, on a bike path), but it is never something that bicyclists *must* do.

That the District Court's decision rested on its erroneous premise that Mr. Ray was required by the statute to ride as far right as practicable in the shoulder, as opposed to as far right as practicable in the roadway, *see* Trial Tr. 12:5-10 & 12:25-13:4, provides an additional basis for the Law Court to vacate the District Court's decision. *See Howard,* 2024 ME 9, 308 A.3d 213 (vacating child support decision where District Court's erroneous decision was premised on its failure to consider the entire statutory scheme at issue).

C. The District Court Erred by Interpreting Section 2063(2) as Creating a Condition Requiring a Cyclist to Move as Far Right as Possible Anytime Motor Vehicle Traffic Desires to Pass Them.

The District Court erred and abused its discretion when it built this new condition into its interpretation of section 2063(2):

> You're claiming, Mr. Ray . . . that when a vehicle is approaching from behind, you are not required to move as far to the right as practicable . . . I think the statute reads that you are – as a cyclist, have an affirmative responsibility to move as far to the right as possible to let traffic pass . . . . It's the way I read that statute . . . It says you are required to move as far to the right as practicable to allow traffic to pass you . . .

(Trial Tr. 11:22-12:20.) *See Adoption of M.A.*, 2007 ME 123, ¶ 9, 930 A.2d 1088 (new conditions may not be read into an unambiguous statute).

Contrary to what the District Court stated at trial, there is no language anywhere in the statute that "requires" bicyclists to "move as far right as practicable" when a vehicle is approaching from behind. In addition, the District Court's read of the statute as creating an "affirmative responsibility" on the part of cyclists whenever "vehicles are approaching from behind" to "move as far right as possible to let [motor vehicle] traffic pass" is inconsistent with the plain language of 29-A M.R.S. § 2063(2), Maine precedent, and rules of statutory interpretation discussed above. *See* Section I (A), *supra.*

Further, the District Court's interpretation of the statute fails to acknowledge that bicyclists are included within the definition of traffic, are lawful users of the roadway, and often ride "at the speed of normal traffic moving in the same direction at that time and place." This is particularly likely where traffic is approaching and moving through school zones, marked and signed crosswalks, and other locations where the traffic signs, surface conditions and other factors result in the normal speed of traffic being close to or slightly below the posted speed limit, all of which were present in the instant case.

Finally, the District Court's interpretation of the statute is mistaken because it negates the safety protections clearly written into the statute for bicyclists and

ignores the plain language in 2063(2) in which the Legislature makes it clear to motorists and others that there are many situations where bicyclists need not move to the right simply to accommodate the desire of a motor vehicle operator to pass.

In sum, the District Court misconstrued and misapplied the statute at issue, and the statutory mandate contained within section 2063 did not and does not apply to Mr. Ray. Therefore, judgment for the State should be vacated and this matter should be remanded to the District Court for entry of judgment for Mr. Ray. *See State v. Chittim,* 2001 ME 125, 775 A.2d 381.

II. THE DISTRICT COURT'S DECISION CANNOT STAND UNDER *HARMON*.

The District Court's decision against Mr. Ray was also clearly erroneous under the test articulated by the Law Court in *Harmon*:

> The essential impact of the `clearly erroneous' rule is that the trial judge's findings stand unless they clearly cannot be correct because there is no competent evidence to support them. An appellate court can reverse a finding of fact only where (1) there is no competent evidence in the record to support it, or (2) it is based upon a clear misapprehension by the trial court of the meaning of the evidence, or (3) the force and effect of the evidence, taken as a total entity, rationally persuades to a certainty that the finding is so against the great preponderance of the believable evidence that it does not represent the truth and right of the case.

425 A.2d at 982.

A. There is No Competent Evidence in the Record to Support the District Court's Material Findings.

As discussed above, there is no competent evidence in the record that supports the District Court's presumed threshold finding that the State met its burden of proof with respect to establishing all of the required elements of 29-A M.R.S. § 105 (the statute that outlines the elements that must be in place for a lawful traffic stop and lawful traffic citation to be issued under Title 29-A) were met, or that the traffic infraction complaint that was the subject of the January 3, 2024 proceeding was lawfully issued, valid, and properly before the Court.[19]

There is also insufficient evidence in the record to establish that Mr. Ray was traveling "at a speed less than the normal speed of traffic moving in that direction at that time and place" before Mr. Rumsey pulled him over and issued a citation to him. As discussed above, the only evidence in the record regarding eastbound traffic on Tuttle at the time and place at issue was that the two bicyclists were traveling at 17 mph (Trial Tr. 5:6-7), or 17-19 mph (Trial Tr. 7:16-18), as they approached and entered a school and pedestrian zone where there were speed limit signs of 15mph and 25mph, pavement markings reminding traffic of the school zones, crosswalk pavement markings, and eight yellow pedestrian warning

[19] The only competent evidence in the record that speaks to the issue of whether Mr. Rumsey was in uniform at the time of the stop and issuance of citation was circumstantial evidence favorable to Mr. Ray. Namely, if Mr. Rumsey had been in uniform when he told Mr. Ray and his fellow cyclist to ride single file, it is more likely than not that Mr. Ray would not have sworn at him. (Trial Tr. 5:8-12).

signs (Trial Video), and there was a motor vehicle operator (Mr. Rumsey) traveling behind them at that same rate of speed. Although there was evidence that the one eastbound motorist (again, Mr. Rumsey) desired to pass the cyclists, there was no competent evidence in the Record to suggest, or for the District Court to find, that Mr. Rumsey's desired passing speed would have been the "normal speed" for the school and pedestrian zones or that Mr. Ray's chosen operational speed for the school and pedestrian zones was less than the "normal speed" for that time and place. *See* 29-A M.R.S. § 2063(2) (initial condition of applicability) & 29-A M.R.S. 2063(5) (requiring cyclists to exercise due care near pedestrian yield/warning signs); 29-A M.R.S. § 2074 (requiring careful, prudent and reasonable speed, regardless of posted speed limit depending on circumstances then existing); 29-A M.R.S. § 2056 (requiring bicyclists to exercise due care in places where pedestrians may be present); 29-A M.R.S. § 2057 (requiring all traffic to obey traffic control devices, including warning and yield signs); *see also* Statement of Facts (including citations and footnotes), *supra*.

In addition, there is no competent evidence in the record to support any presumed or other finding by the District Court that Mr. Ray did not make the threshold 2063(2) "bicyclist determination" that it was unsafe for him to ride further right. Per the statute's directive, it was Mr. Ray's safety determination (not Mr. Rumsey's or the District Court's) that mattered when it came to the question of

whether it was safe to ride further right.[20] The only competent evidence in the record supports the fact that Mr. Ray made that determination. (Trial Tr. 11:4-16).

Although it is conceded that the District Court disagreed with Mr. Ray's safety determination and articulated its disagreement as follows: "the fact that there was another cyclist beside [Mr. Ray] tells [Mr. Ray] that there was a lot more room to the right that would have been practical to move over." (Trial Tr. 12:25-13:5), the Court's determination that it was "practical" for Mr. Ray to have ridden further right is not the same as Mr. Ray making the requisite statutory determination that it was "unsafe" for him to ride further right.[21] What mattered at trial, and what

[20] The Legislature is presumed to have understood that bicyclists' safety determinations will vary with respect to their age, health, and technical, physical, and cognitive abilities. The Legislature is also presumed to have appreciated that different bicyclists will have different bodies and capacities to respond to and absorb uneven, cracked, and other dangerous surface conditions and hazards in the way. Likewise, the Legislature is presumed to have understood that bicyclists' bicycle frames, tires, braking systems, and other components will vary with respect to their ability to manage and respond to hazards on the way, imperfections in surface conditions, and the movements of other traffic navigating dangerous conditions. Further, the Legislature is presumed to have appreciated that whether a bicyclist determines that a riding location is unsafe for them may depend on whether they think it is safe to ride in locations that do not allow them to be predictable for other traffic, including other bicycle traffic and motor vehicle traffic. *See* Me. Dep't of State, *Maine Motorist Handbook and Study Guide, 10-2 – 10-4* (commenting: "A skillful rider is predictable and holds a steady line. An unskillful rider may swerve without notice; directing cyclists to scan the road 50 to 100 feet ahead for road hazards like drain grates, potholes, railroad tracks and road debris and to "[a]lways ride straight and be predictable," and "not weave from side to side, or suddenly move out into traffic"). Because the list of factors that can potentially go into a bicyclist's safety determination of where to ride is so voluminous and is not exhaustive, the Legislature intentionally and explicitly made the test for determination on safety to a subjective one, left to the determination of each rider. *See* L.D. 1460 (126th Legis. 2013) ("This amendment does the following. . . 5. In the provision of law that requires a person operating a bicycle or roller skis upon a roadway to operate on the right portion of the way as far as practicable except when it is unsafe to do so, **it specifies that the determination of safety is made by the bicyclist** or roller skier.")(emphasis added). As such, once a bicyclist like Mr. Ray determines that it is unsafe for them to ride as far right as practicable, they cannot and should not be held guilty of a violation of section 2063.

[21] It bears mentioning that bicycle and motor vehicle traffic make operational determinations all the time that may be "practical," but still unsafe for themselves or others. For example, upon encountering a yellow light at an intersection, there are bicyclists who may speed up and cycle through the intersection

matters on appeal, is that there is no competent evidence in the Record that supports a finding that on July 7, 2023, Mr. Ray did not determine that it was "unsafe" for him to ride further right at or around the fire barn where he was approached and then pulled over and cited by Mr. Rumsey.

The District Court's presumed finding that none of the exceptions set forth in section 2063 applied is also clearly erroneous, not based on any competent evidence in the Record, and must be set aside as a matter of law. As discussed above, this Court made it clear in *Semian* that the affirmative command requiring a bicyclist to ride as far right as practicable in the roadway does not apply unless the plaintiff has established by a preponderance of the evidence both that the initial conditions of applicability have been satisfied ***and*** that none of the exceptions described in sections (A) through (D) apply. *See Semian,* 2014 ME 141, ¶ 27, 106 A.3d 412.

In this case, Mr. Ray concedes that exceptions A & B of section 2063(2) do not apply to this case but maintains that there is no competent evidence in the

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believing that is "practical" to get through the intersection sooner rather than later. Yet, there are bicyclists who will elect to use their brakes and not enter the intersection when seeing a yellow light because, even though it may be practical to get through the intersection sooner rather than later, they recognize that it may be unsafe for them or other traffic to risk entering the intersection on a yellow. Similarly, there are drivers who elect to talk or text on hands-free cell phones or other devices while driving because it is "practical" to take care of business or personal matters while driving, and there are drivers who elect to avoid using any hands-free devices while driving because they have determined that driving with them is unsafe, despite the fact that it may be practical to multi-task while driving.

Record to support the District Court's presumed finding that that exceptions C & D do not apply.

With respect to exception C to section 2063(2), which exempts a bicyclist from riding as far right as practicable "when proceeding straight in a place where right turns are permitted," Officer Rumsey offered no testimony or evidence on behalf of the State that would allow the State to prove by a preponderance of the evidence that the exception did not apply. Similarly, there was no competent evidence in the Record to support a presumed finding by the District Court that Mr. Ray was not riding straight in a place where right turns are permitted. In fact, the only evidence in the Record (Mr. Ray's testimony and the demonstrative video) establishes that exception C to section 2063(2) applies. Mr. Ray's testimony was that he was "riding within the statute's intent," (Trial Tr. 12:16), and the demonstrative video shows Mr. Ray proceeding straight in a handful of places where right turns were permitted (i.e., the fire barn, side streets, driveways) and establishes that the exception applies. (Trial Video.)

Similarly, Mr. Ray maintains that there was no competent evidence in the Record supporting the District Court's presumed finding that exception D to section 2063(2) did not apply. To the contrary, the only competent evidence in the record establishes that before Mr. Rumsey pulled Mr. Ray over, he was riding to the left of hazardous conditions because he felt that his chosen positioning was

necessary to avoid "hazardous conditions, including, but not limited to, fixed or moving objects , . . bicycles . . . broken pavement . . . surface hazards . . ." *See* 29-A M.R.S. § 2063(2)(D) *with* Trial Tr. 6:13-17, 7:18-19, 11:4-16 & Trial Video at 00:05-06; 00:12-16); *see also* Statement of Facts, *supra* (including citations and footnotes).

Finally, if the Law Court agrees with Mr. Ray that the plain meaning of "roadway" as used in section 2063(2) does not include "paved shoulders," it should also agree that there is no competent evidence in the record to support the District Court's decision that Mr. Ray was not riding as far right as practicable in the roadway. This is so because there is insufficient competent evidence in the record to establish that Mr. Ray was riding anywhere other than at the edge of the shoulder's fog line or as far right as practicable in the roadway/travel lane. (Trial Tr. 6:13-17; Trial Video.)

In sum, because there is insufficient competent evidence in the record to support the District Court's presumed or actual findings on these material issues, the District Court's finding "that the offense has been committed" should be vacated by the Law Court. *See Withers,* 1998 ME 164, ¶ 7, 714 A.2d 798 (vacating a decision on defamation where the record evidence was insufficient as a matter of law to support a finding of each of the required underlying elements of a tort); *Rutland*, 2002 ME 98, ¶ 17, 798 A.2d 1104 (same).

B. THE FINDING AGAINST MR. RAY WAS BASED UPON A CLEAR MISAPPREHENSION BY THE DISTRICT COURT OF THE MEANING OF THE EVIDENCE.

As is evidenced by the District Court's statements at trial in support of its decision that Mr. Ray committed the traffic infraction offense, the District Court appears to have misapprehended the meaning of the evidence before it. Namely, the District Court mistakenly concluded that its evidentiary finding that Mr. Ray was able to ride side-by-side with another cyclist necessitated a finding that he was not riding as far right as possible and in violation of section 2063(2). *See* Trial Tr. 12:25-13:5. However, as explained above, evidence of another bicyclist riding side-by-side with Mr. Ray and to Mr. Ray's right was nothing more than evidence of the other bicyclist electing to ride in the shoulder pursuant to section 2063(2-A) and Mr. Ray electing to ride to the left of the other cyclist and on the edge of the fog line or as far right as practicable in the roadway/travel lane. *See* 29-A M.R.S. § 2063 (2) & (2-A).

To the extent that the Law Court believes it appropriate to presume that the District Court made a factual finding that one or both cyclists were not riding as far right as practicable in the roadway, the District Court's decision would still be based on a misapprehension of the evidence because, as discussed above, there was insufficient evidence in the record for the District Court to find that: (1) the

threshold conditions required for valid traffic infraction complaint were met, (2) the initial condition of applicability was present, and (3) none of the exceptions set forth in the preamble to or subsections (A) through (D) of 29-A M.R.S. § 2063 applied to exempt Mr. Ray from the statutory mandate. *See* Section II (A), *supra.*

C. THE TOTALITY OF THE FORCE AND EFFECT OF THE EVIDENCE RATIONALLY PERSUADES TO A CERTAINTY THAT THE DISTRICT COURT'S FINDING DOES NOT REPRESENT THE TRUTH AND RIGHT OF THE CASE.

The Law Court should also vacate the District Court's decision because the "totality of the force and effect of the evidence rationally persuades to a certainty that the District Court's finding does not represent the truth and right of the case." *See Harmon,* 425 A.2d at 982. Put differently, when viewed as a whole, the evidence suggests that Mr. Rumsey made an unlawful, unconstitutional, and retaliatory stop of Mr. Ray and issued an invalid and unlawful citation to Mr. Ray because Mr. Rumsey's ego could not allow Mr. Ray to go unpunished after Mr. Ray swore at him. There was never any lawful authority or even probable cause to support Mr. Rumsey's decision to stop and cite Mr. Ray on July 7, 2023 for a violation of section 2063(2), and the evidence in the Record is certainly not sufficient for the District Court's decision against Mr. Ray to stand.

Based on the foregoing, the District Court's decision was clearly erroneous under the *Harmon* test, and the traffic infraction proceeding should be remanded to Violations Bureau for entry of judgment in favor of Mr. Ray.

III. THE DISTRICT COURT'S DECISION SHOULD BE VACATED PURSUANT TO THE OBVIOUS ERROR TEST BECAUSE IT IS PREMISED ON A SERIES OF PLAIN ERRORS AND INJUSTICES THAT AFFECT MR. RAY'S SUBSTANTIAL RIGHTS AND REFLECT POORLY ON THE PUBLIC REPUTATION OF THE LAW ENFORCEMENT COMMUNITY AND THE REPUTATION OF JUDICIAL PROCEEDINGS.

As stated above, in cases where an issue was not raised or preserved at trial, but the Law Court determines that there was a plain and obvious error that affects a party's substantial rights and seriously affects the fairness and integrity or public reputation of judicial proceedings, the Law Court may vacate the underlying trial court decision. *Pabon*, 2011 ME 100, ¶ 29, 28 A.3d 1147.

Here, the District Court's decision against Mr. Ray should also be vacated under the "obvious error" test because it, among other things it is plainly erroneous for all the reasons stated above and also because it: (a) arises out of an unlawful, retaliatory, and unconstitutional traffic stop made "immediately" after Mr. Ray engaged in protected speech, (b) involves a traffic complaint that Mr. Rumsey was not lawfully permitted to issue, and (c) is based on material omissions and an abuse of power by Mr. Rumsey that has seriously impacted Mr. Ray's substantial rights,

harmed the public reputations of the law enforcement community and judicial proceedings, and compromised the fairness and integrity of the January 3, 2024 trial.

Although Mr. Ray recognizes that he did not raise objections to these underlying errors and injustices at the proceeding below, and although he and the undersigned appreciate that the Law Court rarely vacates civil decisions on obvious error grounds, this case provides an opportunity for the Law Court to act in good conscience and correct the wrongs before it. It also provides occasion to remind law enforcement officers who elect to step into the role of quasi prosecutors on Maine roadways and in Maine Courts of their duty of candor to the public and Court, their responsibility not to abuse power regardless of whether in or out of uniform, and their obligation to ensure constitutional protections and procedural justice to those whom they are pursuing in or out of Court. *See* Me. Dep't of State, *Law Enforcement Code of Ethics.*

As such, the Court is asked to vacate the decision on obvious error grounds and remand this matter to the District Court with instructions to dismiss the complaint or enter a judgment in favor of Mr. Ray. *See State v. Robbins,* 2019 ME 138, 215 A.3d 788 (judgment vacated under obvious error rule based on prosecutor misconduct).

CONCLUSION

For the reasons set forth above, the Court is respectfully requested to vacate the decision of the District Court and remand the matter back to the District Court for entry of judgment in favor of Mr. Ray.

Dated at Portland, Maine, this 6th day of May, 2024

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CERTIFICATE OF SERVICE

I, Lauri Boxer-Macomber, hereby certify that on May 6, 2024, I hand delivered one (1) original and ten (10) copies of the Brief of Appellant Christopher Ray to the Law Court and two (2) copies via U.S. Mail, postage prepaid, to District Attorney Jacqueline Sartoris and Assistant District Attorney Grant S. Whelan, Cumberland County District Attorney's Office, 142 Federal St, Portland, ME 04101. I also certify that on May 6, 204, I also sent an electronic copy of the Brief of Appellant Christopher Ray in electronic form to the Clerk of the Law Court via email at: lawcourt.clerk@courts.maine.gov and copied District Attorney Jacqueline Sartoris at: sartoris@cumberlandcounty.org and Assistant District Attorney Grant S. Whelan at: whelan@cumberlandcounty.org .

Dated: May 6, 2024

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