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## PREVIEW; *City of Helena v. Parsons*: Reckless Vigilante or Good Samaritan Done Wrong?

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**PREVIEW; *City of Helena v. Parsons*:  
Reckless Vigilante or Good Samaritan Done Wrong?**

**Matthew Paoli-Asaro**

Oral arguments for *City of Helena v. Parsons* are scheduled for Wednesday, July 25, 2018, at 9:30 a.m., in the Courtroom of the Montana Supreme Court, Joseph P. Mazurek Justice Building in Helena, Montana. Lance P. Jasper is expected to argue on behalf of the Appellant, Ronald S. Parsons, and Assistant Attorney General Maddell Ployhar is expected to argue on behalf of the Appellee City of Helena.

### I. INTRODUCTION

This case arises from Ronald Parsons' ("Parsons") actions that ended a police chase outside an elementary school in Helena in March of 2016.<sup>1</sup> The city of Helena ("Helena") charged Parsons with negligent endangerment and reckless driving because he maneuvered his truck and trailer to block the route of a suspect evading law enforcement, which caused the suspect to crash.<sup>2</sup> The Arrest by a Private Person statute authorizes a person to use reasonable force to arrest another when there is probable cause to believe that the person is committing or has committed an offense.<sup>3</sup> Parsons attempted to use this statute as a defense, but was barred from doing so as both the municipal court and the district court concluded that the statute was inapplicable to Parsons' criminal case.<sup>4</sup> The jury was therefore not instructed on the statute in any way, and Parsons was convicted on both charges.<sup>5</sup> Parsons appeals what he contests were substantially prejudicial rulings, which led to his conviction.<sup>6</sup> The main issue here is whether, by not instructing the jury on the Arrest by a Private Person statute, the court substantially prejudiced Parsons and deprived him of a fair trial.

### II. FACTUAL AND PROCEDURAL BACKGROUND

On March 13, 2016, Chris Moore led Lewis and Clark

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<sup>1</sup> Appellant's Opening Brief at 2, *City of Helena v. Parsons*, [https://supremecourtdocket.mt.gov/APP/connector/8/449/url/321Z246\\_03W910E6F002H27.pdf](https://supremecourtdocket.mt.gov/APP/connector/8/449/url/321Z246_03W910E6F002H27.pdf) (Mont. May 21, 2018) (No. DA 17-0576).

<sup>2</sup> *Id.*

<sup>3</sup> MONT. CODE ANN. § 46-6-502(1) (2017).

<sup>4</sup> Appellant's Opening Brief, *supra* note 1, at 6-7.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 6.

County Sheriff's Deputy Greg Holmlund on an extensive high-speed chase through residential and school areas.<sup>7</sup> Ronald Parsons, the Appellant, observed the chase while driving his truck and towing his boat.<sup>8</sup> As the chase approached him, Parsons maneuvered his truck and boat trailer to block the path of the fleeing Moore.<sup>9</sup> Moore lost control of his motorcycle and crashed.<sup>10</sup> He suffered injuries and was detained by police and charged with several offenses.<sup>11</sup> For his part in detaining Moore, Parsons was charged with negligent endangerment and reckless driving.<sup>12</sup>

Parsons pled not guilty and filed a motion to dismiss, arguing that the Arrest by a Private Person statute authorized him to stop the chase.<sup>13</sup> The municipal court denied the motion, explaining it was not clear why Parsons had acted, and the statute only provides immunity from civil liability, not criminal.<sup>14</sup> Later in the proceedings, the City filed motions to exclude any affirmative defenses Parsons might argue and to exclude several jury instructions, including one regarding the Arrest of a Private Person statute.<sup>15</sup> After a hearing on the motions, the municipal court ordered that Parsons could not use the Arrest by a Private Person statute as a defense because it does not apply to the criminal charges against Parsons.<sup>16</sup> The court explained it had already decided it was not relevant in Parsons' initial motion to dismiss.<sup>17</sup> The lower court also considered it an affirmative defense, which would have required written notice of the defense to the court and to Helena.<sup>18</sup>

In his statement at trial, Parsons was allowed to explain his thought process and the reasons for his actions without support from the Arrest by a Private Person statute in any manner of jury instruction.<sup>19</sup> The jury in the Helena Municipal Court convicted Parsons of both charges. The district court upheld the conviction and remanded the case back to the Municipal Court for sentencing.<sup>20</sup> Parsons was sentenced on September 20, 2017. He now appeals his

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<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> Brief of Appellee at 5, *City of Helena v. Parsons*, [https://supremecourtdocket.mt.gov/APP/connector/9/450/url/321Z24D\\_040WFTGRV0003WV.pdf](https://supremecourtdocket.mt.gov/APP/connector/9/450/url/321Z24D_040WFTGRV0003WV.pdf) (Mont. April 6, 2018) (No. DA 17-0576).

<sup>15</sup> Appellant's Opening Brief, *supra* note 1, at 2.

<sup>16</sup> Brief of Appellee, *supra* note 14, at 9.

<sup>17</sup> *Id.* at 9.

<sup>18</sup> *Id.* at 7.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 3.

conviction of negligent endangerment and reckless driving.<sup>21</sup>

### III. SUMMARY OF THE ARGUMENTS

The Arrest by a Private Person statute authorizes a private person to use reasonable force to detain an individual whom he or she has probable cause to believe is committing or has committed an offense, and the existing circumstances require the individual's immediate arrest.<sup>22</sup> The statute further requires that the private person making an arrest immediately notify the nearest available law enforcement agency.<sup>23</sup> The parties disagree as to whether this statute is relevant to the present matter, and accordingly, whether the jury should have been informed of it.

In order to find Mr. Parsons guilty of negligent endangerment, the jury had to find that he consciously disregarded a risk, and that to do so was a gross deviation from the standard of conduct a reasonable person would observe in the actor's situation.<sup>24</sup> To find him guilty of reckless driving, the jury had to find that he operated a vehicle with "willful or wanton disregard . . . for the safety of persons or property."<sup>25</sup> Parsons argues the Arrest by a Private Person statute would controvert these findings of recklessness and negligence because the jury would see his actions through a different lens of reasonableness.<sup>26</sup> The State contests the conviction on these two charges proves that Parsons was acting recklessly and negligently, and therefore the force used could not have been reasonable.<sup>27</sup>

#### A. Appellant Ronald Parsons

Parsons believes the jury should have had an opportunity to measure the reasonableness of his conduct in light of the Arrest by a Private Person statute.<sup>28</sup> Parsons argues that if the jury had been informed of the statute, he would have been less likely to be convicted.<sup>29</sup> He contests the Municipal Court should have either permitted him to raise the statute as a defense, taken judicial notice of the statute, or instructed the jury of the statute.<sup>30</sup> By failing to inform the jury of the statute in any manner, Parsons contends he

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<sup>21</sup> *Id.*

<sup>22</sup> MONT. CODE ANN. § 46-6-502(1).

<sup>23</sup> MONT. CODE ANN. § 46-6-502(2).

<sup>24</sup> Brief of Appellee, *supra* note 14, at 13.

<sup>25</sup> *Id.*

<sup>26</sup> Appellant Opening Brief, *supra* note 1, at 11.

<sup>27</sup> Brief of Appellee, *supra* note 14, at 15.

<sup>28</sup> Appellant Opening Brief, *supra* note 1, at 20.

<sup>29</sup> *Id.* at 11.

<sup>30</sup> *Id.* at 6.

was substantially prejudiced.<sup>31</sup>

Parsons mainly focuses on the lower court’s allegedly erroneous designation of the Arrest by a Private Person statute as an affirmative defense, which generally requires a defendant to give notice. Parsons believes the statute is a negative defense.<sup>32</sup> He distinguishes that while an affirmative defense requires a defendant to admit to the act charged but “seeks to justify, excuse or mitigate it,” a negative defense serves to controvert an adversary’s claim.<sup>33</sup> Parsons does not admit to acting recklessly or negligently.<sup>34</sup> Additionally, there is no basis under statutory or case law to conclude the Arrest by a Private Person statute constitutes an affirmative defense.<sup>35</sup>

Essentially, Parsons argues the statute would provide an alternative lens of reasonableness through which a jury could evaluate his conduct. Parsons concludes by arguing he was substantially prejudiced when the jury did not have the opportunity to evaluate his conduct in light of the statute.<sup>36</sup> Had the jury been given that opportunity, Parsons contests, he would have been less likely to be convicted.<sup>37</sup>

### *B. Appellee City of Helena*

The City of Helena side-steps Parsons’ affirmative defense argument and instead focuses on the relevance of the statute to the case. It argues that the lower courts were correct in that the statute does not provide a defense to the offenses with which Parsons was charged and is therefore irrelevant.<sup>38</sup> Accordingly, Parsons’ substantial rights were not violated by failing to inform the jury of the statute in any manner.<sup>39</sup>

The City continuously asserts that the statute does not provide a defense to the offenses with which Parsons was charged.<sup>40</sup> This is in part because Helena claims the statute only provides civil immunity, not criminal immunity.<sup>41</sup> It further supports the assertion

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<sup>31</sup> *Id.*

<sup>32</sup> Appellant Opening Brief, *supra* note 1, at 7-8.

<sup>33</sup> *Id.*

<sup>34</sup> Appellant Reply Brief at 3, *City of Helena v. Parsons*, [https://supremecourtdocket.mt.gov/APP/connector/10/451/url/321Z25P\\_051C158ZD00001K.pdf](https://supremecourtdocket.mt.gov/APP/connector/10/451/url/321Z25P_051C158ZD00001K.pdf) (Mont. May 22, 2018) (No. DA 17-0576).

<sup>35</sup> Appellant Opening Brief, *supra* note 1, at 12; *see also* MONT. CODE ANN. § 46-15-323(2)).

<sup>36</sup> *Id.* at 10.

<sup>37</sup> *Id.* at 1.

<sup>38</sup> Brief of Appellee, *supra* note 14, at 8.

<sup>39</sup> *Id.* at 9.

<sup>40</sup> *Id.* at 9, 11, 12 and 14.

<sup>41</sup> *Id.* at 6.

that the statute does not provide Parsons a defense with three arguments: 1) Parsons did not have probable cause to arrest Moore,<sup>42</sup> 2) Parsons created a roadblock, he did not effectuate an arrest,<sup>43</sup> and 3) Parsons' conduct was unreasonable due to the nature of the charges.<sup>44</sup> Helena adds that since the statute does not establish what is reasonable, it would have been confusing to the jury.<sup>45</sup> The City concludes that since the statute is not explicitly a defense to the charges, Parsons was not deprived of a fair trial when the jury was not informed of the statute.<sup>46</sup>

#### IV. ANALYSIS

It is likely the Court will remand to the lower court for a new trial where the jury may be instructed on the Arrest by a Private Person statute. First, the statute does appear relevant to the charges. Second, the failure to instruct the jury did prejudicially affect Parsons' substantial rights. The jury was tasked with assessing the reasonableness of Parsons' conduct without knowing Montana law expressly states that it can be reasonable for private citizens to forcibly detain another person under certain circumstances.<sup>47</sup>

##### *A. The Arrest by a Private Person Statute is relevant.*

Parsons' defense relied almost exclusively on the Arrest by a Private Person statute.<sup>48</sup> The City presents a series of seemingly scattered arguments to demonstrate the statute is not relevant. However, there is no law to support Helena's assertion that the Arrest by a Private Person statute only provides civil immunity. It is neither stated in the statute, nor is it a principle of common law. Separately, written notice of a defense is required to prevent surprise and to assist in orderly trial administration.<sup>49</sup> There is no indication that such a requirement applies to the defense Parsons raises.<sup>50</sup> Nonetheless, Parsons provided verbal notice to Helena and the court at the omnibus hearing on May 11, 2016.<sup>51</sup> Regardless of how the defense is categorized, Parsons notified opposing counsel early on of his intention to use the defense.

Addressing the remaining arguments, it can be reasonably

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<sup>42</sup> *Id.* at 13.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 15.

<sup>45</sup> *Id.* at 14.

<sup>46</sup> *Id.* at 20.

<sup>47</sup> Appellant's Opening Brief, *supra* note 1, at 10.

<sup>48</sup> *Id.* at 18.

<sup>49</sup> *City of Missoula v. Paffhausen*, 289 P.3d 141, 149 (2012).

<sup>50</sup> MONT. CODE ANN. § 46-15-323(2).

<sup>51</sup> Appellant's Opening Brief, *supra* note 1, at 15.

concluded that after observing the chase twice, Parsons had probable cause to believe a crime was being committed.<sup>52</sup> As to whether Parsons effectuated an arrest, the Court has adopted three elements: 1) authority to arrest, 2) assertion of that authority with intention to affect an arrest, and 3) restraint of the person.<sup>53</sup> The Arrest by a Private Person lends Parsons the authority he would not otherwise have to effectuate an arrest.<sup>54</sup> The City’s final argument—that the nature of Parsons’ charges suggests he was not acting reasonably—is circular. The jury made its determination without the knowledge that a private person can have authority to effectuate an arrest. The finder of fact must know what the law deems reasonable before making a factual determination as to whether a particular person acted unreasonably. With these circumstances in mind, the Court should find the statute is relevant to the matter.

*B. Not instructing the jury on the Arrest by a Private Person statute was substantially prejudicial to Mr. Parsons.*

The purpose of jury instructions is to “fully and fairly instruct the jury on the law applicable to the case.”<sup>55</sup> Reversible error occurs only if the jury instructions prejudicially affect the defendant’s substantial rights.<sup>56</sup> Ultimately, the jury must determine what is reasonable, but it must do so with a complete understanding of the relevant laws. The Court has stated that “in determining whether a prohibited statement contributed to a conviction, we consider the strength of the evidence against the defendant, the prejudicial effect of the testimony, and whether a cautionary jury instruction could cure any prejudice.”<sup>57</sup> By relying on the statute, Parsons attempted to refute Helena’s contention that he grossly deviated from the standard of care a reasonable person would have.<sup>58</sup> The statute could alter the lens through which the jury would evaluate his conduct. Failing to instruct the jury about the lawful authority of a private person to effectuate an arrest, in a case where a private person appears to effectuate an arrest, would deprive that defendant of a fair trial. It is likely a jury would see Parsons’ actions differently when provided with a statute that may warrant his action.

## V. CONCLUSION

The Court should vacate Parsons’ conviction and remand

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<sup>52</sup> Appellant’s Reply Brief, *supra* note 34, at 3.

<sup>53</sup> *State v. Thornton*, 708 P.2d 273, 277 (1985).

<sup>54</sup> MONT. CODE ANN. § 46-6-502(1).

<sup>55</sup> *State v. Dunfee*, 114 P.3d 217, 221 (2005).

<sup>56</sup> *State v. Gray*, 102 P.3d 1255, 1257 (2004).

<sup>57</sup> *State v. Scarborough*, 14 P.3d 1202, 1220 (2000).

<sup>58</sup> Appellant’s Opening Brief, *supra* note 1, at 9.

this case for a new trial, finding that the Arrest by a Private Person statute is relevant and the jury should have received an instruction on it. It is up to the jury to determine if Mr. Parsons' conduct was reasonable within the context of the situation and in light of the statute. After instructing the jury of all the relevant laws, the court can be confident Parsons will have been afforded a fair trial regardless of the jury's ultimate determination.