SUPERIOR COURT OF THE STATE OF RIDGEWAY

MRPOP1034, *Petitioner,* v. JAMESGARDAI, in his official capacity as Corporal in the Ridgeway National Guard. *Respondent.*	Civil Action No. RSC-CV-3211

PETITIONER MRPOP1034'S REPLY BRIEF IN OPPOSITION TO STATE'S RESPONSE TO PETITION FOR HABEAS RELIEF

Petitioner MrPop1034, by and through undersigned counsel, hereby files this reply in opposition to Respondent JamesGardai's Response to the Petition for Writ of Habeas Corpus.

A memorandum of law in opposition is attached hereto.

Respectfully submitted.

DATED: JULY 17, 2024
Palmer County Hall

CENTER FOR INDIVIDUAL RIGHTS

BY: /s/BrendaPopplewell

BrendaPopplewell
Ridgeway Bar No. 21109
Counsel of Record
Palmer Apartments, Suite 5B
Palmer, Ridgeway, RW
Tel.: (430) 946-8594
Fax: (753) 632-2442
E-mail: info@brendapopplewell.org

SUPERIOR COURT OF THE STATE OF RIDGEWAY

MRPOP1034, *Petitioner,* v. JAMESGARDAI, in his official capacity as Corporal in the Ridgeway National Guard. *Respondent.*	Civil Action No. RSC-CV-3211

MEMORANDUM OF LAW IN OPPOSITION TO
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Brenda A. Popplewell, Esq.
Ridgeway State Bar No. 21109
Counsel of Record
Center for Individual Rights
Palmer Apartments, Suite 5B
Palmer, Ridgeway
Tel.: (430) 946-8594
Fax: (753) 632-2442
E-mail: info@brendapopplewell.org

STANDARD OF REVIEW

In reviewing a petition for habeas corpus, a court of competent jurisdiction "shall either grant or deny review of the petition based on its merits." 1 R. Stat. § 2211. Accordingly, "[t]he Court may...deny or grant a petition..." Id. If habeas corpus is issued, courts will next determine "whether the police were lawfully entitled to make [the] arrest." In re Zachcasisbeast, 1 R. Supp., at 12 (2022). That is, if the police officer "had probable cause that a crime was committed." Ibid. If the arrest was unlawful, "the inquiry ends there; the record must be removed." Ibid. But if the arrest was lawful, the next question is whether the applicant is "actually innocent of the charge or charges for which they were arrested." Ibid.

ARGUMENT

I. PETITIONER DID NOT COMMIT VEHICULAR ASSAULT

Petitioner MrPop1034 filed this Petition for Writ of Habeas Corpus against Respondent JamesGardai on June 14, 2024, challenging an arrest for vehicular assault under § 7.22 of the Ridgeway Vehicle Code which makes a felony-crime "[t]he act operating a motor vehicle and intentionally striking a vehicle or person." ("§ 7.22"). The facts surrounding this case are so far undisputed: On June 1, 2024, MrPop1034, a Master Firefighter in the Ridgeway County Fire Department, was responding to an emergency situation in his fire truck with his emergency lights flashing. Suddenly—as MrPop was driving down a road near a base for the Ridgeway National Guard—JamesGardai, a Corporal in the Ridgeway National Guard, steps onto the road in front of MrPop's vehicle. In an attempt to save the officer, MrPop abrupty swerves his fire truck—an act that caused the fire truck to collide with a group of guardsmen training in the nearby base.

A. THE COLLISSION WAS NOT "INTENTIONAL" FOR PURPOSES OF § 7.22

JamesGardai arrested MrPop for vehicular assault. This arrest was false—egregiously so. A person commits vehicular assault under § 7.22 if—and only if—they operate a motor vehicle

and "***intentionally*** strik[e] a vehicle or a person." In so defining vehicular assault, the legislature makes a distinciton between intentional collisions and accidental collissions. Indeed, a person cannot be arrested under § 7.22 merely for colliding with another person. By explicitly requiring that the collision be made "intentionally," the legislature seeks "to protect those who were not blameworthy in mind from conviction of infamous … crimes." See Morissette v. United States, 342 U.S., at 252 (1952). In Morissette, various state-of-mind requirements in penal enactments—like "criminal intent," "malice aforethought," "guilty knowledge," "fraudulent intent," "willfulness," and "scienter,"—were all interpreted "to signify an evil purpose." Ibid.

In other words, the state-of-mind requirement employed in § 7.22 requires that MrPop acted not only with an evil-meaning hand (or *actus reus*), but also with an evil-meaning mind (or *mens rea*). See 4 W. Blackstone, Commentaries on the Laws of England 21 (1769) (Blackstone). This view "took deep and early root in American soil" where, to this day, a crime ordinarily arises "only from concurrence of an evil-meaning mind with an evil-doing hand." Morissette, 342 U. S. 246, 342 U.S. 251– 252 (1952); 1 J. Bishop, Commentaries on the Criminal Law §291, p. 163 (6th ed. 1877) (Bishop). Why does our law generally insist not just on a bad act but also a culpable state of mind? "A significant part of it" writes Justice Gorsuch "has to do with respect for the individual and his liberty in a free society. " See Diaz v. United States 602 U. S. ____ (2024) (slip op. at 20) (GORSUCH, J., dissenting). "Criminal liability imports a condemnation, the gravest we," as a Nation, "permit ourselves to make." Ibid, quoting H. Wechsler, American Law Institute II–A Thoughtful Code of Substantive Law, 45 J. Crim. L. & C. 524, 528 (1955) (Wechsler); 4 Blackstone 20–21; 1 Bishop §287, at 161.

Of course, our law recognizes gradations of *mens rea,* ranging from purpose and knowledge to recklessness and negligence. See, e.g., ALI, Model Penal Code §2.02 (1985);

United States v. Bailey, 444 U. S. 394, 404 (1980). But to subject a presumptively free individual to serious punishments for acts undertaken without proof of any of that would be "the badge of tyranny, the plainest illustration of injustice." Wechsler 528. The principle "that an injury can amount to a crime only when inflicted" with some accompanying *mens rea* is, it has been said, "as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." Morissette, 342 U. S., at 250. This principle is so ingrained that courts have even presumed criminal statutes demand proof of *mens rea* even when they are "silent" on the subject. Morissette, 342 U. S., at 252; see Staples v. United States, 511 U. S. 600, 605 (1994).

As one English writer famously pointed out: "Even a dog distinguishes between being stumbled over and being kicked." O. Holmes, The Common Law 3 (1881). The issues at bar in this case concern a Master Firefighter who—in responding to a local fire emergency pursuant to his official duties—got in a bad car accident. The Respondent correctly alleges that MrPop acted, Brief In Opposition, at p. 2, but Respondent fails to even allege that MrPop acted with any intent. Instead, the Respondent takes to a different approach: He argues that the conduct of Petitioner was "reckless" and therefore imports criminal liability under § 7.22. Brief In Opposition, at p. 5. However, such a theory of criminal liability falls short of § 7.22's state-of-mind requirement which in broad terms require that Petitioner's conduct was accompanied by *mens rea*. In other words, while the response sets out Petitioner's evil-meaning hand (*actus reus*), it does not allege that he had an evil-meaning mind (*mens rea*).

As the Respondent correctly asserts, "[t]he Model Penal Code … splits criminal intent into four categories: (1) acting purposely, (2) acting knowingly, (3) acting recklessly, (4) acting negligently." Ibid. The Respondent alleges that, under the Model Penal Code's definitions of the

terms “knowingly” or “recklessly,” Petitioner’s conduct would meet the state-of-mind requirement delineated by § 7.22. However, the Respondent’s argument compares oranges and apples. The State of Ridgeway did not pass into law the definitions used in the Model Penal Code. However, even if—*arguendo*—we were to use the Model Penal Code, the Respondent’s argument is still incorrect. The language used in § 7.22 requires that one must act “intentionally.” "Intent," as used in a penal enactment, imports that one must act with an "evil purpose." Morissette, 342 U.S., at 252. Therefore, criminal “intent,” as set out in Morissette, differs from the words “knowingly” and “recklessly” as used in the Model Penal Code.

Furthermore, the caselaw the Respondent cites in his brief works against his own argument. For instance, the Respondent cites United States v. Jewell, 532 F.2d 697, 700 n.3 (9th Cir. 1976), which holds that “[a]n act is done ***knowingly*** if it's done voluntarily and intentionally and ***not because of mistake or accident or other innocent reason.***” Brief In Opposition, at p. 4. This opinion clearly demonstrates that even applying the ‘knowing’-standard under the Model Penal Code, MrPop’s acts would not constitute a violation under § 7.22. That is so because his acts were caused by “mistake or accident” or, at the least, “other innocent reason.” Jewell, 532 F.2d 697, 700 n.3. Because the Respondent merely alleges that MrPop acted “recklessly,” Brief In Opposition, at 5, and fails to allege that MrPop acted intentionally, the Respondent has conceded that sufficient *mens rea* does not exist to support a finding of a crime. The Respondent could not have had probable cause that a crime was committed, In re Zachcasisbeast, 1 R. Supp., at 12, and MrPop is “actually innocent of the charge” for which he was arrested. Ibid.

CONCLUSION

For the reasons stated above, MrPop’s Petition for Writ of Habeas Coprus should be granted and the Respondent’s argument should be rejected.

DATED: JULY 17, 2024
Palmer County Hall

CENTER FOR INDIVIDUAL RIGHTS

BY: /s/BrendaPopplewell

BrendaPopplewell
Ridgeway Bar No. 21109
Counsel of Record
Palmer Apartments, Suite 5B
Palmer, Ridgeway, RW
Tel.: (430) 946-8594
Fax: (753) 632-2442
E-mail: info@brendapopplewell.org