

1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: \_\_\_\_\_

Court of Appeals of New Mexico

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3 Filing Date: June 13, 2019



Mark Reynolds

4 **No. A-1-CA-36657**

5 **STATE OF NEW MEXICO,**

6           Plaintiff-Appellee,

7 v.

8 **PATRICK MARTINEZ,**

9           Defendant-Appellant.

10 **APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY**

11 **Cindy M. Mercer, District Judge**

12 Hector H. Balderas, Attorney General

13 Santa Fe, NM

14 Margaret Crabb, Assistant Attorney General

15 Albuquerque, NM

16 for Appellee

17 Patrick J. Martinez

18 Albuquerque, NM

19 Pro Se Appellant

1 **OPINION**

2 **DUFFY, Judge.**

3 {1} Defendant appeals his conviction for speeding, contrary to NMSA 1978,  
4 Section 66-7-301 (2002, amended 2015) after a de novo trial in district court. We  
5 affirm.

6 **BACKGROUND**

7 {2} Defendant was stopped and cited for speeding by an officer with the Isleta  
8 Police Department. Following his trial and conviction in magistrate court for  
9 speeding, Defendant filed a de novo appeal in the district court. After a half-day  
10 bench trial, the district court found Defendant guilty of speeding for driving 55 miles  
11 per hour in a posted 45 mile-per-hour speed zone. On appeal to this Court, Defendant  
12 argues that the speed regulation statutes, Section 66-7-301 and NMSA 1978,  
13 § 66-7-303 (1996), are ambiguous and should be construed to allow motorists to  
14 accelerate in advance of an increased speed limit sign once the sign is visible.

15 **DISCUSSION**

16 {3} We consider an issue of first impression in New Mexico, at what point in  
17 relation to a speed limit sign does a speed limit become effective such that a driver  
18 can be cited for a violation of Section 66-7-301. This is a question of statutory  
19 interpretation that we review de novo. *See State v. Tarin*, 2014-NMCA-080, ¶ 6, 331  
20 P.3d 925.

1 In construing a statute, we must ascertain and give effect to the intent  
2 of the Legislature. To accomplish this, we apply the plain meaning of  
3 the statute unless the language is doubtful, ambiguous, or an adherence  
4 to the literal use of the words would lead to injustice, absurdity or  
5 contradiction, in which case the statute is to be construed according to  
6 its obvious spirit or reason. . . . While the consideration of public policy  
7 is the province of the Legislature, where a statute is ambiguous, we may  
8 consider the policy implications of varying constructions of the statute.

9 *State v. Tafoya*, 2010-NMSC-019, ¶ 10, 148 N.M. 391, 237 P.3d 693 (internal  
10 quotation marks and citations omitted).

11 {4} We begin by looking at the plain meaning of the speed limit statutes, Sections  
12 66-7-301 and -303. Section 66-7-301(A) sets forth default speed limits for certain  
13 types of roads and conditions, but also states in Subsection (C) that these speed limits  
14 may be altered as authorized in Section 66-7-303(B). Section 66-7-303(B) states in  
15 relevant part “that [an altered] speed limit shall be authorized and effective when  
16 appropriate signs giving notice thereof are erected at that particular part of the  
17 highway[.]” Thus, the plain language of Section 66-7-303(B) indicates that a speed  
18 limit is effective at the point where the sign is located.

19 {5} This interpretation is supported by several provisions found in the New  
20 Mexico Department of Transportation’s 2008 *Signing and Striping Manual*,<sup>1</sup> (the  
21 NMDOT Manual), a document issued in compliance with the Legislature’s mandate  
22 that the state transportation commission “adopt a manual and specifications for a

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<sup>1</sup><http://dot.state.nm.us/content/dam/nmdot/Infrastructure/SignandStripingManual.pdf>

1 uniform system of traffic-control devices consistent with the provisions of [the  
2 Motor Vehicle Code].” NMSA 1978, § 66-7-101 (2003). The NMDOT Manual  
3 recognizes that “[u]niformity of the meaning and application of traffic control  
4 devices is vital to their effectiveness.” NMDOT Manual, ch. 1, § 1.1.3. Further, in a  
5 section addressing signage and captioned, “Standardization of Location,” it states:

6       The longitudinal displacement between a sign and the corresponding  
7 roadway element varies *from zero in the case of a speed limit sign (or*  
8 *most regulatory signs) that is physically placed at the point where the*  
9 *speed limit (or regulation) begins or ends*, to 1 mile or more in the case  
10 of an advance guide sign.

11 NMDOT Manual, ch. 2, § 2.1.16, at 2.1-20 (2008) (emphasis added); *see also*  
12 NMDOT Manual, ch. 2, § 2.2.2, at 2.2-6 (2008) (providing that a speed limit sign be  
13 installed “[t]o show the beginning of a new speed limit . . . at the physical location  
14 where the speed limit changes”); NMDOT Manual, ch. 2, Exhibit 2.2-C, at 2.2-7  
15 (2008) (indicating, in a table headed “Suggested Spacing for Speed Limit Signs[,]”  
16 that for every type of road listed, the “normal placement” for speed limit signs is “at  
17 the beginning of the speed limit”). Moreover, our State Transportation Commission,  
18 the National Committee on Uniform Traffic Control Devices, the Federal Highway  
19 Administration, and the U.S. Secretary of Transportation all agree that the speed  
20 limit is effective at the point where the sign is located.<sup>2</sup>

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<sup>2</sup>The New Mexico Transportation Commission’s determination that speed limit changes take effect at the point where a speed limit sign is placed is consistent with the approach taken by the American Association of State Highway Officials in

1 {6} Were we to accept Defendant’s argument that a speed limit becomes effective  
2 at the point where the sign can be read, we would disrupt uniformity in the  
3 application of well-established local and national practices governing the placement  
4 of speed limit signs. We decline to depart from the sound reasoning articulated by  
5 the Transportation Commission in the NMDOT Manual, given its particularized  
6 knowledge and experience in promoting uniformity of traffic control devices.  
7 Moreover, Defendant’s proposed interpretation of Sections 66-7-301 and -303  
8 would render speed limits and their boundaries subjective, based upon the unique  
9 point of view of each driver approaching a speed limit sign, thereby eliminating  
10 meaningful, standardized enforcement of speed limits throughout the state.  
11 Interpreting these statutes as Defendant suggests would produce an unworkable and  
12 absurd result. *See United States v. Block*, 452 F. Supp. 907, 909-10 (M.D. Fla.1978)  
13 (“To hold that changing traffic speed zones become effective when the posted signs  
14 become visible would result in the law being variable, uncertain, and relative to  
15 individual motorists’ eyesight. The effect would be theoretically confusing, as well  
16 as practically impossible.”); *see generally Tarin*, 2014-NMCA-080, ¶ 8 (rejecting a

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its 2009 *Manual on Uniform Traffic Control Devices* (MUTCD), available at <https://mutcd.fhwa.dot.gov/pdfs/2009r1r2/mutcd2009r1r2edition.pdf>, which is developed jointly with the Federal Highway Administration and approved by the U.S. Secretary of Transportation. *See* MUTCD § 2B.13, ¶¶ 3-4 (2009) (providing that “Speed Limit . . . signs . . . shall be located at the points of change from one speed limit to another. . . . At the downstream end of the section to which a speed limit applies, a Speed Limit sign showing the next speed limit shall be installed”).

1 party's proposed interpretation of a statute where doing so "would produce an  
2 unworkable situation and absurd result"). For all of these reasons, we hold that "the  
3 speed limit starts at the physical location of the sign and continues to be in effect  
4 until it ends at the next different speed limit sign." *Shafron v. Cooke*, 190 P.3d 812,  
5 814 (Colo. App. 2008) (noting that a driver's "sight[ing] of a forty mile per hour  
6 sign did not allow him to increase his speed above twenty-five miles per hour until  
7 he reached that sign").

8 {7} We are similarly unpersuaded by Defendant's argument that because drivers  
9 often decelerate in anticipation of a slower speed limit, he should have been allowed  
10 to speed up in anticipation of a faster one. Defendant misapprehends that posted  
11 speed limits represent the maximum traveling speed, and as one court explained,

12 [A] speed limit sign for a slower speed zone requires a motorist to have  
13 his speed reduced by the time he reaches the sign. Slower speed zones,  
14 in short, are mandatory. On the other hand, a speed limit sign indicating  
15 a faster speed zone simply means that a motorist may proceed at a faster  
16 speed than he is presently permitted once he has reached that sign. The  
17 speed limit sign for a faster speed zone does not require that a motorist  
18 be driving at the faster speed when he reaches the sign, but simply  
19 allows him to begin doing so once he has reached the sign. Faster speed  
20 zones are permissive.

21 *Block*, 452 F. Supp. at 910. Just as with speed limit increases, however, slower speed  
22 limits become applicable at the point that the sign is posted.

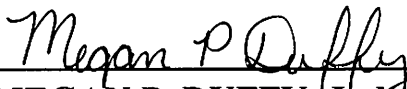
23 {8} Finally, Defendant advocates for the rule of lenity here, arguing that the  
24 speeding statute is ambiguous because it does not clearly state where any particular

1 speed limit starts and ends. “The rule of lenity counsels that criminal statutes should  
2 be interpreted in the defendant’s favor when insurmountable ambiguity persists  
3 regarding the intended scope of a criminal statute.” *State v. Johnson*, 2009-NMSC-  
4 049, ¶ 18, 147 N.M. 177, 218 P.3d 863 (internal quotation marks and citation  
5 omitted). Finding no ambiguity in the relevant statutes, we reject Defendant’s rule  
6 of lenity argument.

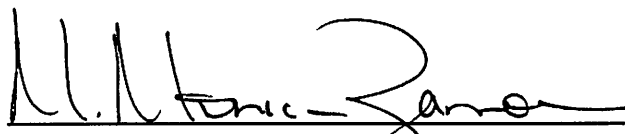
7 **CONCLUSION**

8 {9} For the foregoing reasons, we affirm Defendant’s conviction for speeding.

9 {10} **IT IS SO ORDERED.**

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11 \_\_\_\_\_  
**MEGAN P. DUFFY, Judge**

12 **WE CONCUR:**

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14 \_\_\_\_\_  
**M. MONICA ZAMORA, Chief Judge**

15   
\_\_\_\_\_ **KRISTINA BOGARDUS, Judge**