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We conclude that there is no evidence in this record upon which the jury could have concluded that Smith committed sudden quarrel manslaughter instead of second degree murder. We therefore conclude that the improper jury instruction did not prejudice Smith or affect his substantial rights, and does not require the reversal of his second degree murder conviction.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED.

WRIGHT, J., not participating in the decision.

STATE OF NEBRASKA, APPELLEE, V.
RICHARD A. HALVERSTADT, APPELLANT.

809 N.W.2d 480

Filed November 18, 2011. No. S-11-145.

1. **Statutes: Appeal and Error.** Statutory interpretation is a question of law on which an appellate court has an obligation to reach an independent conclusion irrespective of the determination made by the court below.
2. ____: ____. Statutory language is to be given its plain and ordinary meaning. An appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.

Appeal from the District Court for Lancaster County, JODI NELSON, Judge, on appeal thereto from the County Court for Lancaster County, JEAN A. LOVELL, Judge. Judgment of District Court affirmed in part and in part reversed, and cause remanded with directions.

Jeffry D. Patterson, of Bartle & Geier Law Firm, for appellant.

Jon Bruning, Attorney General, and Kimberly A. Klein for appellee.

HEAVICAN, C.J., CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

STEPHAN, J.

Richard A. Halverstadt was convicted of violating Neb. Rev. Stat. §§ 60-6,294 and 60-6,300 (Reissue 2010) after being cited for hauling an overweight load on a Nebraska roadway. He appeals, contending the statutes do not apply to his actions, because he possessed a special permit. We affirm his convictions for violating § 60-6,294, but reverse his conviction for violating § 60-6,300.

I. FACTS

On May 14, 2010, Nebraska State Patrol Trooper John Lewis stopped a vehicle carrying an oversized load. Halverstadt, the driver of the vehicle, gave Lewis three special permits related to the oversized load: one issued by the city of Lincoln, one issued by Lancaster County, and one issued by the State of Nebraska. Because Halverstadt was on a county road at the time Lewis stopped him, Lewis was concerned only with the county permit.

After viewing the permit, Lewis weighed Halverstadt's load with portable scales. Lewis determined that the weight on the triple axles was 51,300 pounds, which exceeded the 50,100 pounds authorized by Halverstadt's county permit and the 42,500 pounds authorized by state statute.[1] He determined that the weight on the quad axles was 72,200 pounds, which exceeded the 64,000 pounds authorized by the county permit and the 51,500 pounds authorized by state statute.[2] Lewis also determined that the gross weight of Halverstadt's vehicle was 136,500 pounds, which exceeded the 126,000 pounds authorized by the county permit and the 95,000 pounds authorized by state statute.[3] Lewis wrote "Revoked" on the county permit and cited Halverstadt for two violations of § 60-6,294 based on the axle weight excesses. He also cited Halverstadt for violating § 60-6,300 based on the excess gross weight. Halverstadt was convicted in county court of the statutory violations and

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[1] See § 60-6,294.

[2] *Id.*

[3] See § 60-6,300.

fined $500 and $1,550 for the axle violations and $1,050 for the gross weight violation.

Halverstadt appealed to the district court, which affirmed his convictions. He then filed this timely appeal.

II. ASSIGNMENTS OF ERROR

Halverstadt assigns, restated, that the district court erred in (1) concluding the county permit was retroactively revoked when his violation consisted solely of exceeding the weight limitations specified by the county permit, (2) convicting him under an inapplicable statute and imposing a fine contrary to law, and (3) concluding he violated § 60-6,300 when he was operating with three valid special permits issued pursuant to Neb. Rev. Stat. § 60-6,298 (Cum. Supp. 2008) and was not the owner of the vehicle.

III. STANDARD OF REVIEW

[1] Statutory interpretation is a question of law on which an appellate court has an obligation to reach an independent conclusion irrespective of the determination made by the court below.[4]

IV. ANALYSIS

It is undisputed that Halverstadt's load exceeded both the weight limits of his special county permit and the statutory weight limits on two axles and in gross weight. The issue is whether he was cited under the correct statute and, if so, what the penalty for his violations should be.

1. Axle Weight Violations

Section 60-6,294 limits how much weight a vehicle can carry per axle on Nebraska roadways. Generally, no axle can carry a load in excess of 20,000 pounds.[5] Groups of two or more consecutive axles also have weight restrictions based on the distance in feet between the axles, and these restrictions are set out in a statutory chart.[6] "Every vehicle" traveling on a Nebraska

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[4] *State v. Huff, ante* p. 78, 802 N.W.2d 77 (2011).

[5] § 60-6,294(2).

[6] § 60-6,294(3).

roadway must comply with these weight restrictions.[7] The only statutory exceptions are for agricultural floater-spreader implements, disabled vehicles, vehicles moving buildings, self-propelled mobile equipment, and emergency vehicles.[8] "The limitations imposed by [§ 60-6,294 are] supplemental to all other provisions imposing limitations upon the size and weight of vehicles."[9]

The penalties for "operating any motor vehicle . . . when the weight of the vehicle and load is in violation of the provisions of section 60-6,294" are set forth in Neb. Rev. Stat. § 60-6,296 (Reissue 2010). The penalties are always fines, and they are assessed based on the percentage of weight that is over the statutory maximum identified in § 60-6,294.[10] The penalties do not apply in limited situations, including when the cargo can be shifted to meet the statutory weight limits, certain haulings of livestock or grain, and the hauling of refuse.[11]

The Department of Roads, the State Patrol, and "local authorities" may issue special permits allowing operators over "highways under their jurisdiction" to carry loads exceeding the statutory maximum weight restrictions.[12] Each permit issued by such authority must "state the maximum weight permissible on a single axle or combination of axles and the total gross weight allowed."[13] The issuing authority may also "limit the number of days during which the permit is valid," limit the number of trips the permit holder may make, or establish seasonal or time limitations within which the permit is valid.[14]

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[7] § 60-6,294(1).

[8] See § 60-6,294(1) and (10). See, also, Neb. Rev. Stat. §§ 60-6,288(2)(i), 60-6,294.01, 60-6,297, and 60-6,299 (Reissue 2010) and § 60-6,298(1)(a)(v).

[9] § 60-6,294(1).

[10] § 60-6,296.

[11] See Neb. Rev. Stat. § 60-6,301 (Reissue 2010).

[12] § 60-6,298.

[13] § 60-6,298(4).

[14] § 60-6,298(3).

In this case, Halverstadt obtained a special permit from the county. Section 60-6,298(4) provides in part:

> No person shall violate any of the terms or conditions of [a] special permit. In case of any violation, the permit shall be deemed automatically revoked and the penalty of the original limitations shall be applied unless:
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> (a) The violation consists solely of exceeding the size or weight specified by the permit, in which case only the penalty of the original size or weight limitation exceeded shall be applied; or
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> (b) The total gross load is within the maximum authorized by the permit, no axle is more than ten percent in excess of the maximum load for such axle or group of axles authorized by the permit, and such load can be shifted to meet the weight limitations of wheel and axle loads authorized by such permit. Such shift may be made without penalty if it is made at the state or commercial scale designated in the permit. The vehicle may travel from its point of origin to such designated scale without penalty, and a scale ticket from such scale, showing the vehicle to be properly loaded and within the gross and axle weights authorized by the permit, shall be reasonable evidence of compliance with the terms of the permit.

(a) Special Permit Was Improperly Revoked

The district court conceded that § 60-6,298(4)(a) provides that revoking a special permit is not proper if the "violation consists solely of exceeding the size or weight specified by the permit" and stated that Halverstadt's axle violations were "technically" related only to weight. But it reasoned that when read in context, § 60-6,298(4)(a) refers only to a situation where a vehicle exceeds the maximum *gross* weight specified by the permit, but at the same time does not exceed any of the maximum axle weights. It concluded this had to be true, even though § 60-6,298(4)(a) does not refer to gross weight, because § 60-6,298(4)(b) applied when a vehicle was within the maximum gross weight but had axles that exceeded the maximum by no more than 10 percent. It reasoned that if § 60-6,298(4)(a) applied to axle weight in addition to gross weight, then § 60-6,298(4)(b) would be meaningless.

[2] We disagree with the district court's interpretation. Statutory language is to be given its plain and ordinary meaning. An appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.[15] Reading "gross" into § 60-6,298(4)(a) is improper and is not required for § 60-6,298(4)(a) and (b) to make sense. The plain and direct language of § 60-6,298(4) sets out three possible penalties for a violation of a special permit. Section 60-6,298(4) provides the general rule that *any* violation of the special permit results in both revocation of the permit and the "penalty of the original limitations." Section 60-6,298(4)(a) is one exception to the general rule of § 60-6,298(4), and provides that if the *only* violation is exceeding the size or weight specified by the permit, then revocation of the permit is not a penalty and "only the penalty of the original size or weight limitation exceeded" is applied. Section 60-6,298(4)(b) is a further exception to the general rule of § 60-6,298(4), and if all the conditions of that subsection are met, no penalty is imposed for the permit violations.

So construed, it is clear that the statute makes sense without imposing the term "gross" into the specific statutory language of § 60-6,298(4)(a). The phrase "exceeding the size or weight specified by the permit" used in § 60-6,298(4)(a) clearly refers to either exceeding axle weights or exceeding gross weights. In fact, the Legislature used the term "gross" in § 60-6,298(4)(b), indicating that it was aware of the difference between the terms "weight" and "gross" weight and their use in the statutory scheme at issue.

We conclude that under the circumstances of this case, § 60-6,298(4)(a) applies to Halverstadt. Consequently, his special permit was improperly revoked, and only the "penalty of the original size or weight limitation exceeded" applies to his axle weight violations of the special permit.

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[15] *In re Ervin W. Blauhorn Revocable Trust*, 275 Neb. 256, 746 N.W.2d 136 (2008); *Zach v. Nebraska State Patrol*, 273 Neb. 1, 727 N.W.2d 206 (2007).

(b) "Original Limitations" Means Statutory Limitations

The district court, based in part on its erroneous interpretation of § 60-6,298(4)(a) and (b), assumed without specific analysis that the phrase "penalty of the original limitations" used in § 60-6,298(4) meant the original statutory weight limitations imposed by § 60-6,294. Presumably, it did so based on the language in § 60-6,298(4) providing that if the violation falls within that section, the special permit is revoked. And if the permit is revoked, it is not illogical to conclude that the term "original" in § 60-6,298(4) means the original statutory weight limitations of § 60-6,294.

But both § 60-6,298(4) and (4)(a) use the term "original" when referring to the size and weight limitations. And because a violation falling under § 60-6,298(4) results in a revocation of the special permit, but one falling under § 60-6,298(4)(a) does not, it cannot be, as implied by the district court, that "original" in § 60-6,298(4) means the statutory weight limitations simply because under that section the permit is revoked. Instead, for the statute to be internally consistent, the term "original" in § 60-6,298(4) must mean the same thing as the term "original" in § 60-6,298(4)(a).

The question, then, is whether "original" in both subsections refers to the statutory weight restrictions or whether it refers to the weight restrictions of the special permit. We conclude that § 60-6,298(4) can reasonably be interpreted either way and is therefore ambiguous. In such a situation, a court may examine the pertinent legislative history of the act in question to ascertain the intent of the Legislature.[16]

Originally, the Nebraska statutes regulating the width and weight of loads on Nebraska roadways contained no authorization for the issuance of special permits.[17] But a statutory amendment was adopted in 1957 that authorized state and local authorities to issue special permits.[18] The amendment

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[16] *State v. Lebeau*, 280 Neb. 238, 784 N.W.2d 921 (2010).

[17] See, generally, 1933 Neb. Laws, ch. 105, § 4, p. 426.

[18] 1957 Neb. Laws, ch. 156, § 4, p. 565.

provided that no hauler could violate any term or condition of a special permit so issued and that "in case of any violation the permit shall be deemed automatically revoked and the penalty of the original limitations shall be applied."[19] This identical language is currently codified at § 60-6,298(4). The 1957 amendment did not define "original limitations," and the legislative history on the bill is silent as to how this phrase was to be interpreted.

In 1963, the special permit statute was amended to allow haulers to avoid penalties altogether in certain situations where the load had shifted during travel but could be reconfigured to comply with the restrictions of the special permit.[20] The language adopted in 1963 is identical to the language that is now codified at § 60-6,298(4)(b). The introducer's statement of purpose for the bill that resulted in this amendment explained that as the special permit statute existed prior to the amendment,

> [c]ontractors and contract haulers who move heavy equipment do so under special permits issued by the Department of Roads. These permits set axle weights, gross weights, height restrictions and width restrictions. They are subject to revocation if any of their terms are violated, and *a hauler whose permit has been invalidated is penalized according to the statutory weight limits, rather than the weights allowable by the permits.*[21]

In 1965, the Legislature further amended the special permit statutes to add language identical to that which is now codified at § 60-6,298(4)(a).[22] According to the chairperson of the public works committee, the amendment was necessary because

> [u]nder the present law, a person desiring to haul a load exceeding certain widths and weights must get a special permit from the state to haul such loads. Present statutes provide that if the hauler violates either the weigt [sic]

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[19] *Id*. at 566.

[20] 1963 Neb. Laws, ch. 226, § 1, pp. 709-10.

[21] Introducer's Statement of Purpose, L.B. 542, Committee on Public Works, 73d Leg. 1 (Apr. 3, 1963) (emphasis supplied).

[22] 1965 Neb. Laws, ch. 214, § 1, p. 628.

> or width granted by the permit, *the permit is cancelled and he is fined in an amount just as though he had never received a permit.*[23]

During floor debate on the 1965 amendment, it was explained that without the amendment, if a hauler had a special permit authorizing transport of a load that was both overweight and overwidth and exceeded one of the authorizations, he lost the privileges of the special permit for both, and was penalized under the statutory limitations for both, even though he violated only one.[24] The floor debate explained that the purpose of the amendment was to ensure the hauler was penalized only for the provision of the special permit that was violated.[25] The debate was clear, however, that the penalty to be imposed was based on the statutory restrictions, not the restrictions of the special permit.[26]

Based on this legislative history, it is clear that the Legislature intended to base the penalties for violating a special permit on the statutory weight restrictions, not those of the special permit. We therefore conclude that the term "original" limitations as used in both § 60-6,298(4) and (4)(a) means the original statutory restrictions of § 60-6,294.

Because Halverstadt's violation of his special permit consisted solely of exceeding the weight specified by the permit, his conduct fell within § 60-6,298(4)(a) and his permit was not revoked. He was, however, subject to the "penalty of the original size or weight limitation" he exceeded.[27] Because "original size or weight limitation" refers to the statutory limitations of § 60-6,294, Halverstadt was properly cited and convicted under that statute. We therefore affirm the convictions under § 60-6,294 for the axle weight violations.

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[23] Committee Statement, L.B. 648, 75th Leg. (Apr. 29, 1965) (emphasis supplied).

[24] Floor Debate, L.B. 648, Committee on Public Works, 75th Leg. (Apr. 14, 1965).

[25] *Id.*

[26] *Id.*

[27] § 60-6,298(4)(a).

2. Gross Weight Violation

Halverstadt was also convicted of violating § 60-6,300, which provides:

> It shall be unlawful to operate upon the public highways of this state any truck, truck-tractor, or trailer that weighs in excess of the gross weight for which the registration fee on such vehicle has been paid plus one thousand pounds, but this section shall not apply to any truck, truck-tractor, or trailer being operated under a special permit issued pursuant to section 60-6,298.
>
> Any owner of such a vehicle who permits operation of the vehicle in violation of this section shall be guilty of a traffic infraction and shall, upon conviction, be fined twenty-five dollars for each one thousand pounds or fraction thereof in excess of the weight allowed to be carried under this section with tolerance.

The district court concluded that Halverstadt violated this statute because he was over the statutory gross weight and, even though he had obtained a special permit, it was revoked pursuant to § 60-6,298(4). Halverstadt's violation of the county permit properly falls within § 60-6,298(4)(a), and thus his county permit was not properly revoked. Therefore, § 60-6,300 does not apply to him, because he was operating under a special permit issued pursuant to § 60-6,298. We further note that there is no evidence in the record which could support a finding that Halverstadt was the owner of the vehicle so as to subject him to liability under § 60-6,300. We reverse Halverstadt's conviction for violating § 60-6,300 and remand the cause to the district court with directions to reverse that conviction and remand the case to the county court with directions to dismiss.

V. CONCLUSION

For the foregoing reasons, we affirm Halverstadt's convictions under § 60-6,294 and reverse his conviction under § 60-6,300.

Affirmed in part, and in part reversed and remanded with directions.

Wright and Gerrard, JJ., not participating.