

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOSEPH MARK WOLFE,

Defendant-Appellee.

FOR PUBLICATION

May 10, 2002

9:00 a.m.

No. 234940

Kent Circuit Court

LC No. 01-002134-FH

Updated Copy

August 16, 2002

Before: Wilder, P.J., and Griffin and Smolenski, JJ.

WILDER, P.J.

The prosecutor appeals by leave granted the trial court's order dismissing felony child endangerment charges, MCL 257.625(7)(a)(ii), and remanding to the district court. We reverse and remand.

I. Facts and Procedural History

Defendant was bound over to the circuit court for trial on the charge of operating a motor vehicle while impaired (OWI), second offense, MCL 257.625(3), while a person under the age of sixteen was occupying the vehicle (child endangerment). In the information, the prosecution noted its reliance on defendant's March 24, 1991, conviction for driving while intoxicated (DWI) in the state of Texas, Tex Rev Civ Stat Ann, art 67011-1, in seeking enhancement of the DWI charge to a felony charge under MCL 257.625(7)(a)(ii).

Before trial, defendant moved for dismissal of the felony charge, arguing that the offense of DWI under the Texas statute did not "substantially correspond" to either of Michigan's primary drunk driving offenses (OUIL or OWI), as required by MCL 257.625(23), and that therefore his DWI conviction in Texas did not constitute a prior conviction within the meaning of MCL 257.625(7)(a)(ii), the result being that a felony charge could not be sustained. The trial court agreed, granted the motion to dismiss, and remanded to the district court for trial on the charge of OWI, first offense.

The trial court first found that because the Michigan statute requires an impairment from alcohol consumption to affect the driver's "ability to operate a vehicle," in contrast to the Texas

statute, which "requires merely that the driver be affected by alcohol," on its face the Michigan statute imposed on the prosecutor a more demanding threshold of proofs. The trial court next concluded that because the Texas and Michigan statutes were facially dissimilar, and because the prosecutor presented no evidence that the Texas statute was applied in a substantially similar manner to the Michigan statute, *Oxendine v Secretary of State*, 237 Mich App 346, 352-353; 602 NW2d 847 (1999), defendant's contention that the two statutes did not substantially correspond to one another was correct.

This Court granted the prosecutor leave to appeal, *People v Wolfe*, unpublished order of the Court of Appeals, entered July 12, 2001 (Docket No. 234940), to consider whether the trial court correctly determined that the Texas and Michigan drunk driving statutes were not substantially similar.

II. Standard of Review

The issue before us is one of statutory construction, a question of law that we review de novo. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998); *Oxendine, supra* at 349. As the Supreme Court observed in *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 158; 627 NW2d 247 (2001):

In considering a question of statutory construction, this Court begins by examining the language of the statute. We read the statutory language in context to determine whether ambiguity exists. If the language is unambiguous, judicial construction is precluded. We enforce an unambiguous statute as written. Where ambiguity exists, however, this Court seeks to effectuate the Legislature's intent through a reasonable construction, considering the purpose of the statute and the object sought to be accomplished. [Citations omitted.]

Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used, *Phillips v Jordan*, 241 Mich App 17, 22-23, n 1; 614 NW2d 183 (2000), citing *Western Michigan Univ Bd of Control v Michigan*, 455 Mich 531, 539; 565 NW2d 828 (1997). Further, the language must be applied as written, *Camden v Kaufman*, 240 Mich App 389, 394; 613 NW2d 335 (2000); *Ahearn v Bloomfield Charter Twp*, 235 Mich App 486, 498; 597 NW2d 858 (1999), and nothing should be read into a statute that is not within the manifest intent of the Legislature as indicated by the act itself.

III. Analysis

MCL 257.625(7)(a)(ii) provides in pertinent part:

(7) A person, whether licensed or not, is subject to the following requirements:

(a) He or she shall not operate a vehicle in violation of subsection (1), (3), (4), or (5) while another person who is less than 16 years of age is occupying the

vehicle. A person who violates this subdivision is guilty of a crime punishable as follows:

* * *

(ii) If the violation occurs within 7 years of a prior conviction or within 10 years of 2 or more prior convictions, a person who violates this subdivision is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(A) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(B) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.^[1]

The term "prior conviction," as used in subsection 625(7), is defined in subsection 625(23) to mean "a conviction for [OWI or OUIL], whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state." MCL 257.625(23). See also MCL 257.625(23)(a).²

MCL 257.625(1) and (3) provide:

(1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if either of the following applies:

(a) The person is under the influence of intoxicating liquor, a controlled substance or a combination of intoxicating liquor and a controlled substance.

(b) The person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

* * *

¹ Without enhancement by either two prior convictions within ten years or one prior conviction within seven years, the offense is classified as a misdemeanor punishable by not more than one year's imprisonment, MCL 257.625(7)(a)(i), and therefore, within the jurisdiction of the district court. MCL 600.8311.

² While other convictions apply, they are not relevant to the facts before us in this case.

(3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state when, due to the consumption of intoxicating liquor, a controlled substance, or a combination of intoxication liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired

At the time of defendant's DWI conviction in Texas, Tex Rev Civ Stat Ann, art 67011-1 provided in part:

(a) In this article:

(1) "Alcohol concentration" means: (A) the number of grams of alcohol per 100 milliliters of blood; (B) the number of grams of alcohol per 210 liters of breath; or (C) number of grams of alcohol per 67 milliliters of urine.

(2) "Intoxicated" means: (A) not having the normal use of mental faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or (B) having an alcohol concentration of 0.10 or more.

(b) A person commits an offense if the person is intoxicated while driving or operating a motor vehicle in a public place.

The core issue in this case is whether MCL 257.625(1) and (3) and Tex Rev Civ Stat Ann, art 67011-1 are substantially corresponding laws within the meaning of MCL 257.625(23).

Because the term "substantially corresponding" is not defined in MCL 257.625(23), we consult dictionary definitions for aid in construing this term in accordance with its ordinary and generally accepted meaning. *People v Lawrence*, 246 Mich App 260, 265; 632 NW2d 156 (2001), citing *People v Morley*, 461 Mich 325, 330; 603 NW2d 250 (1999). The word "substantial" is defined as "being such with respect to essentials: *two stories in substantial agreement*; pertaining to the substance, matter, or material of a thing; pertaining to the essence of a thing." *Random House Webster's College Dictionary* (1997), p 1285. The word "corresponding" is defined as "similar in position, form, etc: *corresponding officials in two states*." *Id.* at 297. In addition, *Merriam Webster's Collegiate Thesaurus* (2002) lists the words "like," "akin," "alike," "analogous" and "comparable" as being synonymous to the word "corresponding."

We agree with the prosecutor and find that the plain language of MCL 257.625(1) and (3) and Tex Rev Civ Stat Ann, art 67011-1 indicates that they are substantially corresponding statutes that require "no judicial gloss to show [their] similarity." While the Michigan and Texas laws employ different words, it is clear that each of the statutes in question uses similar subjective criteria to prohibit similar conduct pertaining to the same essence, namely, drunk driving. In addition, both the Texas and Michigan laws set forth identical blood alcohol thresholds,

measured in identical ways, as an objective method of proving a violation. MCL 257.625(23) requires that the law of the other state "substantially correspond" to a law of this state; it does not require an identical match.

Because the Michigan and Texas laws substantially correspond to one another when the term "substantially corresponding" is accorded its ordinary and generally accepted meaning, the trial court's reliance on *People v Lambert*, 395 Mich 296, 305; 235 NW2d 338 (1975), and *Oxendine, supra* at 354, was misplaced.

IV. Conclusion

MCL 257.625(3) and Tex Rev Civ Stat Ann, art 67011.1 are "substantially corresponding" laws, within the meaning of MCL 257.625(23). Accordingly, defendant's conviction under the Texas statute constitutes a prior conviction under MCL 257.625(7)(a)(ii), and defendant was appropriately bound over to the circuit court on the charge of OWI, second offense. Thus, the trial court erred in granting defendant's motion to dismiss.

Reversed and remanded to the trial court for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ Richard Allen Griffin

/s/ Michael R. Smolenski