

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARRY DUANE BOUCHA,

Defendant-Appellant.

UNPUBLISHED
August 31, 2010
APPROVED FOR
PUBLICATION
October 12, 2010
9:15 a.m.

No. 289197
Roscommon Circuit Court
LC No. 08-727260-AA
Advance Sheets Version

Before: BANDSTRA, P.J., and FORT HOOD and DAVIS, JJ.

PER CURIAM.

Defendant appeals by leave granted the circuit court's order, which affirmed the district court's decision finding defendant responsible for operating an overweight vehicle in violation of MCL 257.722 and 257.724, a civil infraction. We reverse.

On January 14, 2008, defendant hauled a load of pine chips with a tractor-trailer on Maple Valley Road. Defendant had three of his trailer axles raised for approximately two miles through a series of curves. Defendant testified that it would have been impossible to negotiate the curves, at any speed, with his axles down because the dropped axles created too much resistance to make the curves. He asserted that on a prior occasion he forgot to lift the axles on this stretch of road and ended up driving in the other lane, almost in the gravel. Defendant asserted that he could not lower the axles in the straight sections between the curves because it took too long for the air compressor to pump air into the system that supported the axles and the brakes. He testified that his axles were down after he negotiated the curves and when he was stopped by the police officer who had been following him. Defendant alleged that his load was not overweight when all the axles were down. The police officer concluded that five of the six axles were overweight. The officer testified that he weighed the vehicle with the axles in the positions they were in when traveling on the curves in the roadway.

Following a formal hearing, defendant was found responsible for the civil infraction and fined for the violation. The circuit court affirmed the violation, albeit on other grounds. We granted defendant's application for leave to appeal. The prosecution has not filed a brief in opposition to the appeal.

MCL 257.724a provides in relevant part:

(1) The axle weight requirements of this chapter do not apply to a vehicle equipped with lift axles during the period in which axles are raised to negotiate an intersection, driveway, or other turn and until the lift axles are fully engaged after the period of time or the distance necessary to negotiate that intersection, driveway, or other turn.

(2) If a vehicle is to be weighed to determine whether the vehicle is being operated in violation of this act or a rule promulgated under this act or of a local ordinance substantially corresponding to this act or a rule promulgated under this act and the vehicle is equipped with lift axles that have been raised to allow the vehicle to negotiate an intersection, driveway, or other turn, the vehicle shall be weighed only after the lift axles have been fully lowered and are under operational pressure as provided in subsection (1).

Statutory construction issues present questions of law reviewed de novo. *People v Keller*, 479 Mich 467, 473; 739 NW2d 505 (2007). When interpreting a statute, courts must ascertain the legislative intent by examining the words of the statute. *People v Plunkett*, 485 Mich 50, 58; 780 NW2d 280 (2010). Terms in a statute are to be construed reasonably in accordance with their plain and ordinary meaning. *People v Yamat*, 475 Mich 49, 56; 714 NW2d 335 (2006).

The word “turn” when used as a noun is defined as “a movement of partial or total rotation: *a turn of the handle*,” or “a place where a road, river, or the like turns[.]” *Random House Webster’s College Dictionary* (2000), p 1410. In the present case, the police officer testified that he followed defendant through a series of curves in the roadway. Additionally, defendant submitted photographs demonstrating that there were eight curves in the roadway with signs warning drivers of the curves and the applicable speed limit. Defendant reported that the distance between each sign ranged from $\frac{1}{5}$ of a mile to $\frac{2}{5}$ of a mile. Therefore, the axle-weight requirements were inapplicable during the period in which the axles were raised to negotiate the curves in the roadway. MCL 257.724a(1). That is, defendant had to turn the vehicle to negotiate the changes in the roadway. It is important to note that the prosecution did not present any testimony to contradict defendant’s assertions that it was necessary to raise axles to negotiate this stretch of the roadway or regarding the time to restore compression in the braking system. Because defendant raised his axles “to allow the vehicle to negotiate [a] . . . turn,” the officer should have weighed defendant’s vehicle with the axles down. MCL 257.724a(2). In light of the fact that the officer weighed the vehicle with the axles raised, as they had been while defendant negotiated the curves, contrary to MCL 257.724a(2), defendant’s citation was invalid and must be dismissed.¹

Reversed.

¹ In light of our conclusion regarding the statutory language, we need not address defendant’s challenges to the circuit court’s other rulings.

/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood
/s/ Alton T. Davis