

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AHMED NASIR,

Defendant-Appellant.

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FOR PUBLICATION

January 14, 2003

9:15 a.m.

No. 225705

Wayne Circuit Court

LC No. 99-007344

Updated Copy

March 28, 2003

Before: Holbrook, Jr., P.J., and Gage and Meter, JJ.

METER, J. (*dissenting.*)

I respectfully dissent because I believe that applying MCL 205.428(6) according to its plain meaning best effectuates the Legislature's intent. I would affirm.

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *People v Morey*, 461 Mich 325, 329-330; 603 NW2d 250 (1999). As noted in *People v Venticinque*, 459 Mich 90, 99; 586 NW2d 732 (1998), the Legislature is presumed to have intended the meaning it plainly expressed. If the plain and ordinary meaning of the language in a statute is clear, judicial construction is generally not permitted. *People v Philabaun*, 461 Mich 255, 261; 602 NW2d 371 (1999).

As noted by the majority, MCL 205.428(6) clearly does not include an element of intent or knowledge. Given that many other criminal statutes do include elements of intent or knowledge, I conclude that the Legislature was aware of the consequences of the language employed in MCL 205.428(6) and consciously chose to enact a statute creating a strict-liability crime. See, generally, *People v Ramsdell*, 230 Mich App 386, 392; 585 NW2d 1 (1998). In *Ramsdell*, *supra* at 391, this Court rejected the defendant's contention that an element of knowledge be imputed to the crime of being a prisoner in possession of contraband, MCL 800.281(4). Significantly, the Court stated:

The word "knowingly" is absolutely absent from the statute as enacted by the Legislature and signed into law by the Governor.

Defendant's position implicitly suggests that that Legislature did not know quite what it was doing when it enacted MCL 800.281(4) . . . . We disagree; the Legislature is presumed to be aware of the consequences of the use, or omission,

of language when it enacts the laws that govern our behavior. [*Ramsdell, supra* at 392.]

As noted in *People v Lardie*, 452 Mich 231, 240; 551 NW2d 656 (1996), states may punish certain acts or omissions regardless of the actor's intent. Given this recognized authority of the Legislature to enact strict-liability crimes, and given the clear absence of an element of intent or knowledge from the statute at issue in this case, I see no reason to contravene the plain meaning of the statute and the clear legislative intent by imputing an additional element to the crime in question.

Citing *People v Quinn*, 440 Mich 178, 190 n 14; 487 NW2d 194 (1992), the majority contends that an element of knowledge must be imputed to MCL 205.428(6) because the statute is not a public welfare law, because it exposes a defendant to severe punishment, because it has the potential to criminalize a broad range of apparently innocent conduct, and because the burden on prosecutors to prove guilty knowledge would not be oppressive. In response, I note that providing funding for schools, which the Tobacco Products Tax Act, MCL 205.421 *et seq.*, does, is indeed a matter of public welfare,<sup>1</sup> and requiring prosecutors to prove guilty knowledge would increase the chances of fraudulent avoidance of the tax. Moreover, while the penalty under MCL 205.428(6) is potentially severe, I note that in *People v Motor City Hosp & Surgical Supply, Inc*, 227 Mich App 209, 210; 575 NW2d 95 (1997), this Court upheld a strict-liability crime despite a potential punishment of four years' imprisonment and a \$30,000 fine.<sup>2</sup> Accordingly, a potentially severe penalty does not automatically mandate the imputation of an intent or knowledge element to a strict-liability crime. With regard to the notion that MCL 205.428(6) potentially punishes a range of apparently innocent conduct, I note simply that this argument could be made in the context of any strict-liability offense. For example, the statute at issue in *Ramsdell, supra* at 391, punishes a prisoner for possessing contraband even if the prisoner did not know the true nature of the item he possessed. I do not find the majority's argument a persuasive reason for ignoring the clear legislative intent expressed in MCL 205.428(6). In short, I do not believe that an analysis of the factors listed in *Quinn, supra* at 190 n 14, mandates the imputation of a knowledge element to MCL 205.428(6).

Because I conclude that MCL 205.428(6) should be enforced as written, and because I find no merit to the additional issues defendant raises on appeal, I would affirm.

/s/ Patrick M. Meter

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<sup>1</sup> Moreover, the statute in question concerns the public health and safety because it involves the regulation of tobacco products. See, generally, *People v Asta*, 343 Mich 507, 515; 72 NW2d 282 (1955).

<sup>2</sup> See also *Ramsdell, supra* at 391, involving a strict-liability crime with a potential punishment of five years' imprisonment under MCL 800.285(1).