

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals Nos. L-06-1265
L-06-1266

Appellee

Trial Court Nos. 05-CRB-01005
05-CRB-01001

v.

David Britton

and

Mark Loeser

DECISION AND JUDGMENT ENTRY

Appellants

Decided: May 4, 2007

* * * * *

John B. Arnsby, Maumee Municipal Prosecuting Attorney, for appellee.

Samuel Z. Kaplan, for appellants.

* * * * *

HANDWORK, J.,

{¶ 1} Appellants, David A. Britton and Mark Loeser, appeal from a judgment of the Maumee Municipal Court. The stipulated facts of this case are as follows.

{¶ 2} On September 4, 2005, appellants were passengers in a motor vehicle operated by a female friend when Sergeant Sanchez of the Ohio State Highway Patrol stopped the friend's vehicle for an alleged traffic violation. It is undisputed that both

appellants were under the age of 21 at the time. Appellants were each charged with violating R.C. 4301.69(E)(1), a misdemeanor of the first degree, which prohibits an underage person¹ from knowingly being under the influence of beer or an intoxicating liquor in any public place.

{¶ 3} Appellants filed a motion to dismiss the charges against them, arguing that as passengers in a privately owned motor vehicle being operated on a public highway, they were not in a "public place" for the purposes of R.C. 4301.69(E)(1).

{¶ 4} The trial court disagreed. Ostensibly applying the common sense meaning of a "public place," the lower court held:

{¶ 5} "What constitutes a public place can be defined differently depending upon the context within which the phrase is utilized. It is the court's belief that when utilized in reference to the intoxication of underage persons, a broader definition of 'public place' must be utilized. The definition utilized by this court in evaluating the statute is that those places that are not specifically private, i.e., a person's home, must be considered a public place. A group of underage persons traveling in the community upon public streets cannot be said to be in a private place for purposes of underage intoxication."

{¶ 6} The trial court also relied on an opinion of the Attorney General of the state of Ohio, who determined that: "For the purposes of R.C. 4301.632, which prohibits the possession of any beer or intoxicating liquor in any public place by a person under the

¹"Underage person" is defined as "a person under the age of twenty-one years." R.C. 4301.69(H)(5).

age of twenty-one years, 'any public place' includes a motor vehicle located on a public roadway or in a public parking lot." 1988 Ohio Atty. Gen. Ops. No. 88-061.

{¶ 7} Based upon the foregoing, the municipal court denied appellants' motions to dismiss. Thereafter, appellants each entered a plea of no contest, were found guilty, and were sentenced. Their sentences were stayed pending the outcome of their appeals, which we consolidated. Appellants assert a single assignment of error:

{¶ 8} "The trial court erred in finding that passengers seated within a privately-owned motor vehicle being operated upon a public highway constitute a 'public place' for the purposes of R.C. 4301.69(E)."

{¶ 9} The only issue in this cause requires us to engage in statutory interpretation. The interpretation of a statute is a question of law subject to de novo review. *Columbus v. Breer*, 152 Ohio App.3d 701, 2003-Ohio-2479, ¶ 12 (Citation omitted.). The paramount concern in construing a statute is to determine legislative intent. *Featzka v. Millcraft Paper Co.* (1980), 62 Ohio St.2d 245, 247. To determine the legislative intent, a court must look to the language of the statute. *Provident Bank v. Wood* (1973), 36 Ohio St.2d 101, 105. Words used in a statute are to be taken in their usual, normal, and customary meaning. *State ex rel. Pennington v. Gundler* (1996), 75 Ohio St.3d 171, 173, citing R.C. 1.42.

{¶ 10} Generally, criminal statutes must be strictly construed against the state and liberally construed in favor of the accused. See *State v. Jordan* (2000), 89 Ohio St.3d 488, 492, citing R.C. 2901.04(A). Nevertheless, statutes intending to promote the public

good are given a liberal construction despite "the fact that a violation of the statute may incur a penal sanction." *Pizza v. Sunset Fireworks Co., Inc.*(1986), 25 Ohio St.3d 1, 4, citing *Mason v. Roberts* (1971), 35 Ohio App.2d 29, 39.

{¶ 11} A reading of R.C. 4301.69(E)(1) reveals that it is plainly a statute enacted for the public's health, welfare, and safety by preventing underage individuals who have been drinking alcoholic beverages from harming themselves or other members of the public. But, see, *Hamilton v. Collier* (1975), 44 Ohio App.2d 419, 421(strictly construing a city ordinance criminalizing the possession of an open container of an intoxicating liquor in a public place). For the following reason, we, however, conclude that even in giving a "public place" a liberal construction, it does not, under this particular statute, include the interior of a privately owned motor vehicle traveling on a public highway.

{¶ 12} A "public place" is defined as "[a] place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public (e.g. a park or public beach)." Black's Law Dictionary (Abridged Sixth Ed. 1991) 857. "Private" means "[a]ffecting or belonging to private individuals as distinct from the public generally." Id. at 830. Applying these definitions to R.C. 4301.69(E)(1), and liberally construing those terms, we hold that the interior of a motor vehicle under this specific statute is not a "public place."

{¶ 13} In reaching this decision, we do not find the 1988 Attorney General's opinion persuasive because it does not address the statute under consideration. Former

R.C. 4301.632, which was repealed as of October 11, 2002, prohibited the *possession* of any beer or intoxicating liquor in any public place by a person under the age of 21 years. R.C. 4301.69, which replaced R.C. 4301.632, is captioned "Offenses involving underage persons." This statute also sets forth separate offenses involving the possession of beer or intoxicating liquor by underage persons. See, e.g., R.C. 4301.69(B) (No owner or occupant of a public or *private* place shall knowingly allow an underage person to remain in or on the place while *possessing* or consuming beer or an intoxicating liquor.) Indeed, R.C. 4301.69(E)(1), in addition to the offense charged against appellants, also prohibits underage persons from, *inter alia*, knowingly *possessing* beer or other intoxicating liquor in any public or *private* place. Therefore, possession of intoxicating beverage is clearly a distinct and separate offense from that of an underage person knowingly being under the influence of a beer or intoxicating liquor in a *public* place.

{¶ 14} Moreover, if the legislature wanted to extend the meaning of a public place to include privately rented or owned property, as they did in the two aforementioned sections of R. C. Chapter 4301, they would have done so. *Miller v. Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353, ¶ 24 (The canon of expressio unius est exclusio alterius means that express inclusion of one thing implies the exclusion of the other.). Accordingly, for only those prosecutions involving underage persons who are charged with knowingly being under the influence of beer or an intoxicating liquor in any public place, the interior of a motor vehicle being operated upon a public highway is not a "public place" within the meaning of R.C. 4301.69(E)(1).

{¶ 15} Appellants' sole assignment of error is found well-taken. The judgment of the Maumee Municipal Court is reversed. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, P.J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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