

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

MACARIO G. YAMAT, JR.,

Defendant-Appellee.

FOR PUBLICATION

March 24, 2004

9:05 a.m.

No. 257923

Kent Circuit Court

LC No. 04-002637-AR

Official Reported Version

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's order affirming the district court's dismissal of a charge of felonious driving, MCL 257.626c, against defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant, a front-seat passenger in a vehicle, grabbed and turned the vehicle's steering wheel without permission. The vehicle left the road and struck a jogger. The district court dismissed the charge of felonious driving, finding that defendant was not operating the vehicle within the meaning of MCL 257.626c. The circuit court affirmed.

We review an issue of statutory interpretation de novo on appeal. *Livonia Hotel, LLC v Livonia*, 259 Mich App 116, 130; 673 NW2d 763 (2003). In determining the meaning of a statute, we first look to the precise words the Legislature used. *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). And, we must enforce the language used, *id.*, and utilize any definitions provided in the statute. If the Legislature does not define an important word we can consult a dictionary for its common meanings. *People v Cathey*, 261 Mich App 506, 515-516; 681 NW2d 661 (2004).

Here, MCL 257.626c provides in pertinent part:

A person who *operates* 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, carelessly and heedlessly in willful and

wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that endangers or is likely to endanger any person or property resulting in a serious impairment of a body function of a person, but does not cause death, is guilty of felonious driving [Emphasis added.]

The Legislature defined the critical term "operate" as "being in actual physical control of a vehicle" MCL 257.35a. The statute does not define "control," but a dictionary indicates that it means "power or authority to guide or manage." *Webster's New Collegiate Dictionary* (1980).

Applying these definitions, we conclude that defendant was not in actual physical control of the vehicle. Rather, defendant was interfering with the actual physical control of the vehicle. The undisputed evidence shows that the driver, who had control of the gas and brake pedals, emergency brake, ignition, turn signals, and steering wheel, was appropriately driving the vehicle until defendant grabbed the steering wheel, causing the vehicle to veer off the road. Although defendant's act caused the vehicle to veer off the road, defendant did not have the actual physical control of the vehicle, i.e., the power or authority to guide or manage the vehicle. Defendant could not have stopped or started the vehicle, nor could he have caused it to increase or decrease in speed. Defendant could not use any of the vehicle's other instruments; therefore he was not in actual physical control of the vehicle.

No authority addresses whether a passenger who grabs and turns the steering wheel of a moving vehicle to the surprise of the driver is operating the vehicle for purposes of MCL 257.626c. Cases addressing the issue of what constitutes the operation of a vehicle are all in the context of the statute prohibiting the operation of a vehicle under the influence of intoxicating liquor. Moreover, all these cases involved a single occupant of the vehicle and are distinguishable on that basis. See, e.g., *People v Wood*, 450 Mich 399; 538 NW2d 351 (1995). However, in an analogous case, *Farm Bureau Gen Ins Co v Riddering*, 172 Mich App 696; 432 NW2d 404 (1988), the Court held that a front-seat passenger who grabbed and turned the steering wheel of a vehicle was not operating the vehicle for the purpose of applying an exclusionary clause in an insurance policy. We believe that case offers a persuasive analysis.¹ The *Riddering* Court observed that the operation of a vehicle involved more than simply steering: it includes all functions necessary to make the vehicle operate. The *Riddering* Court concluded that in the case before it, the passenger who grabbed and turned the steering wheel without permission was *interfering* with the operation of the vehicle, not operating it. *Id.* at 703.

¹ The prosecution's assertion—that in light of the absence of authority interpreting the meaning of operating a vehicle for the purpose of applying MCL 257.626c, the district court and the circuit court erred in consulting authority dealing with civil law—is unsubstantiated, as the prosecution has provided no authority for its position. *Leitch v Switchenko*, 169 Mich App 761, 764; 426 NW2d 804 (1988).

On the basis of the above analysis, we conclude that defendant's grabbing and turning the steering wheel without the driver's permission did not constitute operation of the vehicle for purposes of the application of MCL 257.626c.

We affirm.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell