STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant, v VALERIANO ACOSTA-BAUSTISTA, Defendant-Appellee.	FOR PUBLICATION May 1, 2012 9:05 a.m. No. 303015 Ingham Circuit Court LC No. 10-000947-FH

Before: HOEKSTRA, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order granting defendant's motion to quash his bindover after the district court found that there was probable cause to believe that defendant was guilty of violating MCL 257.904. The circuit court held that there was no probable cause and ordered that the charge be dismissed. Because we conclude that the plain language of MCL 257.904 does not include persons driving with an expired license, we affirm.

This case arises from a fatal automobile accident. On September 3, 2009, Adam Nevells pulled out of the Okemos High School parking lot onto Jolly Road when the driver's side door of his automobile was struck by a pickup truck driven by defendant. Nevells died as a result of the injuries he received in the crash; he was the only occupant of the vehicle. It was later determined by police that defendant had the right of way, and that defendant's effort to stop before striking Nevells' vehicle left a 30-foot skid mark on the road leading to the crash site. No negligence on defendant's part was alleged. It was also not disputed that defendant possessed an operator's license originating in Mexico that had expired on May 27, 2009.

Defendant was charged with violating MCL 257.904(4), which makes it a felony offense for a person to operate a motor vehicle having never applied for a license or with a suspended or revoked license, and cause the death of another person by operation of that motor vehicle. A preliminary examination was held on December 2, 2010. Based on evidence establishing the facts discussed above, the district court concluded that there was probable cause to bind defendant over for a felony trial.

In the circuit court, defense counsel moved to quash the bindover on the ground that defendant did not violate MCL 257.904 because there was no evidence that he had been driving on a suspended or revoked license, or that he had failed to apply for a license or been denied one. Defense counsel stressed that Mexico and the United States have an agreement whereby each

country honors a license issued by the other. The reciprocity between Mexico and the United States in this regard is not disputed by the parties on appeal. The reciprocity agreement is set forth in the 1943 Convention on the Regulation of Inter-American Automotive Traffic.

Defense counsel alternatively argued in the circuit court that there was insufficient evidence to show proximate causation. In response, plaintiff argued that defendant was in violation of MCL 257.904 because he had no valid license, and additionally urged the trial court to interpret MCL 257.904 as imposing strict liability on the causation element. The circuit court agreed with defendant on both grounds, and ordered that the charge against defendant be dismissed. This appeal ensued.

On appeal, regarding defendant's license status, plaintiff argues that the circuit court erred when it dismissed defendant's charge because the evidence was sufficient to establish probable cause that defendant was in violation of MCL 257.904(4).

The issues raised in this case require that we interpret MCL 257.904. We review issues of statutory interpretation de novo. *People v Hrlic*, 277 Mich App 260; 744 NW2d 221 (2008). The purpose of statutory interpretation is to give effect to the intent of the Legislature. *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997). If a statute is clear, it must be enforced as written. *Id.*

When interpreting a statute, we do not speculate about the probable intent of the Legislature beyond the words expressed in the statute. *In re Schnell*, 214 Mich App 304, 310; 543 NW2d 11 (1995). "Nothing will be read into a clear and unambiguous statute that is not within the manifest intent of the Legislature as derived from the language of the statute itself." *People v Miller*, 288 Mich App 207, 210; 795 NW2d 156, lv den 488 Mich 992 (2010). Accordingly, the statutory language itself is the best indicator of the statue's scope.

Defendant was charged with violation of MCL 257.904(4), which provides in pertinent part: "A person who operates a motor vehicle in violation of subsection (1) and who, by operation of that motor vehicle, causes the death of another person is guilty of a felony." MCL 257.904(1) provides:

> A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified as provided in [MCL 257.212] of that suspension or revocation, whose application for [a] license has been denied, or who has never applied for a license, shall not operate a motor 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 motor vehicles, within this state.

We observe that MCL 257.904(1) is carefully worded to identify precisely what licensing deficiencies are punishable. The plain language of the statute applies to persons who never apply for a license, or who obtain one but subsequently have the license suspended or revoked because of improper driving. In the first instance, the person has never been adjudged fit to drive. In the second instance, the person has specifically been adjudged unfit to drive. In contrast, a person

with a valid license who has simply let it lapse is a person adjudged fit to drive who has merely failed to keep up the related paperwork.

MCL 257.904(1) and (4) prohibit and penalize a person whose operator's license "has been suspended or revoked," a person "whose application for [a] license has been denied," or a person "who has never applied for a license." Defendant's licensing status, as one driving on a valid but recently expired license, is not included in the plain statutory language. The fact that defendant's license was never suspended or revoked was not contested; further, it was not contested that defendant never applied for a Michigan driver's license, and was never denied a driver's license for which he did apply. Rather, defendant applied for, and was granted a Mexican driver's license.

Instructive is the statement in MCL 257.904(4) exempting from its penalties "a person whose operator's or chauffeur's license was suspended because that person failed to answer a citation or comply with an order or judgment . . . ." This limiting language guarantees that application of the statute to persons driving on suspended licenses is limited to those whose licenses were suspended because of unsafe or illegal driving, not merely those suffering suspension for administrative reasons unrelated to their driving record. For these reasons, we conclude that MCL 257.904(1) does not include licensed drivers whose licenses have merely expired, and accordingly, we conclude that the penalties of MCL 257.904(4) do not apply to persons driving with expired licenses.

Plaintiff does not directly disagree with this interpretation of MCL 257.904(4). Instead plaintiff focuses its argument on an interpretation predicated on defendant's status as an illegal alien. Specifically, plaintiff argues that defendant is in violation of the statute because he never applied for a Michigan driver's license, and, as an illegal alien, defendant would not be entitled to a Michigan driver's license if he applied for one. Accordingly, plaintiff argues, defendant is a person "who never applied for a license" in violation of MCL 257.904(1) and is consequently subject to MCL 257.904(4).

Defendant responds by asserting that plaintiff's argument fails because pursuant to the 1943 Convention on the Regulation of Inter-American Automotive Traffic, defendant was not required to apply for a Michigan driver's license because his Mexican license is recognized in Michigan. Plaintiff's answer to that claim is that the convention does not excuse defendant from failing to apply for a Michigan license because defendant was in the United States illegally, and consequently, should not be extended the privilege of driving set forth in the convention. According to plaintiff, because defendant cannot rely on the convention for lawful driving privileges in Michigan, he was required to obtain a Michigan driver's license, and his failure to apply for one subjects him to prosecution pursuant to MCL 257.904(1) as a person that has "never applied."

We are not persuaded by plaintiff's attempt to draw a distinction based on an individual's immigration status in regard to the privileges extended by the 1943 Convention on the Regulation of Inter-American Automotive Traffic and the application of MCL 257.904. First, we observe that plaintiff cities no authority to support its position that defendant's immigration status affects whether he may be prosecuted under MCL 257.904. Moreover, plaintiff admits that the convention is silent in regard to immigration status. Similarly, MCL 257.904 does not

make any reference to, let alone a distinction regarding driving privileges based on, immigration status. There simply is no statutory language or case authority to support plaintiff's contention that defendant's immigration status is a relevant consideration regarding the application of MCL 257.904.

Under these circumstances, plaintiff is urging us to impose a policy decision regarding the application of MCL 257.904 to illegal aliens. Because there is no basis either in law or in the language of the statute to hold that immigration status is relevant to the application of MCL 257.904, accepting plaintiff's argument would constitute our making a policy decision, which is a function reserved to the legislature. *People v McIntire*, 461 Mich 147, 152; 599 NW2d 102 (1999) ("Because our judicial role precludes imposing different policy choices than those selected by the Legislature, our obligation is, by examining the statutory language, to discern the legislative intent that may reasonably be inferred from the words expressed in the statute).

Therefore, we conclude that based on the plain language of the statute and the convention, the analysis under MCL 257.904(1) and (4) is not impacted by the motor vehicle operator's immigration status and is the same regardless of whether the motor vehicle operator is driving pursuant to a license from Michigan, a foreign country that is a signatory to the convention, or one of the other 49 states.

Here the evidence presented at the preliminary hearing established that defendant was driving on a Mexican issued license as permitted by the convention and the fact that defendant's license was expired at the time of the accident does not implicate the application of MCL 257.904. Consequently, the circuit court did not err when it granted defendant's motion to quash the bindover because this evidence does not demonstrate probable cause to believe defendant is guilty of violating MCL 257.904(4). [1]

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Henry William Saad

[1] In light of our resolution of this issue, we need not reach the question of causation.