Michigan Supreme Court
Lansing, Michigan

Syllabus

PEOPLE v REA

Docket No. 153908. Argued on application for leave to appeal April 25, 2017. Decided July 24, 2017.

Gino R. Rea was charged in the Oakland Circuit Court with operating a motor vehicle while intoxicated (OWI), MCL 257.625(1). A police officer parked his patrol vehicle in the street in front of defendant's driveway while responding to noise complaints from defendant's neighbor. As the officer walked up the straight driveway, defendant backed out of his detached garage and down the driveway. When the officer shined his flashlight to alert defendant that he was in the driveway, defendant stopped his car in the driveway, next to the house. Defendant then put his car in drive and pulled forward into the garage, bumping into stored items in the back of the garage. Defendant, who smelled of alcohol and whose speech was slurred, was arrested for operating a motor vehicle while intoxicated after he refused to take field sobriety tests; defendant's blood alcohol level was later determined to be three times the legal limit set forth in MCL 257.625(1)(b). After his arraignment, defendant moved to quash the information. The court, Colleen A. O'Brien, J., granted the motion and dismissed the charge, finding that the upper portion of defendant's driveway, closest to the garage, was not a place generally accessible to motor vehicles for purposes of criminal liability under MCL 257.625(1). On appeal, the Court of Appeals, GLEICHER, P.J., and SHAPIRO, J., (JANSEN, J., dissenting), affirmed the trial court's order, concluding that because the general public is not widely permitted to access the upper portion of a private driveway, defendant's operation of his vehicle while intoxicated did not fit within the purview of behavior prohibited under MCL 257.625(1). 315 Mich App 151 (2016). The Supreme Court ordered and heard oral argument on whether to grant the prosecution's application for leave to appeal or take other peremptory action. 500 Mich 871 (2016).

In an opinion by Justice BERNSTEIN, joined by Chief Justice MARKMAN and Justices ZAHRA, and WILDER, the Supreme Court, in lieu of granting leave to appeal, *held*:

MCL 257.625(1) of the Michigan Vehicle Code, MCL 257.1 *et seq*., prohibits a person, whether licensed or not, from operating 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 within this state if the person is operating while intoxicated. The phrase "generally accessible" in MCL 257.625(1) is not defined by the Michigan Vehicle Code. In light of the dictionary definitions of these words, "generally accessible" means usually or ordinarily capable of being reached. In contrast to the phrase "open to the general public," which concerns

who may access the location, the phrase "generally accessible to motor vehicles" concerns *what* can access the location. Accordingly, when determining whether a place is generally accessible to motor vehicles, the focus is not on whether most people can access the area or have permission to use it but on whether most motor vehicles can access the area. In context, MCL 257.625(1) prohibits an intoxicated person from operating a motor vehicle in a place that is usually capable of being reached by self-propelled vehicles. Had the Legislature intended to prohibit driving while intoxicated only in areas actually used by motor vehicles, it would have used different language in the statute. In this case, defendant's driveway was designed for vehicular travel and there was nothing on his driveway that would have prevented motor vehicles on the public street from turning into it. Accordingly, defendant's driveway was generally accessible to motor vehicles for purposes of MCL 257.625(1). The Court of Appeals erred by affirming the trial court's dismissal of the OWI charge against defendant.

Court of Appeals judgment reversed, circuit court order of dismissal vacated, and the case remanded.

Justice LARSEN, concurring in the result only, concluded that the case at issue fit easily within the statutory language and therefore would have waited for a case that pushed the boundaries of MCL 257.625 to explore the edges of the statutory language. The whole point of a driveway is to provide access to motor vehicles. Where the place is *designed* to be capable of being reached by motor vehicles, the answer to whether it is "generally accessible to motor vehicles" is simple: of course. Nonetheless, the majority's definition of accessibility, which focused on whether a place is physically capable of being reached, might be too broad. And the dissent's understanding, which focused on legal or customary accessibility, failed to consider that if "accessible" means "legally accessible," there is nothing in the statute to suggest that one's trips up and down their own driveway should not count. Driveways, in general, are legally accessible by, at least, *some* motor vehicles. And if "generally" means "usually," or "in general," then driveways are "generally accessible to motor vehicles," whether "accessible" means "physically capable of being reached," "physically easy to reach," or "legally capable of being reached." Only if "generally" includes some idea of volume ("popularly") *and* "accessible" means "legally so," could driveways possibly be out of bounds. But that reading would come at the cost of the most natural reading of the statutory text. Instead, because driveways are clearly included within the statute's prohibition against operating a vehicle while intoxicated upon places generally accessible to motor vehicles, Justice LARSEN would have concluded that it was not necessary to establish the precise boundaries of MCL 257.625(1) in this case.

Justice MCCORMACK, joined by Justice VIVIANO, dissenting, agreed with the majority that the Legislature's 1991 amendment of MCL 257.625(1) prohibited the operation of motor vehicles while intoxicated in other places in that the language "generally accessible" evidenced an intent to expand the scope of the statute to cover additional places not covered by the original language. But Justice MCCORMACK disagreed with the majority's conclusion that MCL 257.625(1) prohibits an individual from driving a vehicle while intoxicated on a private driveway. The majority's broad interpretation of the language—whether a place is usually capable of being physically reached by a motor vehicle—threatened to swallow the original "open to the general public" language in the statute in that the majority's interpretation

effectively bans in all places the operation of a vehicle in Michigan while intoxicated. The majority's broad interpretation ignores that when the Legislature has wanted to prohibit driving specific types of motor vehicles in all places while intoxicated, it has clearly done so. Examining the three related clauses in MCL 257.625(1), it is clear that the Legislature did not intend for the "generally accessible" clause to extend the reach of the statute to every place in this state, but rather to cover places that are open to an appreciable number of motor vehicles, even when access is restricted by physical or other barriers to entry; a place is "generally accessible" if it is a place where vehicles are routinely permitted to enter. While many private roads are generally accessible to motor vehicles—and would therefore come within the purview of prohibited conduct in MCL 257.625(1)—private driveways are not. It should not be assumed that the Legislature intended to extend the scope of the statute to include the private property of individual homeowners because the statute has historically focused on areas open to the general public without restriction. Justice MCCORMACK would have affirmed the result reached by the Court of Appeals.

Michigan Supreme Court
Lansing, Michigan

OPINION

FILED July 24, 2017

STATE OF MICHIGAN

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v No. 153908

GINO ROBERT REA,

Defendant-Appellee.

BEFORE THE ENTIRE BENCH

BERNSTEIN, J.

This case concerns whether defendant, Gino R. Rea, may be charged under MCL 257.625 for operating a motor vehicle in his private driveway while intoxicated. We hold that, because defendant's conduct occurred in an area generally accessible to motor vehicles, the conduct was within the purview of MCL 257.625(1). Accordingly, we reverse the judgment of the Court of Appeals, vacate the trial court's dismissal of the case, and remand to the trial court for further proceedings consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY

In the early morning hours of March 31, 2014, police officers were dispatched three times to defendant's home because of a neighbor's noise complaints. On the third visit, Northville police officer Ken DeLano parked his patrol vehicle in the street in front of defendant's driveway, which is paved and straight. The driveway begins on the street, passes to the right of defendant's home, and extends to defendant's garage at the end of the driveway. The garage is detached from the home, and it is situated within defendant's backyard. There are no physical obstructions that block entry to defendant's driveway from the street.

As Officer DeLano walked up defendant's driveway to investigate the noise complaint, the overhead garage door opened, and defendant started to back his car down the driveway. After Officer DeLano shined his flashlight to alert defendant of his presence, defendant stopped his car, coming to a rest in the driveway, next to his house. When Officer DeLano approached defendant, who had remained in his car, the officer noticed a strong odor of intoxicants. Officer DeLano also observed that defendant's eyes were glassy and blood shot and his speech was slurred. Defendant suddenly put the car in drive and pulled forward into the garage, bumping into stored items in the back of the garage. Defendant then got out of the car and started to walk toward Officer DeLano, swaying as he walked. Officer DeLano asked defendant to perform field sobriety tests, but defendant refused. Defendant was then arrested for operating a vehicle while intoxicated. A blood test later conducted at a hospital revealed a blood alcohol level of .242 grams per 100 milliliters of blood—three times the legal limit. See MCL 257.625(1)(b).

The Oakland County Prosecuting Attorney charged defendant with one count of operating while intoxicated (OWI), MCL 257.625(1). Following a preliminary examination, defendant was bound over to the Oakland Circuit Court, where he moved to quash the information. On October 30, 2014, the trial court granted defendant's motion and dismissed the case, finding that the upper portion[1] of defendant's driveway did not constitute an area that is "generally accessible to motor vehicles" for purposes of criminal liability under MCL 257.625(1). In a split, published opinion, the Court of Appeals affirmed the trial court's ruling, holding that the upper portion of the driveway did not constitute a place generally accessible to motor vehicles because "[t]he 'general public' is not 'widely'. . . permitted to 'access' that portion of a private driveway immediately next to a private residence." *People v Rea*, 315 Mich App 151, 157; 889 NW2d 536 (2016).

The prosecution sought leave to appeal in this Court. We scheduled oral argument on the application, directing the parties to address "whether the location where the defendant was operating a vehicle was a place within the purview of MCL 257.625." *People v Rea*, 500 Mich 871 (2016).

II. STANDARD OF REVIEW

Whether a defendant's conduct falls within the scope of a penal statute is a question of statutory interpretation that is reviewed de novo. *People v Hill*, 486 Mich 658, 665-666; 786 NW2d 601 (2010). "Statutes . . . are interpreted in accordance with

[1] The parties refer to the driveway as consisting of an upper and a lower portion, although there is no physical barrier or line that splits one from the other. The part of the driveway closest to the garage is referred to as the upper portion of the driveway, whereas the part of the driveway closest to the street is referred to as the lower portion of the driveway.

legislative intent . . . ." *People v Mazur*, 497 Mich 302, 308; 872 NW2d 201 (2015). "[T]he most reliable evidence" of that intent is the plain language of the statute. *Id*. (citations and quotation marks omitted). When interpreting a statute, "we must give effect to every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory." *People v Miller*, 498 Mich 13, 25; 869 NW2d 204 (2015) (citation and quotation marks omitted). Nontechnical words and phrases should be interpreted "according to the common and approved usage of the language." *People v Dunbar*, 499 Mich 60, 67; 879 NW2d 229 (2016) (citation and quotation marks omitted). When a word or phrase is not defined by the statute in question, it is appropriate to consult dictionary definitions to determine the plain and ordinary meaning of the word or phrase. *People v Feeley*, 499 Mich 429, 437; 885 NW2d 223 (2016).

III. ANALYSIS

The Michigan Vehicle Code, MCL 257.1 *et seq.*, prohibits a person from operating a motor vehicle while intoxicated. Specifically, MCL 257.625(1) provides in pertinent part:

> A person, whether licensed or not, shall not operate 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, within this state if the person is operating while intoxicated.

Accordingly, MCL 257.625(1) prohibits operating a vehicle while intoxicated in three types of locations: (1) upon a highway, (2) in a place open to the general public, or (3) in

a place generally accessible to motor vehicles. The issue before us is whether defendant's driveway was "generally accessible to motor vehicles."[2]

The crux of this dispute is the meaning of the phrase "generally accessible" in MCL 257.625(1). Because the Michigan Vehicle Code does not define the phrase "generally accessible," we consult the dictionary definitions of these words. *Feeley*, 499 Mich at 437. The word "generally" is an adverb that modifies the adjective "accessible." "Generally" is defined as "in a general manner"; "in disregard of specific instances and with regard to an overall picture"; and "as a rule: USUALLY." *Merriam-Webster's Collegiate Dictionary* (11th ed).[3] The term "accessible" means "providing access";

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[2] The parties do not argue that defendant's driveway constituted a highway or a place open to the general public under MCL 257.625(1). Therefore, our opinion is confined to considering whether defendant's driveway is a place "generally accessible to motor vehicles." *Id*.

The Court of Appeals dissent opined that whether defendant's driveway was "generally accessible to motor vehicles" was a question for the trier of fact. *Rea*, 315 Mich App at 159 (JANSEN, J., dissenting). We disagree. This case involves a legal question that must be resolved by the court. *Hill*, 486 Mich at 665-666. Accordingly, the dissent was incorrect when it stated that this issue must be submitted to the fact-finder.

[3] *Random House Webster's College Dictionary* (2001) similarly defines "generally" as "usually; ordinarily"; "with respect to the larger part" and "without reference to particular persons, situations, etc., that may be an exception." The use of "generally" in MCL 257.625(1) provides that the place need not *always* be accessible to motor vehicles, but it must be more than *occasionally* accessible to motor vehicles.

The dissent rejects defining "generally" as "usually." However, the dissent later reasons that a private driveway is not "generally accessible to motor vehicles" because it is not "normally used by the public." This reasoning conflates the word "generally" with the word "normally," and "normally" is not meaningfully distinguishable from "usually." "Normally" is defined as "according to rule, custom, etc.; ordinarily; *usually*." *Random House Webster's College Dictionary* (1996) (emphasis added).

"capable of being reached: being within reach" and "capable of being used or seen." *Id.*[4] Therefore, the plain and ordinary meaning of the phrase "generally accessible" means "usually capable of being reached."

This phrase must be considered in its statutory context: "other place . . . generally accessible to motor vehicles." MCL 257.625(1). The phrase "generally accessible" modifies the preceding noun phrase "other place." Accordingly, the prohibition in MCL 257.625(1) against operating a vehicle while intoxicated does not apply to every place.[5]

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[4] *Random House Webster's College Dictionary* (2001) similarly defines "accessible" as "easy to approach, reach, enter, speak with, or use" and "able to be used, entered, or reached." This definition does not require motor vehicles to have *actually reached* that place. Accordingly, the dissent's consideration of places "*accessed* regularly by an appreciable number of vehicles" is inconsistent with the statutory language because it ignores the term "accessible." (Emphasis added.) If the Legislature intended to solely prohibit driving while intoxicated in areas that are actually used by motor vehicles, it would have used "access" as a verb and prohibited driving while intoxicated in places that are "generally accessed by motor vehicles" or in places that "motor vehicles generally access." Instead, MCL 257.625(1) contains the word "accessible," which indicates that the determination is whether motor vehicles *can* access a place, not whether motor vehicles *actually do* access that place. The dissent sidesteps this crucial distinction by noting that "evidence of where motor vehicles actually do go is evidence of where they can go." We agree with this point. However, the dissent's formulation does not consider the number of vehicles using the place as evidence of whether motor vehicles *can* access the place but rather makes actual use of the place the dispositive inquiry. But an area that motor vehicles do not regularly access can still be an area that motor vehicles are *able* to access, and the dissent's approach does not account for this distinction. For these reasons, the dissent's exclusive focus on whether a road is "*accessed* regularly by an appreciable number of vehicles" is misplaced.

[5] The Legislature amended MCL 257.625(1) in 1991 to add the language at issue in this case, specifically to prohibit persons from operating a motor vehicle while intoxicated on places "generally accessible to motor vehicles." See 1991 PA 98, effective January 1, 1992. Contemporaneously with that amendment, the Legislature enacted MCL 257.625m to expressly prohibit persons with a certain blood alcohol level from operating a "commercial motor vehicle *within the state*." (Emphasis added.) See 1991 PA 94, effective January 1, 1993. The Legislature's omission of similar language when

Instead, the statute's prohibition applies only to highways, to other places open to the general public, and to other places that are generally accessible—that is, usually or ordinarily capable of being reached.[6] Finally, we must incorporate the phrase "to motor vehicles," which is an adverbial prepositional phrase that modifies "generally accessible." The Michigan Vehicle Code defines "motor vehicle" as "every vehicle that is self-propelled . . . ." MCL 257.33. Therefore, as a whole, the relevant statutory provision prohibits an intoxicated person from operating a vehicle in a place that is usually capable of being reached by self-propelled vehicles.

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amending MCL 257.625(1) further indicates that the statute does not criminalize driving while intoxicated in *every* place like MCL 257.625m but rather in only three specific areas: (1) upon a highway, (2) in a place open to the general public, or (3) in a place generally accessible to motor vehicles. See *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993) ("Courts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there.")

[6] The dissent asserts that our definition "threatens to swallow the 'open to the general public language' in the statute . . . because every place open to the general public will *also* always be 'generally accessible to motor vehicles.' " (Emphasis in original.) MCL 257.625(1) prohibits operating a motor vehicle while intoxicated on "a highway or *other place* open to the general public or generally accessible to motor vehicles . . . ." (Emphasis added.) "Other place" applies to both "open to the general public" and "generally accessible to motor vehicles." Therefore, these two categories need not be entirely independent of each other. This is also evident given that a "highway" is both open to the general public and generally accessible to motor vehicles. Moreover, although there might be significant overlap between these categories, the phrase "generally accessible to motor vehicles" still provides an additional place that may not necessarily be covered under the "open to the general public" category. Therefore, each category does work independent of the other, and neither is rendered useless surplusage by the existence of the other.

The Court of Appeals majority erred when it concluded that whether a place is "generally accessible to motor vehicles" depends on whether the general public "widely" or "popularly" has permission to enter the location.[7] *Rea*, 315 Mich App at 155-158. This conclusion is inconsistent with the plain language of the statute in several respects. First, the Court of Appeals majority erroneously construed the term "generally" to mean open to an unrestricted number of users. See *id*. at 157. But the use of the modifier "to motor vehicles" shows that the focus is not whether most *people* can access the area, but whether most *motor vehicles* can access the area. The Court of Appeals majority similarly erred by construing "accessible" to mean permission to enter. *Id*. An object, unlike an operator of the object, is not typically given *permission* to enter a location. We therefore read "accessible" to instead refer to whether motor vehicles have the *ability* to enter an unsecured private driveway, not whether their operators have permission to do so. Consequently, the Court of Appeals majority's statement that only a small subset of vehicles are permitted to use the upper portion of the driveway even though the public may access the lower portion of the driveway is simply irrelevant. See *id*. This arbitrary line-drawing between the lower and upper portion of defendant's driveway has no basis in the language of MCL 257.625(1).

Furthermore, to construe the phrase "generally accessible" as dependent on whether the general public has permission to enter the location would conflate the two phrases "open to the general public" and "generally accessible to motor vehicles." In

[7] Relying on *Webster's New World College Dictionary* (5th ed), the Court of Appeals majority defined "generally" as "to or by most people; widely; popularly; extensively."

MCL 257.625, these two phrases are separated by the disjunctive term "or," which indicates separate alternatives. See *People v Kowalski*, 489 Mich 488, 499 n 11; 803 NW2d 200 (2011) (" 'Or' is . . . a disjunctive [term], used to indicate a disunion, a separation, an alternative.") (citation and quotation marks omitted; alteration in original). For that reason, to similarly interpret "generally accessible to motor vehicles" as concerning whether the general public has permission to enter would nullify the disjunctive term "or" and render the phrase "generally accessible to motor vehicles" needless surplusage. This Court must avoid an interpretation that would render any part of the statute nugatory. *Miller*, 498 Mich at 25.

This is especially true in light of the statutory history of MCL 257.625(1). Previously, MCL 257.625(1) only prohibited operating a vehicle under the influence of intoxicating liquor "upon a highway or other place open to the general public." MCL 257.625(1), as amended by 1982 PA 309, effective March 30, 1983. In 1991, the Legislature amended the statute to include an area not previously covered under the statute: a place that is "generally accessible to motor vehicles." See MCL 257.625(1), as amended by 1991 PA 98, effective January 1, 1992. This amendment broadened the scope of the OWI statute to include an additional, alternative place where operating a motor vehicle while intoxicated is prohibited.[8] *People v Nickerson*, 227 Mich App 434,

[8] The inclusion of this alternative place indicates that one of the purposes of the statute is to prevent collisions with other persons or property, not merely to prevent collisions with other *motor vehicles*. *People v Wood*, 450 Mich 399, 404; 538 NW2d 351 (1995). This danger could readily exist even if one were driving in one's own private driveway with no other vehicular traffic at the time. For example, it is commonplace for young children to play in driveways, creating the real danger that such children could be struck by an intoxicated driver. Indeed, in this very case, an individual was placed at risk by

440; 575 NW2d 804 (1998). Accordingly, the phrase "generally accessible to motor vehicles" must be meaningfully distinguished from the phrase "open to the general public." "Open to the general public" concerns *who* may access the location, while "generally accessible to motor vehicles" concerns *what* can access the location. This interpretation avoids redundancy and provides meaning to both phrases.[9]

We now apply our plain language interpretation of the statute to the facts at issue in this case. Defendant's private driveway is designed for vehicular travel.[10] Areas

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defendant's conduct; as defendant reversed his car toward Officer DeLano, the officer needed to shine his flashlight to alert defendant of his presence behind the vehicle.

[9] This Court has never defined the phrase "open to the general public" in the context of MCL 257.625(1), and it is unnecessary to do so here. However, we are skeptical of the dissent's assertion that all roads that are "privately owned and maintained," are, by definition, not " 'open to the general public.' " See *Holland v Dreyer*, 184 Mich App 237, 239; 457 NW2d 55 (1990) (holding that a road through a mobile home park that "was built and maintained privately" was open to the general public because it was "accessible to the general public"). The dissent asserts that "private roads" are " 'generally accessible to motor vehicles' " but not " 'open to the general public.' " However, the very definition of a "private road" that the dissent relies on states that such a road is "normally open to the public." MCL 257.44(2). We see no meaningful difference in this context between the phrases "normally open to the public" and "open to the general public." Moreover, there is a reasonable argument that an area that places some restrictions on public access may still be an area that is "open to the general public." See *State v Boucher*, 207 Conn 612, 615-616; 541 A2d 865 (1988) (holding that "[f]or an area to be 'open to public use,' it does not have to be open to 'everybody all the time,' " so long as access to the area is "not confined to privileged individuals or groups whose fitness or eligibility is gauged by some predetermined criteria, but is open to the indefinite public"). Therefore, our reading of the statute more accurately reflects the plain language of the statute, because the dissent's interpretation conflates "open to the general public" and "generally accessible to motor vehicles," rendering the last category needless surplusage.

[10] Because defendant's private driveway is designed for vehicular travel, we need not decide whether MCL 257.625(1) also prohibits driving while intoxicated in other places—such as lawns or open fields—that are not designed for such traffic.

designed for vehicular travel, are by their nature, areas a vehicle is usually capable of accessing. Additionally, there is nothing on defendant's driveway that would *prevent* motor vehicles on the public street from turning into it.[11] Given these facts, defendant's driveway is a place motor vehicles are usually capable of entering. Accordingly, we conclude that defendant's driveway was generally accessible to motor vehicles under MCL 257.625(1).[12]

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[11] Defendant argues that his driveway was not "generally accessible to motor vehicles" when he operated his vehicle because Officer DeLano parked his car across defendant's driveway before approaching the garage, effectively preventing any vehicles from accessing the driveway. But this temporary obstruction does not change the fact that the driveway is *generally* accessible, as the driveway is not usually obstructed by another vehicle. See *Merriam-Webster's Collegiate Dictionary* (11th ed) (defining "generally" as "in a general manner"; "in disregard of specific instances and with regard to an overall picture"). However, we agree with the concurrence that one's living room is not an area "generally accessible to motor vehicles." Whether it is difficult for motor vehicles to enter an area is certainly relevant to determining whether motor vehicles are "usually capable of reaching" that area. Since there is nothing on defendant's driveway that makes it difficult for motor vehicles to enter it, we need not determine with specificity when entrance to an area is so difficult that it is not "generally accessible to motor vehicles."

[12] The dissent asserts that if the Legislature intended to include a private driveway under MCL 257.625(1), then we "should expect far more clarity." The dissent notes that the Legislature could have listed "private driveways" in MCL 257.625(1), but it chose not to. However, it is not necessary for the Legislature to list every possible place that is "generally accessible to motor vehicles" in order for them to be included under that provision—such is the point of using broader language that encompasses more specific places.

Moreover, there is ample reason for the Legislature to prohibit operating a motor vehicle while intoxicated on an unobstructed driveway. Although the driveway is private property, should an intoxicated driver strike a child crossing his or her driveway, the injury to the child is still as real as it would have been if the child had been playing in the street. And, as the dissent concedes, the Legislature has the authority to "regulate and even outlaw certain conduct on private property."

For the aforementioned reasons, MCL 257.625 encompasses defendant's private driveway. The Court of Appeals majority did not properly apply the plain meaning of MCL 257.625(1) because the Court failed to distinguish between "open to the general public" and "generally accessible to motor vehicles." Therefore, the Court of Appeals erred by upholding the trial court's order to quash the information.

IV. CONCLUSION

We hold that defendant's driveway is an area "generally accessible to motor vehicles" for purposes of MCL 257.625(1). Because defendant allegedly operated a motor vehicle in his driveway while intoxicated, the prosecution established probable cause that defendant violated MCL 257.625. Accordingly, we reverse the judgment of the Court of Appeals, vacate the trial court's dismissal of the case, and remand to the trial court for further proceedings consistent with this opinion.

Richard H. Bernstein
Stephen J. Markman
Brian K. Zahra
Kurtis T. Wilder

S T A T E O F M I C H I G A N

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v No. 153908

GINO ROBERT REA,

Defendant-Appellee.

LARSEN, J. (*concurring in the result only*).

I agree with the majority that defendant may be charged under MCL 257.625 with operating a motor vehicle in his private driveway while intoxicated. I write separately because I believe that the case before us fits easily within the statute; I would, therefore, wait for a case that pushes the boundaries of MCL 257.625 to explore where its edges lie.

MCL 257.625(1) states: "A person, whether licensed or not, shall not operate 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, within this state if the person is operating while intoxicated." Driving drunk is, therefore, prohibited in three places: (1) "upon a highway," (2) in an "other place open to the general public," or (3) in "[another] place generally accessible to motor vehicles." We must decide whether driveways are "generally accessible to motor vehicles."

That to ask the question comes close to answering it is not, alone, sufficient to decide the case. But it is a clue that should not be discounted. Sometimes, when exploring the overall scheme of a statute, the initially intuitive reading proves wrong.

But it is often the case that the most straightforward meaning is actually the one initially conveyed. A speaker of ordinary English would not readily conclude that driveways are *not* "generally accessible to motor vehicles," and that should give us pause before we conclude that the Legislature chose those words to produce such a result. Further study of the statute does not dislodge the initial impression. The whole point of a driveway is to provide access to motor vehicles. Where the place is *designed* to be capable of being reached by motor vehicles, the answer to whether it is "generally accessible to motor vehicles" is simple: of course.

I. "ACCESSIBLE"

An accessible place, the majority, the dissent, and I all agree, is one that is, in some sense, "capable of being reached." The majority focuses on whether a place is *physically* capable of being reached. While I agree that access often denotes physical access, and might well do so in this context, I share in the dissent's concern that, unmodified, this definition might prove too much. A car may be physically capable of barreling down a barricade or crashing into someone's living room but no one would say that a living room is "generally accessible to motor vehicles," just as no one would say that a location is wheelchair-accessible merely because, given sufficient momentum, a wheelchair can be made to surmount a curb. These examples help us see that "accessible" might be used in the majority's physical sense but with a narrower reach: some dictionaries define "accessible" as "*easy to* approach, reach, enter, speak with, or use." *Random House Webster's College Dictionary* (2001) (emphasis added). See also *Webster's New World College Dictionary* (5th ed) ("that can be approached or entered"

or that is "easy to approach or enter"); *The American Heritage Dictionary* (2d college ed) ("Easily approached or entered."); *Webster's II New College Dictionary* (1995) ("Easily approached or entered."). On this definition, a ramp is wheelchair-accessible; a curb is not. So too with a driveway. Most are readily, or easily, physically accessible by motor vehicles; and even if some might not be—because they are graded too steeply or are in great disrepair—that would make no difference—the category (driveways) need only be "generally" so. The majority, however, focuses not on ease, but on capability. And while a driveway surely fits within the majority's definition, I share the dissent's concern that the majority may have adopted a rule that has few boundaries.[1]

The dissent, on the other hand, asks if the place is one "where vehicles are routinely *permitted* to enter." (Quotation marks and citation omitted; emphasis added.) The dissent, like the Court of Appeals panel below, has thus introduced the idea of *legal* or *customary* as opposed to *physical* accessibility. But if a place is "generally accessible" when "vehicles are routinely permitted to enter" by virtue of rights of ownership or

[1] This is not to say that defining "accessible" as "easy to approach" is free from doubt. It is possible that the Legislature intended to adopt an extremely broad rule, as the majority contends, and to rely on the discretion of police officers and prosecutors to bring charges in appropriate cases. Locations that would be difficult for a car to access but which are nevertheless *capable* of being reached by cars might be locations where, for example, pedestrians would be in greater need of protection. The Legislature might have intended to allow prosecutors to charge under MCL 257.625 an individual who, while driving drunk in such a location, posed a threat to unsuspecting pedestrians; although I expect the dissent would say that most such places are already covered because they are "open to the general public." There is no need to grapple with these hypotheticals in this case because none of these circumstances is present here. I would thus prefer to resolve this straightforward case and leave the question of the reach of MCL 257.625 for a future case that tests its boundaries.

permission granted by the owner, then surely a private driveway is such a place. Vehicles driven by friends and relatives, service providers, and salesmen are all "routinely permitted to enter" one's driveway. Moreover, one's *own* vehicles are routinely, indeed *daily*, permitted to enter one's driveway. The statute, it should be remembered, states only that the area must be "generally accessible to motor vehicles"; it does not say that it must be "generally accessible to motor vehicles owned by others." And so even if "accessible" means "legally accessible," I see nothing in the statute to suggest that one's own trips up and down the driveway should not count. Driveways, in general, are legally accessible by, at least, *some* motor vehicles.

II. "GENERALLY"

Whether "accessible" is defined as "physically capable of being reached," "physically easy to reach," or "legally capable of being reached," I conclude that driveways are "accessible to motor vehicles." But what, then, of "generally?" The majority defines "generally" as "usually."[2] The dissent, however, fears that the

[2] The majority defines "generally" as " 'in a general manner'; 'in disregard of specific instances and with regard to an overall picture'; and 'as a rule: USUALLY,' " quoting *Merriam-Webster's Collegiate Dictionary* (11th ed). Similar definitions are expressed in *Random House Webster's College Dictionary* (2001) ("usually; ordinarily"; "with respect to the larger part" and "without reference to particular persons, situations, etc., that may be an exception"), *The Oxford English Dictionary* (2d ed) ("So as to include every particular, or every individual; in a body, as a whole, collectively"; "Universally; with few or no exceptions; with respect to every (or almost every) individual or case concerned"; "With respect to the majority or larger part; for the most part, extensively"; "In a general sense or way; without reference to individuals or particulars"; "As a general rule; in most instances, usually, commonly"), *The American Heritage Dictionary* (2d college ed) ("For the most part; widely"; "As a rule; usually"; "In disregard of particular instances and details"), and others.

majority's rule threatens to "cover[] any land not under water" despite the Legislature's decision not to prohibit driving while intoxicated in all places "within this state." Cf. MCL 257.625m(1) (stating that an intoxicated person "shall not operate a commercial motor vehicle within this state"). To avoid such a broad interpretation, the dissent reads "generally" to mean " 'to or by most people; widely; popularly; extensively.' "[3] Quoting *Webster's New World College Dictionary* (5th ed). The dissent thus requires that the place where vehicles are " 'routinely permitted to enter' " also be available " 'to or by most [motor vehicles],' "[4] " 'widely,' " or to "an appreciable number of motor vehicles." (Citations omitted.) And because any *particular* private driveway is not legally accessible to *most* motor vehicles, the dissent concludes that, as a category, private driveways are not generally accessible to motor vehicles.[5]

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[3] The dissent supports its understanding of "generally" by arguing that the statute's use of the plural form, " 'motor *vehicles*,' " suggests that "a certain volume of use is required." I find little force in this argument. Our statutory rules of construction caution that the plural form usually includes the singular. See MCL 8.3b ("Every word importing the singular number only may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number."). See also Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thomson/West, 2012), p 130 (noting that the plural "normally include[s] the singular," but "the proposition that many includes only one is not as logically inevitable as the proposition that one includes multiple ones, so its application is much more subject to context and to contradiction by other canons"). Because I think we agree that the question is whether driveways, as a category, are "generally accessible to motor vehicles," the Legislature may have chosen the plural over singular ("generally accessible to *a* motor vehicle") to avoid confusion.

[4] Because the statute states "generally accessible to *motor vehicles*," the dissent's definition of "generally" must mean "to or by most [motor vehicles]," not "to or by most people." Even though cars, for now, all require drivers, there are surely places legally or physical accessible to people that are not so to motor vehicles.

[5] The dissent concludes otherwise for private roads: though privately owned, and,

While the dissent's interpretation of "generally accessible to motor vehicles" might be one way to make the statute work, it certainly takes the long way home when there are much straighter routes to resolving this case. And while I share the dissent's concern that the majority may have adopted a rule that has few, if any, boundaries, the dissent's desire to avoid an overly broad interpretation has caused it to eliminate the obvious case. I cannot agree with the dissent that driveways are *not* "generally accessible to motor vehicles." If "generally" means "usually," or "in general," then driveways are "generally accessible to motor vehicles," whether "accessible" means "physically capable of being reached," "physically easy to reach," or "legally capable of being reached." Only if "generally" includes some idea of volume ("popularly") *and* "accessible" means

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therefore not "open to the general public," they are, by statutory definition, still "normally open to the public," and, therefore, "widely," legally, "accessible to motor vehicles." I am not certain that a private road, which is "normally open to the public," is not itself "open to the general public." Accordingly, I question whether the dissent's interpretation of "generally accessible to motor vehicles" leaves the third category to do no work. I am not convinced, as the dissent is, that each of the three categories in MCL 257.625(1) needs to be given distinct meaning; the third category, "generally accessible to motor vehicles," might well be a catch-all provision. If so, then *it* must do some work. Even if it intentionally encompasses either or both of the others, there must be places that were not covered by the previous statutory language that are now covered because they are "generally accessible to motor vehicles." While redundancy is normally to be avoided in statutory interpretation, sometimes it is just baked in, and this seems not unusual when a statute has been successively amended to add broader and broader coverage, as this one has been. See 1927 PA 318 (prohibiting intoxicated driving "upon any highway within this state"); 1941 PA 346 (prohibiting intoxicated driving "upon any highway or any other place open to the general public within this state"); 1956 PA 34 (prohibiting intoxicated driving "upon any highway or any other place open to the general public, including any area designated for the parking of motor vehicles, within this state"); 1991 PA 98 (prohibiting intoxicated driving "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").

"legally so," could driveways possibly be out of bounds. But that reading comes at the cost of the most natural reading of the statutory text. One stumbles to say that "driveways are not generally accessible to motor vehicles" and that is sufficient to dispel for me whatever doubt the dissent's complex formulation might raise.

* * *

Because I believe that driveways are "generally accessible to motor vehicles," I would resolve this straightforward case on its own facts and leave for a future case the determination of the precise boundaries of MCL 257.625(1). I, therefore, concur in the judgment only.

Joan L. Larsen

S T A T E O F M I C H I G A N

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v No. 153908

GINO ROBERT REA,

Defendant-Appellee.

MCCORMACK, J. (*dissenting*).

I respectfully dissent. I believe we must read the language "generally accessible to motor vehicles" in MCL 257.625(1) as meaning something more specific than just whether a place is "usually capable of being [physically] reached" by motor vehicles, as the majority does, an interpretation that threatens to swallow the rest of the statute. We should give this language a meaning that respects each clause in the statute.

MCL 257.625(1) sets forth three categories of places in which a person can be penalized for operating a vehicle while intoxicated: (1) upon a "highway," (2) in an "other place open to the general public," or (3) in an other place "generally accessible to motor vehicles." The first two categories are easy to understand; both indisputably cover places that are open to the general public.[1] And I agree with the majority that the

[1] See MCL 257.20 (defining "[h]ighway or street" as "the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel").

Legislature's decision to add the third category in 1991 must have been intended to expand the scope of the statute to cover some areas not covered by the first two clauses, i.e., some areas that are not open to the general public. The question, then, is what places not open to the general public are covered by the third clause: "generally accessible to motor vehicles."

One weakness in the majority's interpretation—whether a place is "usually capable of being [physically] reached" by a motor vehicle—is that it threatens to swallow the "open to the general public" language in the statute. This is so because every place open to the general public will *also* always be "generally accessible to motor vehicles."[2] Put differently, the majority's interpretation is unpersuasive because under the majority's reading, the phrase "generally accessible to motor vehicles" does all the work and makes the surrounding statutory language pointless. Moreover, if the "generally accessible" category encompasses any place that is "usually" *physically* accessible to motor vehicles, what places are excluded that would otherwise be included if the statute read merely "accessible to motor vehicles"? Modern engineering allows motor vehicles to access

[2] The majority asserts that its interpretation meaningfully distinguishes the "open to the general public" category of the statute from the "generally accessible to motor vehicles" category because it reads the former as concerning *who* may access a location and the latter as concerning *what* can access a location. I find this distinction unhelpful because without a car *and* a person driving it, there is no drunken driving for the statute to prohibit. In other words, each part of the statute requires both a driver and a vehicle; it is unclear to me why the Legislature would be concerned with preventing the operation of a vehicle while intoxicated in a place a vehicle (but not necessarily a driver) is capable of accessing when a driver is a necessary prerequisite for application of MCL 257.625(1).

many places; what does it add to the inquiry that the vehicle be not just capable of physically accessing the area, but "usually" capable of physically accessing the area? I see no answer to that question in the majority's analysis.

There is more. The majority's broad interpretation of "generally accessible" also ignores other statutes that prohibit driving specific types of motor vehicles while intoxicated. When the Legislature has wanted to prohibit drunken driving in all places, it has done so in clear terms. See, e.g., MCL 257.625m(1) (providing that an intoxicated person "shall not operate a commercial motor vehicle within this state"); MCL 324.81134(5) (providing that a person who operates an off-road vehicle "within this state" while intoxicated and causes a serious impairment of a body function of another person is subject to various penalties); MCL 324.82127 (prohibiting the operation of a snowmobile while intoxicated "in this state"). The Legislature's decision not to use the broadest phrase possible in MCL 257.625(1) obligates us to give a meaning to the phrase "generally accessible to motor vehicles" that does not amount to a complete prohibition on operating while intoxicated anywhere "in this state." Yet the majority's "usually capable of being reached" by motor vehicles standard leaves few to no places uncovered, particularly given the expansive definition of what constitutes a "motor vehicle." See, e.g., MCL 257.33 (defining "motor vehicle" as "every vehicle that is self-propelled," with a few limited exceptions).

Thus, the majority's interpretation gives the statute immense reach—arguably covering any land not under water. Confusingly then, in its application, the majority has apparently decided to impose some limitations on its own standard. The majority states that "defendant's driveway is a place motor vehicles are usually capable of entering"

because it is "*designed for vehicular travel*" and "there is nothing on defendant's driveway that would *prevent* motor vehicles on the public street from turning into it." (First emphasis added.) But the majority never explains from where these limitations originate or how they should be interpreted and applied in future cases.

If the Legislature had wanted to limit the statute's reach to places "designed for vehicular travel" it could have done so, just like it did in MCL 691.1402(1), which provides that a governmental agency's duty to "repair and maintain highways . . . extends only to the improved portion of the highway designed for vehicular travel . . . ." Similar language does not appear in MCL 257.625(1). We have had some difficulty interpreting this standard in the context of highway repairs. See, e.g., *Yono v Dep't of Transp*, 499 Mich 636; 885 NW2d 445 (2016). How it will be interpreted and applied outside of that context is anyone's guess.

The second limitation, in my view, is equally problematic. What, precisely, suffices as a preventative check on a vehicle's entry into a given place? Would a security gate with an articulating arm qualify? That would seem to exclude all sorts of places where people congregate in their cars. Does it matter if the arm of the security gate is up or down? Or if the driver has the ability to activate the arm? Or what about a gated community, that is, a subdivision with a large metal gate that restricts access? I am perplexed that the majority's interpretation will sweep in private driveways but exclude these other places that the Legislature likely intended to cover.

In my view, there is a more sensible way to interpret the scope of the statute's third clause. This interpretation "examine[s] the statute as a whole, reading individual words and phrases in the context of the entire legislative scheme." *Madugula v Taub*,

496 Mich 685, 696; 853 NW2d 75 (2014). To properly interpret the "generally accessible" clause, therefore, we must examine each of the three related clauses in MCL 257.625(1) in turn.

The first and second clauses are separated by the disjunctive "or," and the second clause is prefaced by the word "other"—"other places open to the general public." Both clauses, therefore, encompass places open to the general public. The first, "highway," is defined in the Motor Vehicle Code—so we don't have to guess about its precise meaning. See MCL 257.20. The second clause, "open to the general public," is undefined, so we look to the usual sources to determine its ordinary meaning. That meaning was well-explained in *People v Hawkins*, 181 Mich App 393; 448 NW2d 858 (1989), a case that predated the 1991 amendment of MCL 257.625(1). In *Hawkins*, the Court of Appeals held that the statutory phrase "other place[s] open to the general public" focuses on public accessibility and interpreted it to include areas that invite and do not have any barriers to public access. The Court explained:

> "For an area to be 'open to public use' it does not have to be open to 'everybody all the time.' The essential feature of a public use is that it is not confined to privileged individuals or groups whose fitness or eligibility is gauged by some predetermined criteria, but is open to the indefinite public. It is the indefiniteness or unrestricted quality of potential users that gives a use its public character." [*Hawkins*, 181 Mich App at 398-399, quoting *State v Boucher*, 207 Conn 612, 615; 541 A2d 865 (1988).]

The panel concluded that a shopping center parking lot that was "accessible to the general public without restriction" was a "place open to the general public" for purposes of MCL

257.625(1). *Hawkins*, 181 Mich App at 399.[3] I believe the panel was correct that a place "open to the general public" is a place that is "accessible to the general public *without restriction*." *Id*. at 399 (emphasis added).

What does this mean for the third clause? It means, logically, that the third clause furthers the statute's reach by including places to which access is restricted in some way.[4] But we also know that the third clause was not intended to encompass every place "in this state." So what places, beyond those that are "open to the general public," were added by the 1991 amendment? I believe, for the reasons below, that the "generally accessible to motor vehicles" clause was intended to cover places that are open to an appreciable

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[3] The following year, another panel of the Court of Appeals, citing *Hawkins*, concluded that a trailer park road was a place open to the general public since the park was open twenty-four hours a day and those using the road as a shortcut were not prosecuted for trespassing. *Holland v Dreyer*, 184 Mich App 237, 239; 457 NW2d 56 (1990).

[4] *Hawkins* hinted at a potential loophole in the statute for places that are open to the public, but where access is restricted. For the reasons set forth later in this opinion, I believe the 1991 amendment was intended to close this loophole. And indeed, while not necessary to my conclusion, it is worthwhile to note that the relevant legislative materials indicate that the 1991 amendment was intended to capture these very places, including "trailer parks and other restricted-access areas[.]" See Analysis of the House Judiciary Committee, Highlights of the Drunk Driving Package (May 14, 1991), p 2 ¶ 7.

A subsequent panel of the Court of Appeals applied the new statutory language in precisely this way. In *People v Nickerson*, 227 Mich App 434, 436; 575 NW2d 804 (1998), the defendant relied on *Hawkins* to argue that the drunk driving statute did not apply to a race track pit area because it was a restricted area. In response, the prosecution distinguished *Hawkins*, in part on the basis that *Hawkins* was decided before the new language was added to MCL 257.625(1) in 1991. *Id*. at 437. The prosecution further argued that the admission fee was not dispositive because the pit area was, at the very least, a place "generally accessible to motor vehicles." The Court of Appeals agreed, holding that the pit area was "generally accessible" because motor "vehicles are routinely permitted to enter for the purpose of driving and parking." *Id*. at 440-441.

number of motor vehicles, even if their access is restricted by physical or other barriers to entry.

In determining what places are "generally accessible to motor vehicles," the touchstone is accessibility. "Accessible" means some places not open to the general public (because, as noted, places open to the general public are plainly already covered by the first two clauses) "that can be approached or entered" or that are "easy to approach or enter." *Webster's New World College Dictionary* (5th ed). A place where access is restricted, but still possible, is "accessible" because it is "capable of being reached." But while "accessible" reaches places with restrictions, "generally" must meaningfully modify "accessible". "Generally" means "to or by most people; widely; popularly; extensively[.]" *Webster's New World College Dictionary* (5th ed).[5] This definition of "generally" finds textual support in MCL 257.625(1), which requires the area to be "generally accessible by motor *vehicles*"—that is, by multiple vehicles, suggesting a certain volume of use is required.[6] A place is "generally accessible," then, if it is a place

[5] While the majority is correct that dictionaries also include "usually" as a common definition of "generally," for the reasons previously described, I do not believe it is possible to use that definition and have the word do any meaningful work in this statute. I therefore conclude that "widely" is the preferable meaning to give "generally."

[6] The majority believes that the relevant "determination is whether motor vehicles *can* access a place, not whether motor vehicles *actually do* access that place." Of course, evidence of where motor vehicles actually do go is evidence of where they can go. And consideration of actual use does not read "accessible" as "accessed," as the majority alleges; it gives meaning to the word "generally" by making actual use *part*, but not all, of the inquiry. In other words, if the place is actually accessed by a lot of vehicles, it must also be "generally," i.e., widely, "accessible."

"where vehicles are routinely permitted to enter." *People v Nickerson*, 227 Mich App 434, 440; 575 NW2d 804 (1998).

In other words, some places are, though not open to the general public without restriction, accessed regularly by an appreciable number of vehicles. Private roads—in private neighborhood associations, motor home parks, private cul-de-sacs, limited rights of way, commercial driveways with limited hours, and so on—would be the paradigm. But an *individual homeowner's* residential driveway is not one of those places, according to our Legislature. Indeed, the Legislature has defined a "private driveway" as "any piece of privately owned and maintained property which is used for vehicular traffic, but is not open or *normally used* by the public." See MCL 257.44(1) (emphasis added).[7] Thus, if a particular driveway is "normally used by the public" it is not a private driveway. Further, if a driveway is not "normally used by the public," it is not accessed by an appreciable number of vehicles, and therefore cannot sensibly be considered "generally accessible."[8]

[7] Had the Legislature intended the 1991 amendment to include private driveways, it easily could have used the statutorily defined term "private driveway" in MCL 257.625(1)—like it had previously done in the first clause with "highway"—but it did not.

[8] But I reject the lower courts' analysis to the extent that they drew a distinction between the upper and lower portions of a driveway, and I disagree with the Court of Appeals' conclusion that the portion of a driveway "between one's detached garage and house is not" a place that is generally accessible to motor vehicles but that the lower portion of the driveway might be. *People v Rea*, 315 Mich App 151, 158; 889 NW2d 536 (2016). For the reasons given, I conclude that no portion of a private driveway is "generally accessible to motor vehicles."

As I say, many private roads *are* "generally accessible to motor vehicles." That is, they are "widely" accessible to a significant number of motor vehicles despite not being open to the general public. Indeed, there are countless private roads that run through subdivisions, private developments, apartment and condominium complexes, and motor home communities in Michigan. And in fact, the Legislature has defined a "private road" as "*a privately owned or maintained road*, allowing access to more than 1 residence or place of business, which is [nevertheless] *normally open to the public* and upon which persons other than the owners located thereon may also travel." MCL 257.44(2) (emphasis added). Although such roads are privately owned and maintained (and therefore not a "highway" or another place "open to the general public" for purposes of MCL 257.625(1)), they are "normally open to the public" to drive upon. Therefore, they are "widely accessible" to motor vehicles. Private parking structures would be similarly included, as would private roads to and within private country clubs, for another example. It makes sense that the Legislature would want to outlaw intoxicated driving for all of these.

But an individual homeowner's residential driveway is another matter altogether. We should be most hesitant to assume—and should expect far more clarity from our Legislature before we conclude—that the state seeks to extend its reach onto the private property of individual homeowners. Private property rights are, of course, central to our legal system—every person has "exclusive dominion over his own soil."[9] If a private

[9] 2 Blackstone, Commentaries on the Laws of England, pp **411-412.

citizen chooses to have a few beers while washing his car (or to wash his car while having a few beers), on a patch of his own land covered by a driveway, that is his right.

Dominion, yes—absolute immunity from regulation, of course not: There is no doubt the state can regulate and even outlaw certain conduct on private property. My point is that we should not lightly assume that our Legislature intends to do so.[10] This is particularly so here because this statute has historically focused on areas open to the general public without restriction.[11] While the Legislature would understandably seek to prohibit intoxicated driving on the countless private roads in this state, it does not follow

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[10] Indeed, even if I were more persuaded by the majority's interpretation of the statute, in light of the uncertainty surrounding the statute's scope and whether the defendant's conduct falls within its purview, I would apply the rule of lenity and dismiss the charge against the defendant. The rule of lenity provides that criminal statutes cannot be extended to cases not included within the clear and obvious import of their language and that "if there is doubt as to whether the act charged is embraced in the prohibition, that doubt is to be resolved in favor of the defendant." *People v Ellis*, 204 Mich 157, 161; 169 NW 930 (1918). See also *People v Wakeford*, 418 Mich 95, 113-114; 341 NW2d 68 (1983) (noting that the rule of lenity applies "in the circumstances of an ambiguity, or in the absence of any firm indication of legislative intent"). Under the circumstances presented in this case, "there is doubt" whether the defendant's conduct falls within the statutory language of MCL 257.625(1).

[11] See 1917 PA 164 (prohibiting intoxicated driving "upon any public highway, street, avenue, driveway or alley within this state"); 1925 PA 109 (expanding the prohibition to "other public place[s]"); 1927 PA 318 (prohibiting drunken driving "upon any highway within this state"); 1941 PA 346 (prohibiting intoxicated driving "upon any highway or any other place open to the general public within this state"); 1956 PA 34 (prohibiting intoxicated driving "upon any highway or any other place open to the general public, including any area designated for the parking of motor vehicles, within this state"); 1976 PA 285 (prohibiting intoxicated driving upon any "highway or other place open to the general public, including an area designated for the parking of motor vehicles, within this state").

that our Legislature would want to extend that prohibition to an individual homeowner's private driveway or patch of tire-tracked grass.[12]

For these reasons, the defendant was entitled as a matter of law to dismissal of the charge of operating a motor vehicle while intoxicated. Accordingly, I respectfully dissent and would affirm the result reached by the Court of Appeals.

Bridget M. McCormack
David F. Viviano

[12] Of course, if an intoxicated driver on a residential driveway injures another there are certainly criminal statutes that the driver could be charged with violating and common-law remedies that would apply. There is no evidence that the Legislature added the "generally accessible to motor vehicles" language to MCL 257.625(1) as a response to intoxicated drivers striking children crossing driveways, so while I share the majority's concern for victims of intoxicated drivers, I do not see a way to justify its overly broad reading of that language as a result of our shared concern. And once an intoxicated driver exits his or her driveway and enters the public (or well-traveled private) roadway or other place open to the general public, the driver's intoxicated operation of the vehicle becomes unlawful under MCL 257.625(1). But that is not what happened in this case.