

[J-130-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 25 WAP 2002
	:	
Appellee	:	
	:	Appeal from the Order of the Superior
	:	Court entered December 28, 2001, at No.
v.	:	45WDA2001, affirming the Judgment of
	:	Sentence of the Court of Common Pleas
	:	of Allegheny County, Criminal Division,
	:	entered December 5, 2000, at No.
JOSEPH SCOLIERI,	:	CC200003931.
	:	
Appellant	:	
	:	ARGUED: September 11, 2002

DISSENTING OPINION

MR. JUSTICE SAYLOR

DECIDED: DECEMBER 31, 2002

In holding that the "intentionally and knowingly" requirement applies across all elements of the substantive criminal offense described in Section 6310.1(a) of the Crimes Code, 18 Pa.C.S. §6310.1(a), the majority invokes the interpretive provisions of Section 302 of the Crimes Code, to the effect that, when the statutory terms defining an offense prescribe the degree of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements, the culpability provision applies to all material elements unless a contrary purpose is plain. See Majority Opinion, slip op. at 10 (citing 18 Pa.C.S. §302(d)).

I agree with the trial court's position, however, that Section 6310.1(a) is not structured to articulate a degree of culpability requisite to the overall offense. On the contrary, the intentionally and knowingly terms appear to apply to the clauses that

immediately follow them, namely, those which describe the acts of selling, furnishing, or purchasing with intent to sell or furnish alcoholic beverages. This is reinforced by the reiteration of the salient intent requirement in proximity to each of these alternative actions identified. See 18 Pa. C.S. §6310.1(a) (proscribing "intentionally and knowingly sell[ing]," "intentionally and knowingly furnish[ing]" and "purchases with intent to sell or furnish"). Additionally, such reading is consonant with the last antecedent rule of construction. See generally Commonwealth v. Rosenbloom Finance Corp., 457 Pa. 496, 500, 325 A.2d 907, 909 (1974) (stating that "referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent, which consists of "the last word, phrase or clause that can be made an antecedent without impairing the meaning of the sentence" (citations omitted)). Moreover, this reading more closely accommodates the purposes of the statute, as the common pleas court observed:

If the Commonwealth were required to prove beyond a reasonable doubt that the person furnishing alcohol to a minor knew that he or she was under the age of 21, the statute would be virtually unenforceable. Given the appearance of many young men and women between the ages of 18 and 21, it would be impossible to prove the offender knew that the person being served was under the age of 21. On the other hand, it is quite easy for the seller to require identification before the sale. It seems clear that the legislature placed the burden on the person serving alcohol to determine the age of the purchaser.

While it thus appears to me that no culpability terms are expressly indicated with respect to the age-of-the-recipient element of the Section 6310.1(a) offense, Section 302(c) of the Crimes Code sets forth a default, minimum degree of culpability of recklessness for material elements of an offense repositied in the Crimes Code as to which culpability is not specifically prescribed, see 18 Pa.C.S. §302(c), other than

summary offenses, see 18 Pa.C.S. §305(a)(1). Although I therefore agree with the majority that the Superior Court's order of affirmance cannot be sustained on the court's reasoning, I would remand for a determination whether, on this record, a finding of recklessness is mandated,¹ since a valid verdict may be maintained for any proper reason appearing as of record.

Mr. Justice Castille and Mr. Justice Eakin join this dissenting opinion.

¹ Under the Crimes Code, recklessness is defined as follows:

A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

18 Pa.C.S. §302(b)(3). It is at least arguable, in my view, that a bartender who is charged with observance of the liquor laws, and who served alcohol without requiring identification to a patron designated by the factfinder as someone "any bartender that would serve . . . would be well advised to card," R.R. at 78, has effectively been deemed to have acted in disregard the substantial and unjustifiable risk that the patron may in fact have been a minor.