[J-48-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, SAYLOR, EAKIN, BAER, BALDWIN, FITZGERALD, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 167 MAP 2005
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered 03-30-2005 at No. 1596
	:	EDA 2003 which Reversed the Judgment
v.	:	of Sentence of the Montgomery County
	:	Court of Common Pleas Criminal Division
	:	entered 04-23-2003 at No. 5863-02.
TERRENCE GALLAGHER,	:	
	:	874 A.2d 49 (Pa. Super. 2005)
Appellee	:	
	:	SUBMITTED: August 17, 2006

OPINION

CHIEF JUSTICE CAPPY* **DECIDED: June 1, 2007**

The question presented in this appeal is whether the offense of luring a child, 18 Pa.C.S. § 2910, is a strict liability crime with regard to the age of the victim. The Superior Court concluded that § 2910 was not a strict liability crime with regard to the age of the victim and that the Commonwealth had to prove that Appellee Terrence Gallagher acted knowingly, recklessly, or negligently under 18 Pa.C.S. § 302 with regard to the victim's age. Commonwealth v. Gallagher, 874 A.2d 49, 50 (Pa. Super. 2005). For the reasons that follow, we affirm the order of the Superior Court reversing the judgment of sentence of Appellee under § 2910 for luring a child into a motor vehicle.

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* This matter was reassigned to this Justice.

The relevant facts as related by the Superior Court were as follows. At approximately 11:40 p.m. on August 3, 2002, 17-year-old M.N. was walking home from a convenience store. Gallagher, 874 A.2d at 50. Appellee stopped his car, asked M.N. for directions, and offered him a ride, which M.N. accepted. When Appellee asked M.N. if he liked to drink, M.N. replied that he did. Appellee then drove to a bar, bought beer, and took M.N. to his parked RV, where they began drinking. They then went to a second bar to purchase more beer. After returning to the RV, Appellee performed oral sex on M.N., who then told Appellee he wanted to go home. Id. Appellee refused, telling M.N. he was too drunk to drive. The next morning, Appellee again performed oral sex on M.N. before dropping him off near his house. Later that morning, after talking with his girlfriend's mother, M.N. reported the incident to the police. Id.

Appellee was charged with various crimes and following a bench trial, was found guilty of luring a child into a motor vehicle, 18 Pa.C.S. § 2910, and furnishing alcoholic beverages to minors, 18 Pa.C.S. § 6310.1. The trial court sentenced Appellee to two to four years in prison for the luring conviction, followed by one year of probation for the furnishing alcohol conviction.

In a published opinion, the Superior Court reversed Appellee's judgment of sentence in relevant part. Gallagher, supra. Before the Superior Court, Appellee argued that because the trial court acquitted him of corruption of minors based specifically on his defense that he reasonably believed the complainant to be over the age of 18, such a factual finding precluded his conviction for luring a child into a motor vehicle in that the Commonwealth failed to prove that he possessed the sufficient *mens rea* to lure a person under the age of 18 into his car. Gallagher, 874 A.2d at 51.

The Superior Court agreed with Appellee, concluding that the culpability requirements of 18 Pa.C.S. § 302 must be imputed to the age element of § 2910. The court reasoned that the lack of a statutory "mistake of age" defense did not free the

Commonwealth from its duty to prove that Appellee acted intentionally, knowingly, or at the very least, recklessly as to the complainant's age under § 302. Applying this standard, the Superior Court also rejected the trial court's factual finding that Appellee knew MN was a minor, since such a finding was "contradicted by the [Appellee]'s acquittal on the charge of corruption of minors based on his testimony that he reasonably believed [MN] to be over the age of 18." Id. at 53. Accordingly, the court concluded that the Commonwealth failed to sustain its burden with regard to the age element of § 2910 and reversed the judgment of sentence on the luring conviction.

We granted allowance of appeal to determine whether the age element of § 2910 is subject to strict liability, or whether it requires the Commonwealth to prove a knowing, intentional, or reckless *mens rea* with regard to the victim's age.

This is a question of statutory construction. The polestar of statutory construction is ascertaining legislative intent. 1 Pa.C.S. § 1921(a). "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b). Only when the words used by the Legislature are not explicit do we turn to other factors to ascertain its intent. 1 Pa.C.S. § 1921(c). Finally, penal provisions are to be strictly construed. 1 Pa.C.S. § 1928(b)(1).

Any discussion of this issue must begin with the relevant statutory provisions. Section 2910 states:

> A person who lures a child into a motor vehicle without the consent, express or implied, of the child's parent or guardian, unless the circumstances reasonably indicate that the child is in need of assistance, commits a misdemeanor of the first degree.

18 Pa.C.S. § 2910.[1] Although "child" is not defined in Section 2910, "[a]ll sections of Chapter 29 of the Crimes Code bear upon 'kidnapping' and must be read in *pari materia*."

[1] The Legislature amended the statute on November 10, 2005, which was after the present offense.
(continued…)

Commonwealth v. Adamo, 637 A.2d 302, 305 (Pa. Super. 1994) (citing 1 Pa.C.S. § 1932(a); Commonwealth v. Dodge, 599 A.2d 668 (Pa. Super. 1991)). Other sections of Chapter 29 define "child" to mean a person under 18 years of age. 18 Pa.C.S. § 2908(b); see also id., § 2904(a). Thus, we read the word "child" in Section 2910 to mean a person under 18 years of age. M.N. was 17 years old when the incident occurred; therefore, he was a child under the statute.

A plain reading of Section 2910 reveals that the statute does not express a *mens rea* requirement with regard to the age of the victim. As a rule, in such instances, Section 302(c) of the Crimes Code prescribes the default culpability requirement by providing that "when the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts intentionally, knowingly or recklessly with respect thereto." 18 Pa.C.S. § 302(c).

The Commonwealth, however, contends that Section 302 does not apply in this instance because the intent of the Legislature was to impute strict liability to the age element of Section 2910. In support of its argument, the Commonwealth points to the lack of a "mistake of age" defense in Section 2910, that the statute is ambiguous regarding strict liability, and Superior Court case law, including its decisions in Commonwealth v. Figueroa, 648 A.2d 555 (Pa. Super. 1994) and Commonwealth v. Adamo, 637 A.2d 302 (Pa. Super. 1994). For the reasons set forth herein, we disagree with the Commonwealth's contentions.

The fact that a criminal statute is silent with regard to a culpability requirement does not mean that the Legislature intended to dispense with the same. Staples v. United States, 511 U.S. 600, 605 (1994); Morissette v. United States, 342 U.S. 246, 252 (1952).

(…continued)

Instead, there is a long-standing tradition, which is reflected in the plain language of Section 302, that criminal liability is not to be imposed absent some level of culpability. This is because the imposition of absolute liability for a crime is generally disfavored and an offense will not be considered to impose absolute liability absent some indication of a legislative directive to dispense with *mens rea*. Commonwealth v. Mayfield, 832 A.2d 418, 426 (Pa. 2003) (citing Staples). Therefore, the inquiry in this case is simply whether there is some indication of legislative intent to dispense with *mens rea* with regard to the age of the complainant in Section 2910. If we determine that the Legislature did not intend Section 2910 to be a strict liability crime with regard to the age requirement, then there is no need to inquire further into the Legislature's intent. Mayfield, 832 A.2d at 427.

We conclude that there is nothing in Section 2910 to indicate that the Legislature intended luring a child to be a strict liability crime regarding the age element. Contrary to the Commonwealth's contention, we disagree that the Legislature's omission of a "mistake of age" defense indicates its intent that the age requirement in Section 2910 be strictly enforced. Instead, when the Legislature has intended that an offender is to be strictly liable for a crime regardless of his or her knowledge of the victim's age, it has done so explicitly. 18 Pa.C.S. § 3102 (making clear that "mistake of age" defense will not be available to any crimes in subchapter involving rape for victims less than 14 years of age)[2]; 18 Pa.C.S. §

[2] The dissenting opinion cites to Commonwealth v. Robinson, 438 A.2d 964 (Pa. 1981), in support of its position. Dissenting opinion at 2. Notably, in Robinson, the crime at issue was statutory rape under a now-repealed statute that defined that offense in terms of a victim under the age of 14. See 18 Pa.C.S. §3122 (repealed). Therefore, the relevant offense plainly incorporated Section 3102's prescription that no mistake-of-age defense is available where the offense includes an element that the victim is under 14 years of age. Indeed, there were no arguments presented in Robinson concerning whether absolute liability was intended by the Legislature; rather, the focus was on the constitutionality of an express scheme of absolute liability.

The dissenting opinion also accuses the majority of requiring the Commonwealth to prove that the defendant knew that the victim was under 18, a requirement the dissent (continued…)

5902(c) ("[T]he actor promotes prostitution of a child under the age of 16 years, whether or not he is aware of the age of the child"). Indeed, in Section 2910, the Legislature could have indicated its intent by making clear that "mistake of age" will not be a defense for any offenders of this subsection. The legislature, however, did not do so. In fact, there is nothing in the plain language of Section 2910 evidencing a legislative directive to dispense with a *mens rea* requirement with regard to the age requirement. Rather, this task is properly accomplished according to the Crimes Code's express, default culpability scheme at Section 302(c).

The Commonwealth also points to the fact that Section 2910 is part of a larger section whose goal is the prevention of kidnapping. According to the Commonwealth, this court must consider, as did the Superior Court in Figueroa, 648 A.2d at 558, the chapter within which Section 2910 appears. When considered in context, the Commonwealth asserts that Figueroa clearly demonstrates that *mens rea* is only required with regard to the "luring" element.

In Figueroa, the Superior Court was confronted with the question of whether the Legislature intended Section 2910 to be a strict liability crime, which may be breached by violation of its provision regardless of motive. In support of the position that it was not a strict liability crime, Figueroa argued that implicit in the statute was the requirement that there be "intent to harm" the victim, which the Commonwealth also had to prove. Figueroa, 648 A.2d at 557.

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states is impossible to enforce. See Dissenting Opinion, slip op. at 2-3. This assessment is based upon a misunderstanding of the default culpability provision, which we find applies. Under that provision, the defendant may be found guilty even if he did not act knowingly, so long as his actions were reckless with regard to the element of the offense (here, the victim's minority). See 18 Pa.C.S. §302(c).

In reaching its decision, the court stated that "[t]he gravamen of the present crime is luring a child into a motor vehicle." Id. As such, the court imputed the Section 302(c) culpability requirement into the luring requirement of Section 2910, finding that "inviting the children into his car with a promise of a ride to school or the bus stop, which appellant here agrees that he did, is sufficient to meet the prohibitions of the statute. This knowing conduct we believe meets the requirement of culpability." Id. at 557-58. In response to Figueroa's argument regarding intent to harm, the court then stated, "[t]hat there may have been no intent to harm is not relevant *since this is not a requirement of the act*." Id. at 558 (emphasis added). Rather, "viewing this crime as a threshold prophylactic rule for the terrible crime of kidnapping, we conclude that it is a legitimate exercise of the legislature's discretion, to prohibit persons from offering rides to children under any invitational pretext." Id. For these reasons, the court concluded that the Commonwealth did not need to establish that there was an "intent to harm" so long as it established that Figueroa knowingly lured a child into a motor vehicle. Id.

The Commonwealth interprets Figueroa to mean that the only material element for which culpability was required was luring; and "intent to harm" was construed to be a strict liability aspect of Section 2910. The dissenting opinion similarly interprets Figueroa as imputing strict liability to the intent to harm. See Dissenting opinion at 2. A reading of Figueroa simply does not support such a position. The Figueroa court's reasoning regarding "intent to harm" was grounded in the fact that there was no "intent to harm" requirement on the face of the statute and not in the fact that the court found strict liability with regard to "intent to harm." The instant situation, however, is very different from Figueroa, since we must construe the actual, stated requirement of the luring offense involving the essential element that "a child" be the victim. In fact, the court's decision in Figueroa supports the conclusion that *mens rea* should be assigned to the age element of

Section 2910, since the court imputed such a requirement with regard to the material element of "luring."

Finally, the Commonwealth points to the Superior Court's decision in Adamo in support of its contentions. We find any reliance on Adamo misplaced simply because the relevant challenge in Adamo was a constitutional challenge based on vagueness and overbreadth. Adamo, 637 A.2d at 306. There were no arguments presented in Adamo concerning whether absolute liability was intended by the Legislature with regard to the age of the victim. Rather, the focus of the challenge was on the constitutionality of the statute based upon its failure to give reasonable notice as to the age of the child to which the statute applies, the definition of "lure," and the circumstances that imply parental consent. Id.

We are mindful of the Legislature's important goal of preventing kidnapping. In the absence of a clear legislative directive to the contrary, however, we cannot ignore the Legislature's mandate in Section 302(c) providing the default culpability for a material element of an offense when none is otherwise prescribed by law. Indeed, as noted previously, Section 302(c) is grounded in the long-standing tradition that criminal liability will not be imposed absent some level of *mens rea*. Mayfield, supra. For these reasons, the order of the Superior Court is affirmed.[3]

Jurisdiction relinquished.

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[3] The Superior Court also applied § 302 to the facts of the case and concluded that the evidence was insufficient to establish that Appellant either knew or was reckless with regard to the age of the complainant. Gallagher, 874 A.2d at 53. The Superior Court was required to address the sufficiency claim by reviewing the evidence in a light most favorable to the Commonwealth. See, e.g., Commonwealth v. Busanet, 817 A.2d 1060, 1063 (Pa. 2002). However, the Superior Court panel appears to have applied a diminished standard of review rather than the appropriate standard in conducting the sufficiency analysis. Accordingly, we stress that our opinion today should not be read as expressing an approval of the Superior Court's sufficiency analysis, as the sole question raised by the Commonwealth related to the statutory construction of § 2910.

Messrs. Justice Castille, Saylor and Baer, Madame Justice Baldwin and Mr. Justice Fitzgerald join the opinion.

Mr. Justice Eakin files a dissenting opinion.