SJC-12745

COMMONWEALTH vs. SHAWN P. MANSUR.

Middlesex. December 5, 2019. - February 21, 2020.

Present: Gants, C.J., Lenk, Gaziano, Lowy, Budd, Cypher, & Kafker, JJ.

Alcoholic Liquors, Motor vehicle, Possession of opened bottle. Beverage Containers. Motor Vehicle, Operation. Statute, Construction.

Complaint received and sworn to in the Marlborough Division of the District Court Department on April 19, 2018.

The case was heard by Michael L. Fabbri, J.

The Supreme Judicial Court granted an application for direct appellate review.

Edward Crane for the defendant.
Hallie White Speight, Assistant District Attorney, for the Commonwealth.
Rebecca Kiley, Committee for Public Counsel Services, for Rufus Wornum, amicus curiae, submitted a brief.

KAFKER, J. In the instant case we are asked to decide whether possession of an open container of alcohol in a motor vehicle is a civil infraction or a criminal offense. The

defendant was charged with operating a motor vehicle while under the influence of intoxicating liquor (OUI), in violation of G. L. c. 90, § 24 (1) (a) (1); possessing an open container of alcohol in a motor vehicle, in violation of G. L. c. 90, § 24I (open container violation); and failing to have a current and valid inspection sticker, in violation of G. L. c. 90, § 20. Prior to trial, the defendant disputed whether the open container charge constituted a civil infraction or a criminal offense. Relying on Commonwealth v. Johnson, 461 Mass. 44, 50 n.7 (2011), the trial judge concluded that it was a criminal offense. A jury found the defendant guilty of the open container violation, but not guilty of OUI. The defendant appealed, and we granted his application for direct appellate review.

In order to determine whether an open container violation is a civil infraction or criminal offense, we must examine whether it fits within the definition of a "civil motor vehicle infraction" in G. L. c. 90C, § 1. Such infractions are defined as "automobile law violation[s] for which the maximum penalty does not provide for imprisonment." Id. Where, as here, the offense at issue does not provide for imprisonment, the relevant question is simply whether the offense may be deemed an "automobile law violation."

In light of the relevant statutory language and the purpose of the statutory scheme regulating the use of motor vehicles, we conclude that automobile law violations comprise those statutory violations relating to the safe operation or use of a motor vehicle. We also conclude that possession of an open container of alcohol in a motor vehicle relates to the safe operation or use of a motor vehicle. The open container statute was originally enacted to protect against drunk driving and, despite more recent amendments to the statute, is still aimed at that purpose. Accordingly, possession of an open container of alcohol in a motor vehicle is a civil motor vehicle infraction, rather than a criminal offense. In so holding, we overrule a narrower interpretation of the same statutory language articulated in Commonwealth v. Giannino, 371 Mass. 700 (1977), wherein we held that automobile law violations must "necessarily and exclusively encompass[] the 'operation or control' of a motor vehicle." Id. at 702, quoting G. L. c. 90C, § 1.

Analysis. We have not previously addressed the question whether an open container violation is civil or criminal in nature. In Johnson, this court noted in passing, without analysis, that "possession of an open container of alcohol in a motor vehicle is a misdemeanor." Johnson, 461 Mass. at 50 n.7. See Commonwealth v. Edwards, 476 Mass. 341, 349 (2017) (citing this passage from Johnson uncritically). The nature of an open

container violation, however, had not been raised below in Johnson, was not crucial to the holding in that case, and amounts to dicta. Indeed, we have elsewhere referred to this violation as a "civil infraction," albeit in reference to a previous version of the open container statute. See Commonwealth v. Callahan, 428 Mass. 335, 336 (1998). For the reasons discussed infra, we now conclude that a violation of the open container statute, G. L. c. 90, § 24I, is a civil infraction.

1. Statutory background. In Massachusetts, "[t]he right to operate a motor vehicle . . . is a privilege that is conditioned upon obedience to the comprehensive regulatory scheme designed to keep the motorways safe." Kasper v. Registrar of Motor Vehicles, 82 Mass. App. Ct. 901, 902 (2012). See Luk v. Commonwealth, 421 Mass. 415, 423 (1995). A principal component of this regulatory scheme is G. L. c. 90, which regulates the registration, licensing, and appropriate use and operation of motor vehicles in the Commonwealth. See Rushworth v. Registrar of Motor Vehicles, 413 Mass. 265, 270 (1992); Commonwealth v. Murphy, 409 Mass. 665, 669 (1991). General Laws c. 90C concerns the procedure for handling violations arising out of G. L. c. 90 and was designed to "assure uniform treatment of violators." Commonwealth v. Mullins, 367 Mass. 733, 736 (1975). See Commonwealth v. Boos, 357 Mass. 68, 70 (1970).

Pursuant to G. L. c. 90C, a statutory violation may be considered either a "civil motor vehicle infraction" or a criminal offense. A civil motor vehicle infraction is defined as "an automobile law violation for which the maximum penalty does not provide for imprisonment," with certain exceptions not relevant here. G. L. c. 90C, § 1. A criminal offense is, by negative implication, an automobile law violation that provides for a maximum penalty of imprisonment. In turn, an "automobile law violation" is defined as a "violation of any statute, ordinance, by-law or regulation relating to the operation or control of motor vehicles."[1] Id. The parties do not dispute that the open container law does not provide for imprisonment. Thus, the only question on appeal is whether a violation of the open container law may be considered an "automobile law

[1] The definition also contains exceptions not relevant here. General Laws c. 90, § 1, defines "automobile law violation" as follows:

> "any violation of any statute, ordinance, by-law or regulation relating to the operation or control of motor vehicles other than a violation (1) of any rule, regulation, order, ordinance or by-law regulating the parking of motor vehicles established by any city or town or by any commission or body empowered by law to make such rules and regulations therein, or (2) of any provision of [G. L. c. 159B]. A recreation vehicle and a snow vehicle, both as defined in [G. L. c. 90B, § 20], a motorized bicycle and motorized scooter, both as defined in [G. L. c. 90, § 1], shall be considered a motor vehicle for the purposes of this chapter. A motor boat, as defined in [G. L. c. 90B, § 1], shall not be considered a motor vehicle for purposes of this chapter."

violation." To reach this question, we first examine the definition of an automobile law violation under G. L. c. 90C, § 1.

2. Statutory interpretation of automobile law violation. We analyze questions of statutory interpretation de novo. Commonwealth v. Soto, 476 Mass. 436, 438 (2017). In so doing, we seek to discern the meaning of the statute in the first instance from its plain language. See id. If the language is "clear and unambiguous, it is to be given its 'ordinary meaning.'" Id., quoting Commonwealth v. Mogelinski, 466 Mass. 627, 633 (2013). "That said, we do not adhere blindly to a literal reading of a statute if doing so would yield an 'absurd' or 'illogical' result." Commonwealth v. Peterson, 476 Mass. 163, 167 (2017), quoting Commonwealth v. Parent, 465 Mass. 395, 409-410 (2013).

As we have previously stated, "the mere fact that an offense involves a motor vehicle does not ipso facto make it an automobile law violation." Giannino, 371 Mass. at 702. Rather, an automobile law violation is defined specifically as a "violation of any statute, ordinance, by-law or regulation relating to the operation or control of motor vehicles." G. L. c. 90C, § 1. We previously articulated the standard for determining whether an offense fits within this definition in Giannino, supra. The defendant in that case had been charged

with use of a motor vehicle without the authority of the owner, in violation of G. L. c. 90, § 24 (2) (a). In that case, "the defendant was observed with two other youths in the front seat of a car which did not belong to any of them. The defendant was not behind the wheel but was located in the middle of the front seat." Giannino, supra at 701. The question before the court was whether the defendant could avail himself of the so-called "no-fix" statute, G. L. c. 90C, § 2, which requires a police officer to provide an automobile law violator with a copy of a motor vehicle citation at the time and place of the violation, absent one of three enumerated exceptions. We concluded that the no-fix statute did not apply because use of a motor vehicle without authority was not an "automobile law violation" as defined in G. L. c. 90C, § 1.[2] Giannino, supra at 702-703. In so doing, we interpreted an "automobile law violation" as a violation that "both necessarily and exclusively encompasses the 'operation or control' of a motor vehicle." Id. at 702. We now overrule that interpretation of the statutory language.

[2] Although G. L. c. 90C, § 1, was rewritten subsequent to our decision in Commonwealth v. Giannino, 371 Mass. 700 (1977), the definition of "automobile law violation" contained within the statute has remained largely unchanged. The only change to the definition has been the addition of the last two sentences, which specifically address recreation vehicles, snow vehicles, motorized bicycles, motorized scooters, and motor boats. See G. L. c. 90C, § 1. These changes are not relevant to our analysis.

The narrow test set forth in Giannino departs from the plain language of the statute, and does so without any analysis. The statute merely requires that a violation "relat[e] to the operation or control of motor vehicles" to be considered an automobile law violation. G. L. c. 90C, § 1. Nothing in the definition requires that a statutory violation "necessarily," let alone "exclusively," "encompass" the operation or control of a motor vehicle. As a basic tenet of statutory interpretation, we ordinarily do not "add language to a statute where the Legislature itself has not done so." Tze-Kit Mui v. Massachusetts Port Auth., 478 Mass. 710, 712 (2018). We provided no explanation for doing so in Giannino, and we do not discern one now.[3]

Indeed, if the definition of "automobile law violation" was defined as narrowly as the test articulated in Giannino, minor finable violations contained within G. L. c. 90 that do not

[3] Our reasoning as to why use of a motor vehicle without authority was not an automobile law violation was similarly flawed in Giannino. We stated that the "thrust of this offense is not aimed at regulating the manner in which automobiles are operated on a public way." Giannino, 371 Mass. at 703. We have more recently indicated, however, that the crime of use without authority under G. L. c. 90, § 24 (2) (a), is in fact "aimed at protecting the public from harm caused by a user of a motor vehicle who is not readily identifiable." Commonwealth v. Campbell, 475 Mass. 611, 619 (2016). As we (more recently) explained, "the Legislature apparently assumed that a person who uses a vehicle without authority is more likely to use it recklessly or negligently than a person who uses the vehicle with authority." Id. at 619 n.14.

exclusively pertain to the use or operation of the vehicle would not qualify as automobile law violations. See, e.g., G. L. c. 90, § 13A (failure to wear seat belt punishable by twenty-five dollar fine); G. L. c. 90, §§ 7B, 20 (fueling school bus with passengers inside punishable by thirty-five dollar fine for first offense); G. L. c. 90, § 9D (equipping motor vehicle with tinted windows punishable by $250 fine); G. L. c. 90, § 14 (negligently opening car door punishable by one hundred dollar fine). This would lead to one of two confusing possibilities.

The first possibility is that such violations would be deemed criminal offenses by negative implication. Under this view, articulated by the appellant, those minor finable violations that do not meet the Giannino test could not qualify as "civil motor vehicle infractions," and thus would be deemed criminal offenses under G. L. c. 90C by default. This would lead to absurd results. For example, the operator of a motor vehicle who fails to wear a seat belt, in violation of G. L. c. 90, § 13A, is subject to a twenty-five dollar fine. Because this statutory violation directly involves the operation of a motor vehicle, it qualifies as an "automobile law violation." Further, because this violation does not provide for imprisonment, it qualifies as a civil motor vehicle infraction. By contrast, a passenger's failure to wear a seat belt, which does not directly involve the operation of a motor vehicle,

would nonetheless be considered a criminal offense. This result -- wherein the operator of a vehicle is only subject to civil liability while the passenger is subject to criminal responsibility for the same conduct -- is absurd on its face, and cannot be what the Legislature intended. See Wallace W. v. Commonwealth, 482 Mass. 789, 793 (2019) (declining to construe statutory language in manner that "leads to an absurd result, or that otherwise would frustrate the Legislature's intent" [citation omitted]).

The second possibility, equally untenable, is that minor finable offenses contained within G. L. c. 90 would not be governed by G. L. c. 90C at all, despite the fact that G. L. c. 90C is "concerned with the procedure to be followed in dealing with violations arising out of [G. L. c. 90]." Boos, 357 Mass. at 70. Under this view, because G. L. c. 90C pertains to the procedure for handling automobile law violations, minor finable violations within G. L. c. 90 that fail the Giannino test, and thus cannot be considered "automobile law violations," would fall outside the statutory scheme of G. L. c. 90C entirely. To take the prior example of failure to wear a seat belt, this statutory view yields a similarly confusing result. While an operator who fails to wear a seat belt would be subject to the civil procedure set forth in G. L. c. 90C for civil motor vehicle infractions, a passenger who does the same would not be

able to avail him- or herself of the same procedure, and it would become unclear how such a violation should be handled procedurally. In construing statutory language, we "assume generally that the Legislature intends to act reasonably." Commonwealth v. Diggs, 475 Mass. 79, 82 (2016). This result would be confusing at best, and we decline to adopt such an unreasonable interpretation of the statute.

In lieu of the narrow test defined in Giannino, we instead hew to the plain language of the statute, along with the overall intent of the statutory scheme. Phrases such as "relating to" typically suggest "an expansive sweep and broad scope" (quotations and citation omitted). Acushnet Co. v. Beam, Inc., 92 Mass. App. Ct. 687, 695 (2018). Cf. Commonwealth v. Starkus, 69 Mass. App. Ct. 326, 333 (2007) (noting that case law has broadly construed phrase "relating to" in G. L. c. 123A, § 14, to include not only facts directly relevant to offense, but also descriptions of "circumstances attendant to" offense [citation omitted]). Courts have generally given the phrase a broad construction that is "not necessarily tied to the concept of a causal connection" (citation omitted). Somerville Auto Transp. Serv., Inc. v. Automotive Fin. Corp., 691 F. Supp. 2d 267, 271-272 (D. Mass. 2010). Thus, the plain language of the statute indicates that the Legislature intended for the definition of "automobile law violation" to be construed broadly. As

discussed supra, G. L. c. 90C is part of a larger regulatory framework that is designed to ensure the safe use of motorways. See Luk, 421 Mass. at 423. As part of this scheme, the intended scope of G. L. c. 90C is to reach statutory violations pertaining to motorway safety. Accordingly, the definition of "automobile law violation" is best understood as broadly pertaining to any statutory violations relating to the safe operation or use of the vehicle.

3. The open container statute. Having concluded that the term "automobile law violation" consists of statutory violations relating to the safe operation or use of a motor vehicle, we next examine whether the open container statute, G. L. c. 90, § 24I, fits within this definition.[4] To determine whether a violation of the statute may fairly be considered an automobile law violation, we examine the statute's purpose, discerned from the legislative history and plain language of the statute. See Peterson, 476 Mass. at 168.

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[4] General Laws c. 90, § 24I (b), provides in pertinent part:

> "Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, possesses an open container of alcoholic beverage in the passenger area of any motor vehicle shall be punished by a fine of not less than [one hundred dollars] nor more than $500."

The open container statute was first enacted in 1982 as part of a broader legislative package aimed at cracking down on drunk driving. See St. 1982, c. 373. The statute originally prohibited the operation of a motor vehicle "while drinking from an open container of any alcoholic beverage." See St. 1982, c. 373, § 10. The penalty at the time of enactment was the same as the current penalty under the statute: a fine of between one hundred dollars and $500. Id. In 2000, the open container statute was amended to prohibit the possession of an open container of alcohol in the passenger area of a motor vehicle, regardless of who possesses it or whether it is being consumed in conjunction with operation of the vehicle. See St. 2000, c. 294, § 1; Commerce Ins. Co. v. Ultimate Livery Serv., Inc., 452 Mass. 639, 657 n.1 (2008) (Cordy, J., concurring) (detailing history of open container statute). The amendment was aimed at bringing Massachusetts into compliance with a Federal mandate requiring States to prohibit the possession of an open container of alcohol in the passenger area of a motor vehicle, or else forfeit Federal highway funds. See Pub. L. No. 105-206, Title IX, § 9005(a), 112 Stat. 843 (1998). At the time, such State open container laws were viewed as serving "as an important tool in the fight against impaired driving." 65 Fed. Reg. 51,532, 51,533 (2000).

Despite the expansion in scope of the open container law, at bottom it is still "intended to protect the public from intoxicated drivers." Commerce Ins. Co., 452 Mass. at 660 (Cordy, J., concurring). The statute is applicable to the "passenger area" of a motor vehicle, which is defined broadly to include both "the area designed to seat the driver and passengers while the motor vehicle is in operation," as well as "any area that is readily accessible to the driver or a passenger while in a seated position." G. L. c. 90, § 24I. By contrast, the passenger area does not include the trunk, or any area "not normally occupied by the driver or passenger." Id. Significantly, by limiting the applicability of the statute to areas "readily accessible" to the driver or a passenger, the statute protects against alcohol being passed between passengers and the driver. The fact that the statute does not apply to areas "not normally occupied by the driver or passenger" is further indicative of this intent. See id. The statute thus is aimed at the prevention of drunk driving, and therefore relates to the safe operation and use of a motor vehicle. Accordingly, an open container violation constitutes an automobile law violation.

This conclusion is also bolstered by the table of citable motor vehicle offenses promulgated jointly by the registrar of motor vehicles and the Chief Justice of the District Court

Department, which lists the maximum assessment (i.e., fine) for each citable automobile law violation. The table lists an open container violation as one such automobile law violation, and designates it as a civil infraction. Thus, in light of the legislative history and plain language of the open container statute, as well as the table of citable motor vehicle offenses, we conclude that a violation of G. L. c. 90, § 24I, is an automobile law violation and thus a civil motor vehicle infraction.

Conclusion. For the foregoing reasons, we vacate the defendant's criminal conviction of possession of an open container of alcohol and remand the matter to the trial court for further proceedings consistent with this opinion.

So ordered.