

[J-5-2011][M.O. - Todd, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

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| COMMONWEALTH OF PENNSYLVANIA, | : | No. 9 MAP 2010 |
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| Appellee | : | |
| | : | Appeal from the Order of Superior Court at |
| | : | No. 285 EDA 2008 dated 2/5/09 affirming |
| v. | : | the judgment of sentence of Delaware |
| | : | County Court of Common Pleas, Criminal |
| | : | Division at No. 3057-2006 entered on |
| | : | 1/3/08 |
| WALTER J. HART, III, | : | |
| | : | |
| Appellant | : | ARGUED: March 8, 2011 |

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: September 28, 2011

While determining the breadth of the statutory concept of “luring” presents an important question, I agree with Mr. Justice Eakin that the inquiry resides outside the boundaries of the issue the Court has framed for review in this case. See Concurring & Dissenting Opinion, slip op. at 1-2 & n.1 (citing Commonwealth v. Hart, 605 Pa. 406, 990 A.2d 724 (2010) (per curiam)). Notably, in framing the question presented in the Order allowing the appeal, the Court already had taken substantial liberties by substantively modifying the issue originally framed by Appellant (most of which seems to have been geared toward describing how mental deficiencies prevented him from apprehending the legal prohibition of his conduct).¹

¹ Appellant originally requested review on the following issue:

(continued...)

Since the majority broaches the definitional issue, consistent with the rule of lenity, I agree with its approach imposing a limiting construction relative to the otherwise undefined concept of “luring.” I merely note that the Legislature may have wished to minimize the substantial subjectivity in terms of what may constitute a “lure” by casting a wide net.²

(...continued)

Whether all the evidence produced at trial was considered that led the Trial Court to find that I, Mr. Hart’s actions came within the scope for his conviction of 18 Pa.C.S. §2910? My defense testified and presented witnesses to testify that I have a documented mental disability. This disability has impaired my judgment and his ability to discern that my good intention of offering these two neighborhood kids a ride to school could develop into a matter of the legal hardship that it has been for me. Will the Supreme Court take the time to consider upon this fact if the judgment on me, petitioner was unjustly or overbearing? The Common Pleas Court decided: I intentionally and knowingly without merit broke this law, The Superior Court responded I was responsible to understand the common sense definition of this law and referred to Pa.C.S.A. 1903. I ask you to see how unjustly they are to demand a man of my mental ability to be imposed to act in a matter of common sense when my mental level standards differ then what is considered common?

Petition for Allowance of Appeal at 3 (“Questions Presented for Review”) (emphasis in original).

² For example, the majority appears to hold that the mere offer of a ride in an automobile, standing alone, cannot constitute a “lure.” See Majority Opinion, slip op. at 21. This seems to exclude circumstances in which the vehicle itself may serve as the intended lure from a child’s point of view, for example, where the vehicle is a high-end sports car. I do not find this to be consistent with the legislative aim.

Nevertheless, as the General Assembly imposes more expansive prohibitions which do not encompass traditional mens rea requirements, constitutional concerns are magnified. Cf. generally Commonwealth v. Samuels, 566 Pa. 109, 113-46, 778 A.2d (continued...)

(...continued)

638, 641-62 (2001) (Saylor, J., concurring). Tools of statutory construction, such as the rule of lenity and the presumption that the Legislature intends to comply with the Constitution, serve as a check on vague statutory drafting manifesting too much delegation to prosecutorial discretion as the sole measure to protect otherwise innocent conduct.