

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

COMMONWEALTH OF PENNSYLVANIA,	:	No. 9 MAP 2010
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered on February 5, 2009 at No.
	:	285 EDA 2008 affirming the Judgment of
v.	:	Sentence entered on January 3, 2008 in
	:	the Court of Common Pleas, Delaware
	:	County, Criminal Division, at No. 3057-
WALTER J. HART, III,	:	2006
	:	
Appellant	:	
	:	
	:	ARGUED: March 8, 2011

CONCURRING AND DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: September 28, 2011

I concur with the majority's holding 18 Pa.C.S. § 2910 does not require the Commonwealth to prove a person who attempts to lure a child into an automobile did so with the intent to harm the child. See Majority Slip Op., at 20-21. This answers the simple question presented for our review.¹ Nonetheless, the majority goes beyond the

¹ We granted allowance of appeal to address the following issue:

Whether a person who offers a child a ride without previously obtaining the permission of a parent of the child, but who otherwise lacks criminal intent to harm the child, may be convicted of luring a child into a motor vehicle under 18 Pa.C.S. § 2910?

Commonwealth v. Hart, 990 A.2d 724 (Pa. 2010).

scope of the issue granted for appeal, and reverses appellant's conviction after defining "lure" as "the making of a promise of pleasure or gain, the furnishing of a temptation or enticement, or the performance of some other affirmative act calculated to strongly induce another individual to take a particular action." Majority Slip Op., at 17-18. Because the majority's interpretation of the term "lure" goes far afield of the plain meaning of the statute and constructs a definition neither intended by the General Assembly nor supported by this Court's case law, I respectfully dissent from that portion of the opinion.

The majority correctly points out that "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." Id., at 15 (quoting 1 Pa.C.S. § 1921(a)). However, the majority concludes that intent must coincide with the dictionary's meaning, and determines "an attempt to 'lure' does not include the action of simply extending an offer of an automobile ride to a child, when it is unaccompanied by any other enticement or inducement." See id., at 1, 17.

In Commonwealth v. Tate, 816 A.2d 1097 (Pa. 2003), this Court analyzed the former luring statute² and addressed the issue of whether it included the inchoate offense of attempting to lure a child into a motor vehicle. In Tate, the trial court convicted the defendant of luring a child into a motor vehicle based on evidence that he

² When we decided Tate, § 2910 stated:

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 (enacted 2/2/90).

drove up beside a 14-year-old girl walking home from school and told her to get into his car. Id., at 1097. The defendant appealed his conviction, arguing he could not be guilty of luring because the girl never got into his car. Id. The Superior Court affirmed, reasoning that “§ 2910 is an absolute prohibition to inviting unknown children into vehicles.” Id., at 1098 (citing Commonwealth v. Tate, 789 A.2d 229, 231 (Pa. Super. 2001)). We reversed the defendant’s conviction, finding the plain meaning of the statute did not include an attempt to lure a child into a vehicle. Id. We noted that “[i]f the legislature wishes the invitation to be sufficient, it must say so.” Id. (emphasis added).

After our decision in Tate, the General Assembly amended § 2910 to include attempted luring³ and to include an affirmative defense for luring a child into a structure.⁴ It did not extend that affirmative defense to vehicles. If the Legislature intended to provide an additional exception for “Good Samaritan” drivers, it could have done so. Instead, it did not include an affirmative defense for inviting a child into a vehicle for a lawful purpose, while specifically providing one for luring a child into a structure. Thus, in response to our rationale in Tate, the General Assembly clarified its

³ The statute now provides:

Unless the circumstances reasonably indicate that the child is in need of assistance, a person who lures or attempts to lure a child into a motor vehicle or structure without the consent, express or implied, of the child’s parent or guardian commits a misdemeanor of the first degree.

18 Pa.C.S. § 2910(a) (amended 1/9/06) (emphasis added).

⁴ The statute provides the following affirmative defense:

Affirmative defense.—It shall be an affirmative defense to a prosecution under this section that the person lured or attempted to lure the child into the structure for a lawful purpose.

18 Pa.C.S. § 2910(b).

intent to impose an absolute prohibition on trying to get a child into a vehicle without parental consent. The additional element my colleagues add, expanding luring to require some other act “strongly inducing” the child to get in the car, appears nowhere in the legislative process or result.

The plain language of the statute is clear, as is legislative intent demonstrated by the limitation on the affirmative defense: absent parental consent or emergency circumstances, an adult may not invite a child into a vehicle. While the majority desires to protect “Good Samaritans,” its interpretation permits a would-be molester or kidnapper to invite a child into his vehicle without violating the statute, as long as he does so without offering any additional enticement or temptation. By expanding “luring” to include elements not in the statute, my colleagues create a loophole not intended by the Legislature, nor necessary to reach the end they seek. See Tate, at 1098 (citing 1 Pa.C.S. § 1921(a), (b)) (“It is not a court’s place to imbue the statute with a meaning other than that dictated by the plain and unambiguous language of the statute.”).

The danger my colleagues seek to prevent is prosecution of the innocent, the soccer mom who offers a ride home to a neighborhood kid without prior express parental permission. Were any law enforcement personnel so foolish as to bring such a charge, the statute would not permit such a prosecution, for parental consent may be implied in such a case. Common sense is not left at the curb, so to speak, and such implied consent is inherent in most every legitimate “Good Samaritan” situation. We need not graft lurid elements of temptation into the statute to protect the innocent — that protection exists with the requirement that there be no implied consent. We once lived in a world where offering your child’s teammate a ride home was not only accepted, it was expected. While the world has changed, there remain bastions of civility where consent of the parent would still be implied by the circumstances — I suggest most if

not all of Pennsylvania would be included. Consent is implicit in the soccer mom scenario. It is not inherent when a stranger, twice, offers a ride to kids not in need of a ride.

Protecting the Good Samaritan is not achieved by expanding the degree of enticement needed to prosecute — that merely creates a loophole for the wise enticer. Protection, as foreseen by the Legislature, is in the implied consent provisions of the statute. Accordingly, I would affirm appellant's conviction, finding he violated the statute when he twice offered two young boys a ride in his truck without a suggestion of parental consent, express or implied, and when the circumstances did not reasonably indicate the boys were in need of assistance.