

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

PEOPLE OF THE STATE OF MICHIGAN/

Plaintiff/Appellee,

v

CHATHA CHAMPAOENG,

Defendant/Appellant.

File No. 95-2915-AR

HON. THOMAS G. POWER

Charles H. Koop (P27290)

Attorney for Plaintiff

Craig W. Elhart (P26369)

Attorney for Defendant

OPINION

Defendant/Appellant Chatha Champaoeng is charged with violating MCL 257.625(6); MSA 9.2325(6). It is charged that Defendant/Appellant was a person under 21 years of age who operated a motor vehicle on a public highway after having consumed intoxicating liquor. The District Court denied Defendant/Appellant's Motion to Dismiss. On appeal, Defendant/Appellant contends that MCL 257.625(6); MSA 9.2325(6) is unconstitutionally vague.

The statute at issue provides that:

"A person who is less than 21 years of age, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:

(a) An alcohol content of not less than 0.02 grams or more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or

ceremony.

The standard of review of Defendant/Appellant's challenge is set forth in *People v Lino* 447 Mich 567, 575; 527 NW 2d 434 (1994):

In order to pass constitutional muster, a penal statute must define the criminal offense "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v Lawson*, 461 US 352, 357; 103 S Ct 1855; 75 L Ed 2d 903 (1983)."

Defendant/Appellant here asserts that the instant statute fails because one could hypothetically be guilty under subsection (b) and still not meet the threshold level of subsection (a). Therefore, the statute does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited.

Subsections (a) and (b) simply provide definitions of "any bodily alcohol content" for evidentiary purposes. The statute does permit the "consumption of intoxicating liquor as part of a generally recognized religious service or ceremony" per subsection (b). However, if the under 21 years of age motor vehicle operator's blood alcohol content exceeded the minimum of subsection (a), the religious service or ceremony exception might not apply. Further, subsection (b) could be applied where a blood alcohol content was not available.

This Court finds the statute is not unconstitutionally vague. The persons who are subject to being charged with violating the statute should have no difficulty whatsoever in understanding the "tolerance zero" statute. Simply stated, the statute prohibits the operation of a motor vehicle, in a public place by a person under 21, with any bodily alcohol content. Subsection (a) and (b) merely provide alternative evidentiary standards.

The Trial Court is affirmed.
This case is remanded for further proceedings.

HONORABLE THOMAS G. POWER
Circuit Court Judge
Dated: 4/18/96