

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2009-0015

The State of New Hampshire

v.

Randy Riendeau

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE
SULLIVAN COUNTY SUPERIOR COURT

BRIEF FOR THE STATE OF NEW HAMPSHIRE

THE STATE OF NEW HAMPSHIRE

Michael A. Delaney
Attorney General

Stephen D. Fuller
NH Bar No. 14009
Senior Assistant Attorney General
Criminal Justice Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
603.271.3671

(15 minutes)

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ISSUE PRESENTED

Whether the defendant's knowledge that he drove on a "way," as defined in RSA 259:125, is an element of the habitual offender statute where this Court has previously indicated that the mens rea of "knowingly" applies only to the element of whether the defendant was certified as a habitual offender.

STATEMENT OF THE CASE

The defendant, Randy Riendeau, was charged by indictment with one count of driving while certified as a habitual offender, and by information with one count of driving while intoxicated. See RSA 262:23 (Supp. 2008); RSA 265-A:2, I (Supp. 2008). T-I 12–13; DB A1, 2.¹ Following a two day jury trial in the Sullivan County Superior Court (Arnold, J.), the defendant was found guilty on both counts. DB A3, 4. The trial court sentenced the defendant to twelve months in the House of Corrections for the DWI conviction, and a consecutive term of two and a half to five years for the habitual offender conviction. DB A3, 4. This appeal followed.

¹ Citations to the record are as follows:
“T-I” and “T-II” refer to the first and second volumes of the trial transcript;
“DB” refers to the defendant’s brief.

STATEMENT OF FACTS

A. The State's Case

On August 31, 2007, Robyn Forward and the defendant, went to the Twin State Speedway in Claremont to watch the Friday night automobile races. T-II 184. On that evening, Forward drove herself and the defendant to the racetrack in her 2007 Mustang rental car because the defendant had had his license revoked as a habitual offender. T-II 185, 187. After parking the car in the parking lot and exiting the vehicle, the defendant asked Forward if he could take the rental car and race in the spectator race that was being held at the track. T-II 187. Forward allowed the defendant to borrow the car and he drove the car from the parking lot to the pit to enter the spectator race. T-II 175. During the race, the defendant came very close to driving the car into the wall. T-I 105.

After the race was over, the defendant drove the car to the pit area and began squealing his tires to cause a large smoke cloud, something described as a "smokeshow." T-I 63, 81, 106. Because these smokeshows were not allowed at the Twin State Speedway, the pit director, Gary Baker, approached the defendant's car and asked him to turn off the car and give Baker the keys. T-I 82-83. Baker noted that the defendant's eyes were bloodshot and that he smelled of alcohol. T-I

83. When the defendant refused to get out of his vehicle, Baker went to find a police officer. T-I 84.

As Officer Shawn Hallock approached the defendant's car to investigate the smokeshow, the defendant began to drive away from the pit, into the parking lot. T-I 107-08. Officer Hallock then notified Captain Colby Casey over the police radio that the defendant had fled when Officer Hallock tried to approach the vehicle. T-I 135. Captain Casey located the blue 2007 Mustang that the defendant had been driving and pulled the vehicle over. T-I 138. When Captain Casey approached the vehicle, he discovered that Forward was driving the car and the defendant was in the passenger seat. Captain Casey noted that the defendant appeared intoxicated and placed him under arrest based upon the information provided by Officer Hallock and a police dispatch notifying Captain Casey that the defendant's license was suspended because he was a habitual offender. T-I 139-40.

At the police station, the defendant was read his Administrative License Suspension rights. T-II 165. After being read his rights, the defendant refused to sign the ALS form or submit to any sobriety tests. T-II 167. The officer at the police station noted that the defendant gave off a strong smell of alcohol, that he was belligerent, and that he stated on numerous occasions that he had consumed a twelve-pack of beer after participating in the spectator race. T-II 160-61.

B. Relevant Events Before, During, And After Trial

Before trial, the State filed a motion in limine to exclude all witness testimony as to the subjective belief of private citizens with regard to the legal status of the parking lot at Twin State Speedway. DB A2. The defendant objected to the motion, arguing that the State must prove that the defendant acted knowingly with regard to every element of the offense, including the element that the defendant drive on a way. DB A9. The superior court granted the State's motion, concluding that the prior case law made it clear that the mens rea of knowingly was intended only to apply to the defendant's knowledge of his status as a habitual offender.

At trial, the defendant argued that the road he drove to the pit area was merely an extension of the racetrack and thus not a "way" under RSA 259:125, I (Supp. 2007), while the State argued that the road was part of the parking lot, coming within the definition of a way under New Hampshire law. T-II 215, 224.

SUMMARY OF THE ARGUMENT

RSA 262:23, the habitual offender statute, does not explicitly provide for any mens rea requirement. This Court, in State v. Crotty, 134 N.H. 706 (1991), read a mens rea requirement of “knowingly” into the habitual offender statute with respect to the element of being a habitual offender. Thus, a defendant need only have knowledge that he was certified as a habitual offender at the time that he drove a vehicle to meet the mens rea requirements in the habitual offender statute.

Whether or not a defendant is aware that the surface on which he is driving a vehicle is, in fact, a “way” as defined under New Hampshire law is of no consequence to the determination of guilt under the habitual offender statute. The State need only show that the surface upon which the defendant was driving is indeed a “way.” This Court has articulated the elements of the habitual offender statute on numerous occasions and has consistently found that the only element that requires the mens rea of “knowingly” is driving while certified as a habitual offender.

To hold otherwise would undermine the very purpose of the habitual offender statute. The legislature enacted the habitual offender statute to provide maximum safety to all who travel or use the ways of the state. To require the State to prove that a defendant knew that he was driving on a “way” would place the risk posed by habitual offenders on those who travel or use the ways of the state,

rather than on the habitual offender himself. Such a result would nullify the purpose of the statute and should be rejected.

ARGUMENT

THE DEFENDANT'S KNOWLEDGE THAT HE WAS DRIVING ON A WAY, AS DEFINED BY STATUTE, IS NOT AN ELEMENT OF THE HABITUAL OFFENDER STATUTE

On appeal, the defendant challenges the trial court's ruling that the habitual offender statute, RSA 262:23 (Supp. 2008), does not require proof of a mental state with respect to the element of driving on a way. Specifically, the defendant appeals the jury instructions given by the trial judge. In particular, the defendant takes issue with the court's instruction on mental state, which read:

Normally, the matter of intention or the defendant's mental state is something that you would have to decide. In these cases, however, Mr. Riendeau's intent is not an issue as the parties have stipulated as to this element of the offense with respect to the charge of operating a motor vehicle after being certified as a habitual offender and Mr. Riendeau's intent or mental state is not an element of the charge of driving while intoxicated.

T-II 243.

The court went on to instruct the jury specifically about the charge of operating a motor vehicle after being certified as a habitual offender and on the element of driving on a way. The court instructed:

The State is not required to prove that the defendant drove a motor vehicle on a surface that you qualified under the law as a way. [sic] The State is required to prove the knowing element only to the actual operation of the vehicle; that is, that the defendant was aware he was driving a motor vehicle and that he was aware of his status as a habitual offender. The defendant does not have to know that the vehicle he is driving is on a surface that is defined by New Hampshire law as a way for the State to satisfy its burden of proof.

The State need only satisfy you with respect to the existence of a way, that the surface upon which the defendant was driving is, in fact, a way under New Hampshire law.

T-II 243-44.

In challenging the instruction given by the court, the defendant is challenging the court's interpretation of the habitual offender statute and the elements of that crime. This Court considers issues of statutory interpretation de novo. State v. McMillan, 158 N.H. 753, 757 (2009). This Court "is the final arbiter of the intent of the legislature as expressed in the words of a statute as a whole," and its "task is to construe Criminal Code provisions according to the fair import of their terms and to promote justice. In doing so, [the Court] look[s] first to the plain language of the statute to determine legislative intent." Id.

RSA 262:23, I, provides that "[i]t shall be unlawful for any person to drive any motor vehicle on the ways of this state while an order of the director or the court prohibiting such driving remains in effect." Although the habitual offender statute does not specify any mens rea requirement, RSA 626:2, I, (2007) requires that a person may be guilty of a felony only if he acts purposely, knowingly, recklessly, or negligently. Therefore, this Court has read the mental state of "knowingly" into the statute with respect to the defendant's status as a habitual offender. See State v. Crotty, 134 N.H. 706, 710 (1991).

In Crotty, this Court defined the elements of the habitual offender statute as being:

(1) that an habitual offender order barring the defendant from driving a motor vehicle was in force; (2) that the defendant drove a motor vehicle on the ways of this State while that order remained in effect; and (3) that the defendant did so with knowledge of his status as an habitual offender.

Id. The only element that the Court read the mens rea of “knowingly” into was the element of “status as a habitual offender.” The Court went on to repeat these three elements of the habitual offender statute in State v. LeBaron, 148 N.H. 226, 229 (2002), and most recently in State v. Gauntt, 154 N.H. 204, 207 (2006).

A mens rea of knowingly means that the defendant subjectively knew that he had been, and continued to be certified as an habitual offender at the time he drove his vehicle. In order to convict the defendant, the jury must be satisfied beyond a reasonable doubt that the defendant actually knew he was certified as an habitual offender at the time he drove a vehicle.

Gauntt, 154 N.H. at 207 (citing State v. Vincent, 139 N.H. 45, 48–49 (1994)).

In explaining the elements of the habitual offender statute and how the mens rea requirement applied to those elements, this Court has consistently held that the State need only prove that the defendant knew that he was certified as a habitual offender at the time he drove a vehicle. The defendant asserts that this list of three elements laid out by this Court on numerous occasions should now be viewed as incomplete because the Court was not asked to address the element of driving on a way in those cases, and any such language should be rejected as deciding an issue not presented. DB 11; see State v. Ayer, 136 N.H. 191, 193 (1992). Even though the present argument has never before been presented to this

Court, the issue of the mental state required under RSA 262:23 has been revisited, and this Court has reaffirmed the three elements set out in Crotty, LeBaron, and Gauntt. For example, in State v. Vincent, this Court ruled that

[t]o convict a defendant of driving after having been certified as an habitual offender, the jury must find, beyond a reasonable doubt, that the defendant knowingly drove a motor vehicle on the ways of this State while an habitual offender order was in effect. A mens rea of knowingly means that the defendant subjectively knew that he had been, and continued to be, certified as an habitual offender at the time he drove his [vehicle].

Vincent, 139 N.H. at 48.

The defendant argues that if the Court does decide that the elements of the habitual offender statute have in fact already been decided, then the Court should still rule in favor of the defendant in light of State v. Baker, 135 N.H. 447 (1992). The defendant cites Baker for the proposition that the mens rea of “knowingly” applies to all material elements in the habitual offender statute. Id. at 449. The decision in Baker, however, demonstrates no intention of applying the mental state of “knowingly” to the element of driving on a way. In Baker, this Court said that, “[t]o prove that the defendant acted knowingly the State has to prove knowledge as to all material elements, or, in other words that he knowingly operated a vehicle while the habitual offender prohibition was still in effect.” Id. Whether the Court in Baker implicitly found the element of driving on a way not to be a material element, as the trial court concluded, see DB A23–A25, or whether the Court found that applying such a requirement for the “way” element would be contrary

to the plainly apparent purpose of the statute, the result is the same: the mens rea requirement of “knowingly” does not apply to the element of driving on a way.

Should this Court find that the elements of the habitual offender statute have not been finally determined, the Court should still find, under RSA 626:2, I, that the mens rea requirement does not apply to the “way” element because “a contrary purpose plainly appears.”

The habitual offender statute begins with a declaration of policy. The statute reads in pertinent part:

It is hereby declared to be the policy of New Hampshire:

I. To provide maximum safety for all persons who travel or otherwise use the ways of the state; and

II. To deny the privilege of driving motor vehicles on such ways to persons who by their conduct and record have demonstrated their indifference for the safety and welfare of others and their disrespect for the laws of the state, the orders of her court, and the statutorily required acts of her administrative agencies

RSA 262:18, I, II (2004).

This Court has previously noted the importance behind this stated purpose. In State v. Osgood, 135 N.H. 436, 438 (1992), the Court recognized that “[t]he habitual offender statute is intended to promote public safety by removing irresponsible drivers from the highways of the State. The danger to the public occurs when an habitual offender places a motor vehicle . . . in motion on the highway.” In State v. O’Brien, 132 N.H. 587, 592 (1989), the Court noted, “The

legislature has made a deliberate choice to take a strong stand on this issue. It has determined that protection of the public by removing dangerous drivers from highways is a serious priority and that violators of the habitual offender law must be dealt with severely.”

The purpose of the statute is to provide maximum safety to all who travel or use the ways of the state. It is clear from this stated purpose of the legislature that violators of the habitual offender statute are to be dealt with harshly. Were the Court to adopt the defendant’s position and require a mental state for the way requirement, a defendant could escape criminal liability simply by being unaware of the nature of the road he was on, regardless of the great danger in which he was putting other members of the public. This would completely defeat the purpose of providing maximum safety for all persons because “the danger to the public occurs when an habitual offender places a motor vehicle . . . in motion on the highway.” Osgood, 135 N.H. at 428; see Weare Land Use Ass’n v. Town of Weare, 153 N.H. 510, 511–13 (2006) (the legislature will not be presumed to enact legislation “nullifying, to an appreciable extent, the purpose of the statute”).

Similar reasoning led the Court recently to hold that the mens rea requirement of RSA 626:2, I, does not apply to the element of “licensed or privileged to enter” in the burglary statute. State v. McMillan, 158 N.H. at 760–61. The Court reasoned that “a defendant who believes he is licensed or privileged,

but who enters an occupied structure to commit a crime therein, causes the same terror sought to be prevented as a defendant who knows he is neither licensed nor privileged.” Id. at 761. Likewise, a habitual offender who is unaware that he is operating on a way causes the same harm sought to be prevented as one who operates on a way with knowledge of its characteristics.

This Court’s jurisprudence in the area of statutory rape also proves helpful to the current case. RSA 632-A:3, II (Supp. 2008), makes it a crime to engage in sexual penetration with a person who is thirteen years of age or older and under sixteen years of age where the difference between the actor and the other person is four years or more. This Court has held that the element of the victim’s age is a strict liability element and no mens rea need be proven by the State. Goodrow v. Perrin, 119 N.H. 483, 488–89 (1979). The reasoning for imposing strict liability for the element of the victim’s age is to protect the well-being of the State’s youth. See State v. Holmes, 154 N.H. 723, 727–28 (2007). The Court recognized that “the statutes are designed to impose the risk of criminal penalty on the adult, when the adult engages in sexual behavior with a minor.” Id.

As the statutory rape statute protects the State’s youth, the habitual offender statute protects all persons who travel or otherwise use the ways of the state. To achieve this stated purpose, the legislature designed the statute to impose the risk of criminal penalty on the habitual offender when he places himself in the risky

situation of operating a motor vehicle after being certified as a habitual offender. See also State v. Carlson, 146 N.H. 52, 59 (2001) (defendant placed himself in risky circumstances relying upon the victim's mature behavior to substantiate her representation of her age). The defendant must be the one to bear the risk when he chooses to operate a vehicle after being certified as a habitual offender. To hold otherwise would place the risk on the persons who travel or otherwise use the ways of the state, and would "nullify, to an appreciable extent, the purpose of the statute." Weare Land Use Ass'n, 153 N.H. at 511.

The defendant asserts that applying the "knowingly" mens rea to the way element would serve the policy of deterrence that criminal statutes often seek to advance. DB 19. If the defendant does not know that he is driving on a way, so the argument goes, he cannot be deterred from such activity. The flaw with this line of argument is that the habitual offender statute does not simply seek to deter. The first two policy considerations are to provide maximum safety to all persons who travel the ways of the state and to deny the privilege of driving motor vehicles on such ways by persons who have shown their indifference for the safety and welfare of others. RSA 262:18, I, II. The third policy consideration does seek to discourage repetition of criminal. To read the mental state of "knowingly" into the way element of the habitual offender statute would defeat the policy considerations behind the first two stated purposes. To require that a defendant

know that he is driving on a way would not only risk the safety of all persons who travel or otherwise use the ways of the state but would not deny the privileges of driving motor vehicles on such ways to those defendants who successfully claim they were unaware that they were driving on a way. By requiring no mental state for the element of way, not only will the first two aims of the statute be fulfilled, but the result will be to discourage habitual offenders from operating motor vehicles, which will in turn discourage repetition of criminal acts, and would require those habitual offenders who do choose to operate a vehicle after being certified to bear the risk of criminal liability rather than allowing the citizens of the state to bear the burden.

The trial court was correct in its interpretation of the habitual offender statute when it ruled that there was no mens rea requirement for the element of way. The State needed only prove that the defendant operated on a way as defined by statute to meet its burden as to the way element.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

The State requests a fifteen-minute oral argument.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

Michael A. Delaney
Attorney General



Stephen D. Fuller
NH Bar No. 14009
Senior Assistant Attorney General
Criminal Justice Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
603.271.3671

November 4, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have sent two copies of the State's brief to counsel for the defendant, Christopher M. Johnson, Chief Appellate Defender, by first-class mail postage prepaid, at the following address:

Christopher M. Johnson
Chief Appellate Defender
Appellate Defender Program
2 White St
Concord NH 03301


Stephen D. Fuller

November 4, 2009