

IN THE APPELLATE DIVISION SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF FRESNO
CENTRAL DIVISION

PEOPLE OF THE STATE OF CALIFORNIA,) Sup. Ct. Appeal No. 0002345
)
Plaintiff and) OPINION
Respondent,)
)
v.)
)
STEVEN R. SPRIGGS,)
)
Defendant and)
Appellant.)

CERTIFIED FOR PUBLICATION

Appeal from a judgment of the Superior Court of Fresno County,
Jeffrey Bird, Commissioner.

Steven R. Spriggs, in pro per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Public concern about the dangers of distracted driving has led to legislation that limits the use of cellular phones and electronic communications devices while driving. The drive behind this legislation was the concern about the interference with the driver's attention caused by the physical aspects of using these devices. This case requires us to determine whether using a **wireless phone solely**

for its map application function while driving violates Vehicle Code section 23123.¹ We hold that it does.

On January 5, 2012, appellant Steven R. Spriggs was cited for violating section 23123, subdivision (a), driving a motor vehicle while using a wireless telephone. Trial was held on April 26, 2012. California Highway Patrol Officer Jack Graham and appellant each testified that, while driving, appellant was cited for looking at a map on his cellular phone while holding the phone in his hand. The question is whether appellant's conduct violates section 23123, subdivision (a).

Section 23123, subdivision (a) provides:

A person shall not drive a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving.

When the underlying facts are undisputed, issues of statutory construction are subject to independent review on appeal. (*Regents of Univ. of California v. Superior Court* (1999) 20 Cal. 4th 509, 531; *People v. Cardwell* (2102) 203 Cal.App.4th 876, 882.) In undertaking to interpret the words of a statute, the court ascertains the Legislature's intent by "follow[ing] the statute's plain meaning, if such appears, unless doing so would lead to absurd results the Legislature could not have intended." (*Garcetti v. Superior Court* (2000) 85 Cal.App.4th 1113, 1119, internal citations omitted.) The words of the statute itself must be given "a plain and commonsense meaning unless the statute specifically defines the words to give them

¹ All further statutory references are to the Vehicle Code unless otherwise indicated.

a special meaning.” (*People v. Nelson* (2011) 200 Cal.App.4th 1083, 1098, internal quotes omitted.)

“Nevertheless, the ‘plain meaning’ rule does not prevent a court from determining whether the literal meaning of the statute comports with its purpose. [Citations.] Thus, although the words used by the Legislature are the most useful guide to its intent, we do not view the language of the statute in isolation. [Citation.] Rather, we construe the words of the statute in context, keeping in mind the statutory purpose. [Citation.] We will not follow the plain meaning of the statute ‘when to do so would “frustrate[] the manifest purposes of the legislation as a whole or [lead] to absurd results.” ’ [Citations.] Instead, we will ‘interpret legislation reasonably and ... attempt to give effect to the apparent purpose of the statute.’ ” [Citation].) (*Ibid.*)

The statute prohibits driving “while using a wireless telephone,” except when the phone is “specifically designed and configured to allow hands-free listening and talking, *and is used in that manner while driving.*” (§ 23123, subd. (a), emphasis added). The term “using” is nowhere defined in the statute, but if the Legislature had intended to limit the application of the statute to “conversing” or “listening and talking,” as appellant maintains, it could have done so.

Our review of the statute’s plain language leads us to conclude that the primary evil sought to be avoided is the distraction the driver faces when using his or her hands to operate the phone. That distraction would be present whether the wireless telephone was being used as a telephone, a GPS navigator, a clock or a device for sending and receiving text messages and emails. But to the extent the language of the statute may be otherwise interpreted, the court must resolve any ambiguity.

An ambiguity exists when words in a statute "are capable of being construed in two different ways by reasonably well informed people." (*People v. Bostick* (1996) 46 Cal.App.4th 287, 295 (conc. opn. by Kline, P.J.).) "Courts may look to legislative history to construe a statute only when the statutory language is susceptible of more than one reasonable interpretation." (*Pacific Gas and Electric Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 86, 92.) The court can take judicial notice of prior versions of the bill that the Legislature considered as well as related legislative committee analysis. (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 824.)

The Assembly analysis of Senate Bill 1613 provides information about the **intent of the law.** The Assembly analysis noted:

The author argues that, although hands-free devices do not eliminate the distraction a driver may face when talking on a cell phone, **it is crucial to improve reaction time in the event of an emergency by requiring both hands to be on the wheel. This bill focuses on one aspect of motorist cell phone use, that of hands-on operation, in an attempt to reduce motor vehicle accidents in California.**

There are two aspects of cell phone use while driving that result in significant distraction and collisions. The first is **the physical distraction a motorist encounters when either picking up the phone, punching the number keypad, holding the phone up to his or her ear to converse, or pushing a button to end a call. It is this type of distraction that is addressed by this bill.** The other, potentially more significant, is the **mental distraction which results from the ongoing conversation carried on between the motorist and the person on the other end of the line.** (Assembly Floor, Analysis of Sen. Bill No. 1613 2005-2006 Reg. Sess.) as amended Aug. 24, 2005, p. 3 (emphasis added).)

In the "General comments" section of the Assembly's analysis, it was noted:

The author believes that the **hands-free requirement** in this bill is a minimal restriction on the use of cellular telephones in automobiles and that it is a substantial step forward in dealing with a significant driving hazard. **Hands-free** cellular

telephone equipment, or kits, are either given away with telephones or can be acquired as an after-market purchase for under \$20. Such equipment could be an earpiece, headset, speaker phone, or even Bluetooth technology. (Assembly Floor, Analysis of Sen. Bill No. 1613 (2005-2006 Reg. Sess.) as amended Aug. 24, 2005, p. 5.)

Neither the plain language of the statute nor the legislative history support the conclusion that section 23123, subdivision(a), was designed to prohibit hands-on use of a wireless telephone *for conversation only*. Notably, the legislative history acknowledges that the statute as worded does not eliminate a "potentially more significant" distraction of carrying on a conversation while driving. The statute instead focuses on the distraction a driver faces when *using his or her hands to operate the phone*, specifically including "the physical distraction a motorist encounters when either picking up the phone, punching the number keypad, holding the phone up to his or her ear to converse, or pushing a button to end a call." That distraction would be present whether the phone is used for carrying on a conversation or for some other purpose.

Appellant argues that the later enactment of section 23123.5, which prohibits driving while using "an electronic wireless communications device" to write, send, or read a text-based communication unless the device is used in a *hands-free manner*, supports the conclusion that section 23123 was only designed to address listening or talking on a cellphone while driving. The argument is essentially that, if section 23123 were designed to preclude any "hands-on" use of a cellphone while driving, later enactment of section 23123.5 would have been unnecessary. We disagree.

Section 23123 applies only to use of a "wireless telephone" while driving. Section 23123.5 more broadly applies to use of an "electronic wireless communications device," which would include a cellphone, but would also apply to other wireless devices used for communication. The author's rationale for Senate Bill 28, as stated in the comments submitted to the Assembly Committee on Appropriations, reflects that the bill was designed to reach those devices that could not accurately be identified as "wireless telephones":

The author argues that hands-on use of electronic wireless communications devices (Blackberries, etc.) while operating a motor vehicles [sic] is quickly becoming a factor leading to vehicle collisions in California. (Assembly Committee on Appropriations, Analysis of Sen. Bill No. 28 (2007-2008 Reg. Sess.) as amended Aug. 4, 2008.)

In describing the effect of the new proposed law, those comments go on to note:

However, while it [sic] relatively easy for a law enforcement officer to see a driver holding a cell phone up to his or her ear in violation of current law, it may be much more difficult to determine whether or not a driver is composing, sending or reading a text message, since the device will be held away from the upper torso and is likely to be operated in one's lap. (Assembly Committee on Appropriations, Analysis of Sen. Bill No. 28 (2007-2008 Reg. Sess.) as amended Aug. 4, 2008.)

This comment suggests that, at least as of the time that section 23123.5 was before the Assembly, Senator Simitian - who also authored Senate Bill 1613 that enacted section 23123 two years earlier - believed that section 23123 only prohibited "holding a cell phone up to [one's] ear." There is, however, no evidence in the legislative history of Senate Bill 1613 that would support the conclusion that those who voted in support of that bill, including its author, understood or intended the bill to be so limited in its application

when it was passed. To the contrary, the legislative history set out above suggests that the bill was designed to prohibit the "hands-on" use of the phone while driving, without limitation.

Section 23123.5, subdivision(c), specifically provides a limitation on the scope of the statute prohibiting "writing, sending or reading" a text-based communication while driving:

(c) For purposes of this section, a person shall not be deemed to be writing, reading, or sending a text-based communication if the person reads, selects, or enters a telephone number or name in an electronic wireless communications device for the purpose of making or receiving a telephone call or if a person otherwise activates or deactivates a feature or function on an electronic wireless communications device. (§ 23123.5)

The comments section in the analysis of Senate Bill 28, when it was before the Senate Transportation and Housing Committee, acknowledged this significant exemption:

Internet usage. Wireless communications devices are increasingly capable of providing access to the internet. Under this bill, a driver would be prohibited from sending a text message, but could use a hand-held device to surf the internet, a practice which may be as distracting as text messaging, if not more so. Furthermore, allowing for internet usage may make it difficult for law enforcement officers to determine whether or not a driver is in fact violating the prohibition against texting or simply using the internet. (Senate Committee on Transportation and Housing, Analysis of Sen. Bill No. 28 (2007-2008 Reg. Sess.) as amended Aug. 4, 2008.)

It may be argued that the Legislature acted arbitrarily when it outlawed all "hands-on" use of a wireless telephone while driving, even though the legal use of one's hands to operate myriad other devices poses just as great a risk to the safety of other motorists. It may also be argued that prohibiting driving while using "electronic wireless communications devices" for texting and emailing, while

acknowledging and failing to prohibit perhaps even more distracting uses of the same devices, is equally illogical and arbitrary. Both arguments should be addressed to the Legislature in support of additional legislation barring any use of those other devices in other than a hands-free manner, or in support of a repeal or amendment of section 23123 to allow the "hands-on" use of wireless telephones for other purposes while driving. This statute, however, is specifically designed to prevent a driver from using a wireless telephone while driving unless the device is being used in a hands-free manner. The plain language of the statute and its legislative history support that conclusion.

Because it is undisputed that appellant used his wireless telephone while holding it in his hand as he drove his vehicle, his conduct violated Vehicle Code section 23123, subdivision (a).

Accordingly, the judgment of conviction is affirmed.

Dated this 21st day of March, 2013.

Hon. W. Kent Hamlin, Judge

We Concur:

Hon. Donald S. Black, Presiding Judge
Appellate Division of Fresno Superior Court

Hon. F. Brian Alvarez, Judge