

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	§	
	§	No. 374, 2007
Plaintiff Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
SCOTT L. ADKINS,	§	Cr. I.D. No. 0701000116
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: February 4, 2009

Decided: April 14, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 14th day of April 2009, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. The State of Delaware appeals from a Superior Court order granting the motion of Scott L. Adkins, the defendant below, to declare 21 *Del. C.* § 4176A unconstitutionally vague. On appeal, the State argues that *Hoover v. State*,¹ which holds that 21 *Del. C.* § 4176A is constitutional, requires us to reverse the Superior Court's order and remand this case for Adkins' prosecution to continue. We agree and, therefore, reverse and remand.

¹ 958 A.2d 816 (Del. 2008).

2. At around 5:05 p.m., on December 22, 2006, Scott L. Adkins was driving home from work on north-bound Route 13. At that time it was both dark and raining, but Adkins was driving at a proper speed and his lights were operational. Tanisha Cruz was walking, with the flow of traffic, down the shoulder of Route 13. Cruz had run out of gas and had left her car to get assistance. As Adkins was approaching Simms Woods Road, he pulled onto the shoulder lane of Route 13 to prepare to turn onto that road. Adkins entered the shoulder, however, before the marked turn lane began. Tragically, Adkins struck Cruz, and she was severely injured. Cruz was rushed to Kent General Hospital, but died the following day from her injuries.

3. On February 5, 2007, Adkins was indicted on two counts: (1) Operation of a Motor Vehicle Causing Death,² and (2) Changing Lanes when Prohibited.³

² 21 *Del. C.* § 4176A, states in relevant part:

(a) A person is guilty of operation of a vehicle causing death when, in the course of driving or operating a motor vehicle or OHV in violation of any provision of this chapter other than § 4177 of this title, the person's driving or operation of the vehicle or OHV causes the death of another person.

(b) Operation of a vehicle causing death is an unclassified misdemeanor.

(c) Notwithstanding any provision of law to the contrary, a person convicted of operation of a vehicle causing death shall for the 1st offense be fined not more than \$1,150 and imprisoned not more than 30 months. For each subsequent conviction under this section the person shall be fined not more than \$2,300 and imprisoned not more than 60 months.

³ 21 *Del. C.* § 4122 states, in relevant part:

Before trial, Adkins moved to declare 21 *Del. C.* § 4176A unconstitutionally vague and violative of due process, on three grounds: (i) the statute fails to specify what state of mind is sufficient to commit that crime; (ii) it imposes strict liability without evidencing a clear legislative intent to impose strict liability; and (iii) although classified as an “unclassified misdemeanor,” the statute imposes felony-like sentences. Alternatively, Adkins requested the Superior Court to interpret the statute as requiring the State to prove that he acted intentionally, knowingly or recklessly with regard to the underlying traffic offense (here, Changing Lanes when Prohibited) that resulted in Cruz’s death. The Superior Court granted Adkins’ motion, concluding that the statute’s failure to specify a *mens rea* rendered it unconstitutionally vague.⁴

4. The State appeals from the Superior Court’s order. On October 3, 2007, we stayed this case, pending the disposition of certified questions of law from the Superior Court in *Hoover*.⁵ The *Hoover* court certified two questions to

Whenever any roadway has been divided into 2 or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

⁴ *State v. Adkins*, 2007 WL 1861903, at *9 (Del. Super. June 26, 2007).

⁵ *Hoover v. State*, 958 A.2d 816 (Del. 2008).

this Court: (1) Do the general liability provisions of 11 *Del. C.* § 251(b),⁶ apply to 21 *Del. C.* § 4176A; and (2) Is Section 4176A unconstitutionally vague?⁷ We answered both questions in the negative.⁸ Following that decision, briefing in this case resumed.

5. On appeal, the State argues that this case is on all fours with *Hoover*, and that we must reverse the Superior Court’s order declaring 21 *Del. C.* § 4176A unconstitutional. Adkins concedes that *Hoover* forecloses his argument that Section 4176A is unconstitutionally vague, and that it requires a *mens rea* requirement to be read into Section 4176A. Instead Adkins argues that Section 4176A violates due process, because it imposes a substantial penalty upon persons who lacked any intent to commit a crime.

6. Adkins relies on the holding in *United States v. Morissette* that “public welfare statutes” without a *mens rea* requirement violate due process except where the penalties are minor, and conviction does not do “grave damage” to the

⁶ “When the state of mind sufficient to establish an element of an offense is not prescribed by law, that element is established if a person acts intentionally, knowingly or recklessly.”

⁷ See *Hoover*, 958 A.2d at 818.

⁸ *Id.*

offender's reputation.⁹ Adkins contends that under *Morissette* a potential 30 month prison sentence for a misdemeanor without a *mens rea* requirement is unconstitutional. The State rejoins that conviction under Section 4176A requires proof of an underlying or predicate traffic offense enumerated in that statute, and that those predicate offenses have their own *mens rea* requirements. The State further argues that determining whether a conviction under Section 4176A carries a "minor penalty" requires a comparison with other traffic offenses under Delaware law, and with the laws of other states. Here, the State contends, the penalty for Operation of a Motor Vehicle Causing Death is comparable to other offenses under Delaware law and under other state statutes. Therefore, the penalties for violating Section 4176A are not so harsh as to violate due process.¹⁰

7. The issue raised by the parties' contentions is straightforward: does 21 *Del. C.* § 4176A violate due process by imposing too harsh a sentence or by causing grave harm to an offender's reputation without requiring proof of *mens rea*? Although this issue was raised below, the Superior Court did not address the

⁹ See *United States v. Morissette*, 342 U.S. 246, 256 (1952) (noting that public welfare laws without a *mens rea* requirement are acceptable, because the penalties "commonly are relatively small, and conviction does not [do] grave damage to an offender's reputation."). See also *United States v. Engler*, 806 F.2d 425, 432-33 (3rd Cir. 1986) (applying *Morissette* to uphold the constitutionality of the strict liability felony provision of the Migratory Bird Treaty Act (16 U.S.C. § 707(b)), which criminalizes the sale of protected birds.).

¹⁰ The question of whether Section 4176A imposes a harsh sentence that violates due process under *Morissette*, was not certified to this Court in *Hoover*. See *Hoover*, 958 A.2d at 824. We noted, however, in dictum that eleven other states with analogous statutes impose a maximum prison term of six months to five years.

issue in its order. Adkins requests that we affirm the Superior Court's order on that alternate ground, rather than remand the case for Adkins' prosecution to proceed. The State also asks us to address the issue in the interests of judicial economy.

8. This Court has plenary jurisdiction to determine the constitutionality of a legislative act.¹¹ Although both Adkins and the State urge us to decide the due process issue, this Court must first determine whether “a justiciable controversy exist[s] before [we] can properly adjudicate a dispute.”¹² “Generally speaking, an [issue] is not ripe for adjudication when it is ‘contingent ... [and requires] the occurrence of some future event before the [issue’s] factual predicate is complete.’”¹³ Adkins has not been convicted and sentenced (or even tried); therefore, the question of whether a potential 30 month prison sentence violates due process is at this point contingent.

¹¹ *New Castle County Council v. State*, 688 A.2d 888, 891 (Del. 1997).

¹² *Crescent/Mach I Partners v. Dr Pepper Bottling Co. of Texas*, 962 A.2d 205, 208 (Del. 2008) (citations omitted). Delaware courts analyze ripeness in determining whether a justiciable controversy exists. *Id.*

¹³ *Multi-Fineline Electronix, Inc. v. WBL Corp., Ltd.*, 2007 WL 431050, at *8 (Del. Ch. Feb. 2, 2007) (quoting *Energy Partners, Ltd. v. Stone Energy Corp.*, 2006 WL 294783, at *7 (Del. Ch. Oct. 11, 2006)).

9. Even so, this Court does have discretion to make a “practical judgment” as to whether an action is ripe for review.¹⁴ Where, as here, the relevant criminal statute does not set a mandatory minimum sentence, the State may recommend a sentence within that 30 month range, and the trial judge has leeway to sentence within that range. That weighs against reaching the merits of this case “where [the] facts are not fully developed,”¹⁵ *i.e.*, where this Court has not yet had the occasion to review a final sentence under Section 4176A.¹⁶ We are mindful of “the risk not only of granting an incorrect judgment, but also of taking an inappropriate or premature step in the development of the law.”¹⁷ That concern is heightened because conceivably Adkins (or any other offender under Section 4176A) might be sentenced to a term that is relatively minor, or even one that does not meet the constitutional requirements for appellate review by this Court.¹⁸ Therefore, on ripeness grounds we decline to accept the parties’ invitation to determine whether a potential 30 month sentence under Section 4176A violates due process.

¹⁴ *Multi-Fineline Electronix*, 2007 WL 431050, at *8 (citing *Energy Partners*, 2006 WL 294783, at *7).

¹⁵ *Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 480 (Del. 1989).

¹⁶ 21 Del. C. § 4176A was enacted on June 30, 2003.

¹⁷ *Stroud*, 552 A.2d at 480.

¹⁸ Del. Const. Art. IV, § 11(1)(b) states that a sentence must exceed one month or impose a fine over \$100 to permit a criminal defendant a right of appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **REVERSED** and this case is **REMANDED** for further proceedings consistent with this Order.

BY THE COURT:

/s/ Jack B. Jacobs
Justice