

COA Opinion: Court limits pirate-recording statute, MCL 752.1053, to commercial distribution

3. January 2012, by Nicole Mazzocco

On December 29, 2011, the Michigan Court of Appeals issued its opinion in *People v. Douglas*, No. 301233. The Court upheld the constitutionality of the pirate-recording statute, MCL 752.1053, by interpreting the statute as limited to commercial distribution.

MCL 752.1052 and 752.1053 together provide that “a person shall not . . . sell, rent, distribute, transport, or possess for the purpose of selling, renting, distributing, or transporting, or any combination thereof, a recording with knowledge that the recording,” MCL 752.1052, does not “contain in a prominent place on its cover, box, jacket, or label the true name and address of the manufacturer,” MCL 752.1053.

Defendant Douglas was charged with violating these sections, and challenged the “prominent place” requirement as unconstitutionally vague because (1) it did not provide fair notice of the proscribed conduct, (2) it conferred on the fact-finder “unstructured and unlimited discretion” to decide when the statute is violated, and (3) it is overbroad and impinges on First Amendment Rights. The trial court agreed, holding MCL 752.1053 unconstitutional. The State appealed.

First, the Court of Appeals considered Douglas’ fair-notice argument. The Court held that Douglas, who had failed to display the manufacturer’s name anywhere, could not claim that any vagueness in the words “prominent place” caused him to violate the statute. Thus, the statute was not unconstitutional as applied to him. In the alternative, the Court held that the “prominent place” requirement did provide fair notice. The Court examined the dictionary definitions of the two words, and found the phrase’s meaning something a person of ordinary intelligence would understand.

Second, the Court examined whether the statute provided the fact-finder “unstructured and unlimited discretion.” The Court began by noting that “prominent place” provided a limitation. But, even if this were not so, the statute also requires that the defendant perform specific acts “with knowledge.” The Court held that this mental-state requirement, along with the description of the illegal conduct, was a sufficient limit on the fact-finder’s discretion.

Third, the Court analyzed the overboard challenge. The Court held that the statute could be interpreted as limited only to commercial distribution, and that the statute was constitutional with such a limitation because the over breadth doctrine does not apply to commercial speech. Accordingly, the Court limited the statute to commercial distribution and held it constitutional.