

STATE OF ARKANSAS v. EUGENE JARVIS AND
NOBLE JARVIS

5318

427 S. W. 2d 531

Opinion delivered April 29, 1968
[Rehearing denied May 27, 1968.]

1. INTOXICATING LIQUORS—SALE TO MINORS—VALIDITY OF STATUTES.
—Act 257 of 1943 held to have repealed so much of Ark. Stat. Ann. § 41-1117 as is in conflict with Act 257 pertaining to the sale of intoxicating liquors to minors, written consent or order of parent or guardian no longer being available as a defense.
2. INTOXICATING LIQUORS—SALE TO MINORS—STATUTORY PROVISIONS.
—In view of legislative intent, which is spelled out in the acts and supported by public policy, General Assembly enacted two separate and nonconflicting statutes pertaining to sale of intoxicants to minors, whereby to unknowingly sell, give away or dispose of intoxicating liquor to minors is a misdemeanor with attending penalty for violation provided in § 48-901, and to knowingly do so is a misdemeanor for the first offense and a felony for subsequent offenses with penalties provided in § 48-903, amended by Act 277 of 1967.

Appeal from Jackson Circuit Court, *Andrew G. Ponder*, Judge; error declared.

Joe Purcell, Attorney General; *David Hodges*, Asst. Atty. Gen., for appellants.

Pickens, Pickens & Boyce and *Kenneth H. Castleberry*, for appellees.

J. FRED JONES, Justice. Eugene and Noble Jarvis were separately found guilty in the Municipal Court of Newport in Jackson County, Arkansas, on two separate charges of selling or giving intoxicants to minors. They

each were fined \$150.00 and costs in the Municipal Court and appealed to the Jackson County Circuit Court where the cases were consolidated by agreement. When the case came on for trial in the circuit court, the defendants filed a motion to dismiss because "there is no such crime 'as selling to minors.'" The trial court granted the motion and dismissed the charges. The state has appealed and relies on a single point for reversal:

"Arkansas statute 48-903 did not repeal Arkansas statute 41-1117."

Arkansas Statutes Annotated § 41-1117 (Repl. 1964) is digested under chapter 11 having to do with criminal offenses pertaining to children. This section was enacted on March 8, 1879, amended in 1889, and having survived the 18th amendment to the Federal Constitution, it remains as follows:

"Any person who shall sell or give away, either for himself or another, or be interested in the sale or giving away of any ardent, vinous, malt or fermented liquors, or any compound or preparation thereof called tonics, bitters or medicated whiskey, to any minor, without the written consent or order of the parent or guardian, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than fifty [\$50.00] nor more than one hundred dollars [\$100]."

In 1935 the Arkansas legislature enacted "The Arkansas Alcoholic Control Act" (Act 108 of 1935). Article VI of this act insofar as it relates to the question here presented, is as follows:

"Section 1. It shall be unlawful to sell intoxicating alcoholic liquors at the places, on the day, during the hours, to the persons or under the circumstances set out below, and the penalties herein prescribed shall be in addition to any other penalty

prescribed by law on account of sale of intoxicating liquor:

“(a) Any person who shall sell, give away, or dispose of intoxicating liquor to a minor or habitual drunkard or an intoxicated person shall be guilty of a misdemeanor and for the first offense be punishable by a fine of not less than One Hundred (\$100.00) Dollars nor more than Two Hundred and Fifty (\$250.00) Dollars, and for the second and subsequent offenses, he shall be guilty of a misdemeanor and punishable by a fine of not less than Two Hundred and Fifty (\$250.00) Dollars nor more than Five Hundred (\$500.00) Dollars or by imprisonment in the county jail for not less than six (6) months nor more than (1) year, or both so fined and imprisoned in the discretion of the jury.”

By Act 356 of the Acts of 1941, Act 108 of 1935 was amended as follows:

“Section 1. That Section 1 of Article 6 of Act 108 of the Acts of the General Assembly of the State of Arkansas for 1935 shall be amended to read as follows:

“It shall be unlawful to sell intoxicating alcoholic liquors at the places, on the day, during the hours, to the persons, or under the circumstances set out below, and the penalties herein prescribed shall be in addition to any other penalties prescribed by law on account of the sale of intoxicating liquors:

“(a) Any person who sell, give away, or dispose of intoxicating liquor to a minor, or habitual drunkard or an intoxicated person shall be guilty of a misdemeanor and for the first offense be punishable by a fine of not less than \$500.00 nor more than \$1,000.00 or confinement for not more than one year in the Arkansas State Penitentiary, or both.”

Act 218 of the Acts of Arkansas for 1943 was entitled "An Act to Amend Act 356 of the Laws of 1941," and provides as follows:

"Section 1. That Section 1 of Act 356 of the laws of 1941 is hereby expressly repealed and there is substituted in lieu thereof the following:

"It shall be unlawful to sell intoxicating alcoholic liquors at the places, on the day, during the hours, to the persons or under the circumstances set out below, and the penalties herein prescribed shall be in addition to any other penalty prescribed by law on account of sale of intoxicating liquor:

"(a) Any person who shall sell, give away, or dispose of intoxicating liquor to a minor or habitual drunkard or an intoxicated person shall be guilty of a misdemeanor and for the first offense be punishable by a fine of not less than One Hundred (\$100.00) Dollars nor more than Two Hundred and Fifty (\$250.00) Dollars, and for the second and subsequent offenses, he shall be guilty of a misdemeanor and punishable by a fine of not less than Two Hundred and Fifty (\$250.00) Dollars nor more than Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or both so fined and imprisoned in the discretion of the court or jury."

At the same session of the legislature in 1943, Act 257 was also enacted by the General Assembly, and except for the enacting and emergency clauses, this entire act is as follows:

"AN ACT to Make the Sale of Intoxicating Liquor to a Minor or on Sunday Misdemeanors, and Fixing the Punishment Therefor.

“Section 1. The sale, giving away or other disposition of intoxicating liquor to a minor is declared to be a misdemeanor, and any person who shall sell, give away, or otherwise dispose of intoxicating liquor to a minor shall be punished by a fine of not less than One Hundred (\$100.00) Dollars nor more than Two Hundred and Fifty (\$250.00) Dollars for the first offense; and for the second and subsequent offenses he shall be punished by a fine or [sic] not less than Two Hundred and Fifty (\$250.00) Dollars nor more than Five Hundred (\$500.00) Dollars or by imprisonment in the county jail for not more than one year, or both such fine and imprisonment in the discretion of the jury or court.

“Section 2. The sale of intoxicating liquor on Sunday is declared to be a misdemeanor, and any person who shall sell intoxicating liquor on Sunday shall be punished by a fine of not less than One Hundred (\$100.00) Dollars nor more than Two Hundred and Fifty (\$250.00) Dollars for the first offense; and for the second and subsequent offenses he shall be punished by a fine of not less than Two Hundred and Fifty (\$250.00) Dollars nor more than Five Hundred (\$500.00) Dollars or by imprisonment in the county jail for not more than one year, or both such fine and imprisonment in the discretion of the jury or court.

“Section 3. *This Act shall not be construed to repeal any law with respect to the sale of intoxicating liquors except to minors and on Sundays; and all laws and parts of laws in conflict herewith are repealed.*

“Section 4. The Legislature finds as a matter of fact that there are a great many violations of the law with respect to the sale of intoxicating liquor to minors and on Sundays, which, on account of present provisions of the law making such acts

felonies, cannot in many cases be enforced; that the practice of selling intoxicating liquor to minors and on Sundays should be stopped and can best be prevented by making such acts misdemeanors." (Emphasis supplied).

Act 218 of 1943 is digested as Ark. Stat. Ann. § 48-901 (a) (Repl. 1964), and the only difference in amendatory Act 218 of 1943 and Act 257 of 1943, insofar as the sale of intoxicating liquor is concerned, is that Act 218 (Ark. Stat. Ann. § 48-901 [a]) carries an optional minimum jail sentence of six months, whereas Act 257 merely limits the jail sentence to not more than one year, and Act 257 provides "this act shall not be construed to repeal any law with respect to the sale of intoxicating liquors *except to minors and on Sundays*; and all laws and parts of laws in conflict herewith, are repealed." (Emphasis added).

It would appear, therefore, that Act 257 of the Acts of 1943 is the last word from the legislature on the sale of intoxicating liquor to minors where knowledge of minority is not an element, and we are of the opinion that the legislative intent in enacting this legislation is clearly apparent from sections 3 and 4, *supra*.

We therefore hold, that Act 257 did repeal so much of Ark. Stat. Ann. § 41-1117 as is in conflict with Act 257 pertaining to the sale of intoxicating liquors to minors. The written consent or order of the parent or guardian as provided in § 41-1117 is no longer available as a defense under Act 257, and the penalty provision under § 41-1117 has been increased as set out in Act 257, *supra*.

Apparently Act 257 of 1943, did not fully accomplish the purpose of its enactment, as expressed in § 4 of the act, so in 1961 the General Assembly saw fit to strengthen the laws against selling intoxicants to minors by the enactment of entirely new and separate legislation.

Act No. 180 of 1961 (Ark. Stat. Ann. § 48-903 [Repl. 1964]) with the exception of the enacting clause, is as follows:

“AN ACT to Make It Unlawful for Any Person to *Knowingly* Sell, Give or Otherwise Furnish Any Alcoholic Beverage to Any Person Under the Age of Twenty-One Years; to Prescribe Penalties for the First and Subsequent Convictions for Violations of This Act; and for Other Purposes.

“SECTION 1. It shall be unlawful for any person knowingly to sell, give, procure, or otherwise furnish any alcoholic beverage to any person under twenty-one (21) years of age.

“SECTION 2. Any person violating this Act shall upon a first conviction therefor be deemed guilty of a misdemeanor and shall be fined One Hundred Dollars (\$100.00); upon a second conviction within three (3) years, such person shall be deemed guilty of a felony and shall be imprisoned in the State penitentiary not less than one (1) year nor more than five (5) years and shall be fined Five Hundred Dollars (\$500.00); upon a third or subsequent conviction within five (5) years, such person shall be deemed guilty of a felony and shall be imprisoned in the State Penitentiary not less than twenty-one (21) years nor more than fifty (50) years.” (Emphasis supplied).

By Act 120 of the Acts of Arkansas for 1967, the General Assembly re-enacted the provisions of Act 180 of 1961 with the addition of an optional ten day jail sentence as additional penalty on first offense. This act became law without the signature of the Governor on June 30, 1967, and at the same session of the General Assembly, Act 277 of the Acts of 1967, was enacted which, with the exception of the enacting clause, is as follows:

“AN ACT to Make It Unlawful for Any Person to Knowingly Sell, Give or Otherwise Furnish Any Alcoholic Beverage to Any Person Under the Age of Twenty-One Years; to Prescribe Penalties for the First and Subsequent Convictions for Violations of This Act; and for Other Purposes.

“SECTION 1. It shall be unlawful for any person knowingly to sell, give, procure, or otherwise furnish any alcoholic beverage to any person under twenty-one (21) years of age. Provided, however, that this Act shall not apply to the serving of such to one's family or to the use of wine in any religious ceremony or rite in any established church or religion.

“SECTION 2. Any person violating this Act shall upon a first conviction wherefor be deemed guilty of a misdemeanor and shall be fined not more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than ten (10) days, or by both such fine and imprisonment; upon a second conviction within three (3) years, such person shall be deemed guilty of a felony and may be imprisoned in the State Penitentiary not less than one (1) year nor more than five (5) years and shall be fined not more than Five Hundred Dollars (\$500.00) or both.

“SECTION 3. All laws and parts of laws in conflict with this Act are hereby repealed.”

This Act was approved by the Governor on March 10, 1967.

It is clear to us that the General Assembly intended to enact, and did enact, two separate and nonconflicting statutes pertaining to the sale of intoxicants to minors. By Act 257 of 1943 the sale, giving away or other disposition of intoxicating liquor to a minor is made a misdemeanor with punishment for violation fixed at a fine

of not less than \$100.00 nor more than \$250.00 for the first offense, and not less than \$250.00 nor more than \$500.00 or imprisonment in the county jail for not more than one year or both such fine and imprisonment as provided in the act. This act repeals all laws in conflict with it and the consent of a parent or guardian is no defense to the enforcement of its provisions.

By Act 180 of 1961 (Ark. Stat. Ann. § 48-903 [Repl. 1964]) to *knowingly* sell, give, procure, or otherwise furnish any alcoholic beverage to any person under 21 years of age is made a misdemeanor for the first offense and a felony upon a second and subsequent conviction, with penalties as amended by Act 277 of the Acts of 1967.

We conclude, therefore, that the legislative intent is clearly spelled out in the acts, *supra*, and is supported by public policy. We conclude that to unknowingly sell, give away, or dispose of intoxicating liquor to minors is a misdemeanor with attending penalty for violation as provided in Ark. Stat. Ann. § 48-901 (except that the jail sentence may be imposed for any time up to one year), and to *knowingly* do so is a misdemeanor for the first offense and a felony for subsequent offenses with penalties as provided in Ark. Stat. Ann. § 48-903, as amended by Act 277 of 1967, *supra*.

Error declared.

BYRD, J., dissents.