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2 little letters acquit man who passed stopped school bus

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Virginia law on passing a stopped school bus has been clear for 40 years.
Here - read it yourself:

"A person is guilty of reckless driving who fails to stop, when approaching from any direction, any school bus which is stopped on any highway, private road or school driveway for the purpose of taking on or discharging children."

Yes, drivers must stop a school bus which is, er, stopped.

Wait. Is something missing there?

Indeed. The preposition "at" was deleted in 1970 when the law was amended, the statute's history shows. And a man who zipped past a school bus, while it was picking up children with its lights flashing and stop sign extended, was found not guilty recently by a Fairfax County Circuit Court judge.

"He can only be guilty if he failed to stop any school bus," Judge Marcus D. Williams said at the end of the brief trial of John G. Mendez, 45, of Woodbridge. "And there's no evidence he did."

Williams added, "I hope that this is addressed so we don't have to keep dealing with this."

And the Virginia General Assembly will address it. Told by a reporter of Mendez's acquittal, Del. David B. Albo (R-Fairfax) said: "That's not good. That's a very serious charge. That needs to be fixed."

Still, the flawed law will stay on the books at least until January, when the Virginia legislature reconvenes, and most new laws won't take effect until July. Albo, chairman of the House Courts of Justice Committee, said that if there is enough support to push the bill through in emergency fashion, the word change could take effect as soon as late January.

Reckless driving is not just a traffic violation - it's a criminal misdemeanor punishable by jail time and stiff fines.

Mendez probably wasn't looking at any jail time. Still, he had received the ticket in the middle of a ridiculously bad morning - his tools were stolen and he was laid off his job before he passed the bus - and was thrilled by the judge's ruling, coming after argument from his attorney, Eric E. Clingan.

"Eric did his homework," Mendez said. "He did a lot of work and investigation into the statutes. . . . This is the greatest moment ever."

Clingan said he was not aware of the missing word in the statute until Mendez came into his office in June, shortly after he was ticketed on Hooes Road in the Springfield area. He said he took a look at the law, and "it just sort of jumped off the page at me." Clingan said Mendez couldn't afford his fee, so he agreed to take the case for free.

"I do believe there are judges who have taken people's licenses away for passing a school bus," Clingan said. "I hope, as much as anybody else, they'll fix this."

Clingan presented the argument first in Fairfax General District Court, where he said a judge told him that she was intrigued but wasn't buying it. He appealed to the Circuit Court.

Clingan handed up the statute to Williams, along with the "Acts of Assembly" from 1970, when the Virginia legislature changed what is now section 46.2-859. Somehow, nobody noticed the deletion of the word "at" in the following section.

(Bolded words in brackets were deleted; italicized words were added.)

"A person shall be guilty of reckless driving who shall:

(f) Fail to stop, *[at] when approaching from any direction*, a school bus, whether publicly or privately owned, *[and whether transporting children to, from, or in connection with a public or private school]* which is stopped on *[the]* any highway *or school driveway* for the purpose of taking on or discharging children, *[when approaching the same from any direction]* and to remain stopped until all children are clear of the highway or school driveway and the bus is put in motion."

Assistant Commonwealth's Attorney Katie Pavluchuk argued that the law clearly did not intend to require "having to stop the school bus. It's talking about this other vehicle coming towards the school bus. . . . The obvious intent of the statute is clear."

Clingan then pointed to Virginia Supreme Court case law, which says: "Courts are not permitted to add language to a statute nor are they 'permitted to accomplish the same result by judicial interpretation.' "

A 2005 state Supreme Court ruling written by Justice Barbara Keenan, now a federal appeals court judge, said that "we assume that the General Assembly's amendments to a statute are purposeful, rather than unnecessary."

Clingan then provided to Williams a grammatical analysis by E. Shelley Reid, an associate professor of English at George Mason University. Reid noted that the phrase "when approaching from any direction" is a nonrestrictive modifier and can be removed from the sentence. "As a result," Reid wrote, "the grammatical core of the first half of the sentence would read, 'A person is guilty of reckless driving who fails to stop any school bus. . . . ' This is a cohesive, grammatically correct sentence that conveys a clear if not very reasonable meaning."

Williams then wondered aloud: "I don't know if there's some latitude" in divining the law's intent. "There probably isn't, because it's a criminal statute." And read literally, the judge said, he had to acquit Mendez.

The prosecution cannot appeal an acquittal.

Pavluchuk, who was simply handling the regular Thursday morning misdemeanor appeals docket, did not come prepared with case law and professorial analysis, as Clingan did. But her boss, Fairfax Commonwealth's Attorney Raymond F. Morrogh, was ready when asked about it this week.

"I respectfully disagree with the decision," Morrogh said. He cited a U.S. Supreme Court case from 1892 that said, "If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity."

He also said a full reading of the law makes its intention clear and pointed to a Virginia Supreme Court case that said that "the plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction." The court also wrote, "We must assume the legislature did not intend to do a vain and useless thing."

And then the Fairfax prosecutor tossed in his own analysis of the Mendez case, through a Japanese proverb: "Only lawyers and painters can turn white to black."

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