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COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
2019-SC-000660-DG

COURT OF APPEALS 2018-CA-001547-MR

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SUPREME COURT

CRAIG LOUIS MILNER

APPELLANT

v.

Appeal from Fayette Circuit Court
Honorable Lucy VanMeter, Judge
Case No: 18-CR-000227

COMMONWEALTH OF KENTUCKY

APPELLEE

BRIEF FOR APPELLANT, CRAIG LOUIS MILNER

Submitted by:

STEVEN NATHAN GOENS
ASSISTANT PUBLIC ADVOCATE
DEPT. OF PUBLIC ADVOCACY
5 MILL CREEK PARK, SECT. 100
FRANKFORT, KENTUCKY 40601
(502) 564-8006

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2020, the foregoing Brief for Appellant was served by first class mail upon the following: Honorable Lucy VanMeter, Judge, Robert F. Stephens Courthouse, 120 N. Limestone, Suite 382, Lexington, Kentucky 40507; Hon. Louanna Redcorn, Commonwealth Attorney, 116 N. Upper Street, Lexington, Kentucky 40507; by electronic mail to: Hon. Blanton Clay Sousley, Assistant Public Advocate, and by state messenger mail to: Hon. Courtney Hightower, Assistant Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601. I also certify that the record has been returned to the Clerk of this Court on this date.


for **STEVEN NATHAN GOENS**

INTRODUCTION

A Good Samaritan called 911 after seeing Craig Milner hunched over behind the steering wheel of his car, with the driver door open, in the parking lot of Home Depot. This Court granted discretionary review to determine whether Craig qualifies for the exemption from prosecution for possession created by KRS 218A.133.¹

STATEMENT REGARDING ORAL ARGUMENT

Because this case turns solely on statutory interpretation, and this Court has not yet interpreted KRS 218A.133, Craig requests oral argument.

STATEMENT REGARDING CITATION TO THE RECORD

The record consists of one volume of Transcript of Record cited as (TR page number). All court proceedings, which are contained on one compact disc, are cited in conformance with CR 98(4)(a) as (VR: date stamp; time stamp).

¹ *Commonwealth v. Milner*, No. 2018-CA-001547-MR, 2019 WL 5280800 (Ky. App. Oct. 18, 2019), review granted (Feb. 12, 2020) (Opinion and Order Granting Discretionary Review attached at Appendix, Tab 1).

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STATEMENT OF THE CASE

The Fayette Circuit Court ruled that Craig Milner qualified for the exemption from prosecution for possession of drugs and paraphernalia created by KRS 218A.133(2), commonly known as the Good Samaritan statute.²

On December 26, 2017, around 3:30 PM, Leslie Phillips called 911 after she pulled into the parking lot of Home Depot in Lexington, Kentucky.³ Leslie told 911 dispatch that she saw a man “very definitely passed out in the front seat” of a parked car with the driver’s door open.⁴ Leslie told dispatch that the man was “hunched over.”⁵ Leslie told dispatch that the person may only be drunk, and dispatch sent both an ambulance and law enforcement.⁶

An officer with the Lexington Police Department arrived at the scene and approached the car, noting that the car was running, the door was open, and Craig was unconscious.⁷ As the officer approached the running car, he saw Craig “slumped over and passed out at the wheel.”⁸ It was “chilly outside” that day.⁹

² (TR 42-43, 51-53).

³ (VR: 8/27/2018; 3:04:30-3:05:45, 3:06:58-3:07:08).

⁴ (*Id.* at 3:05:45-3:05:56).

⁵ (*Id.* at 3:06:38-3:06:42).

⁶ (*Id.* 3:07:08-3:07:30).

⁷ (VR: 8/27/2018; 3:07:50-3:08:15, 3:08:37-3:08:45, 3:13:45-3:13:54).

⁸ (*Id.* at 3:08:08-3:08:30, 3:08:37-3:08:45).

⁹ (*Id.*).

The officer finally woke Craig by loudly yelling, "Hey man!"¹⁰ The officer saw in "plain view a glass pipe, which looked like a crack pipe, and small baggy of an unknown substance . . . sitting right on top of the middle console."¹¹

The officer got Craig out of the car.¹² It was obvious to the officer that Craig was under the influence of some kind of narcotic based on his inability to follow basic directions, slurred speech, blood-shot watery eyes, and mannerisms.¹³ The officer did not believe alcohol was involved.¹⁴

After searching Craig's pockets, the officer found three or four white pills prescribed to Craig and a small glass Christmas ornament that looked to be used to smoke crack or heroin.¹⁵ The officer arrested Craig and asked him about the paraphernalia found in his pocket.¹⁶ At the scene, Craig admitted he smoked meth and had a drug problem.¹⁷ The dispatched ambulance arrived on scene but did not administer Narcan.¹⁸

The pipe and two small baggies on the middle console of Craig's car, along with the Christmas ornament in his pocket, were the basis of the charges of possession of drug paraphernalia and controlled substances in Craig's case.¹⁹

¹⁰ (VR: 8/27/2018; 3:08:45-3:08:56).

¹¹ (VR: 8/27/2018; 3:08:56-3:09:19).

¹² (VR: 8/27/2018; 3:09:19-3:09:24).

¹³ (VR: 8/27/2018; 3:10:49-3:11:02).

¹⁴ (VR: 8/27/2018; 3:13:28-3:13:45).

¹⁵ (VR: 8/27/2018; 3:10:08-3:10:46).

¹⁶ (VR: 8/27/2018; 3:11:02-3:11:16).

¹⁷ (VR: 8/27/2018; 3:11:16-3:11:29, 3:15:30-3:15:39).

¹⁸ (VR: 8/27/2018; 3:12:07-3:12:24).

¹⁹ (VR: 8/27/2018; 3:11:29-3:12:07, 3:13:08-3:13:28).

The trial court entered an order suppressing the items found in plain view pursuant to the Good Samaritan statute.²⁰ However, the ornament found in his pocket would remain admissible against Craig.²¹ The Commonwealth's interlocutory appeal of that order followed.²²

On Appeal, the Court of Appeals overturned the trial court's order granting Craig partial immunity. *Milner*, No. 2018-CA-001547-MR, 2019 WL 5280800. The Court of Appeals held that KRS 218A.133(2)(c) required that Craig **actually overdose** and **actually need medical assistance** before immunity would apply—not simply a “perceived,” “apparent,” or “presumed” overdose and need for medical assistance.” *Id.* According to the Court of Appeals, immunity did not apply because, “[d]ue to the non-existence of an overdose and the absence of a need for medical assistance, neither element of KRS 218A.133(2)(c) was met in this case.” *Id.* at 4.

Additional facts will be set forth below as necessary.

²⁰ (TR 51-53) (Trial Court Order, attached at Appendix, Tab 2).

²¹ (*Id.*).

²² (TR 59-60).

ARGUMENT

KRS 218A.133 exempted Craig from prosecution for possession of drugs and drug paraphernalia found as a result of a call for help with an overdose.

The trial court was correct when it ruled KRS 218A.133, the Good Samaritan statute, applied to Craig's case. The trial court properly concluded, "The person does not have to be overdosing for the protection to apply. The caller simply has to have a good faith belief that the individual is in need of medical assistance."²³

The Court of Appeals seemingly acknowledged that its interpretation of KRS 218A.133 was contrary to the legislative intent of the statute. *Milner*, 2018-CA-001547-MR, 2019 WL 5280800, at *3 (citing *MPM Fin. Group, Inc.*, 289 S.W.3d at 197) ("[W]here the language of a statute is clear and unambiguous on its face, we are not free to construe it otherwise even though such construction might be more in keeping with the statute's apparent purpose."). However, the Court of Appeals justified its deviation from the legislative intent of KRS 218A.133 based on a misinterpretation. That misinterpretation conflicted with the statute's plain language and rendered a significant portion of the statute superfluous.

Preservation

This issue is preserved by Craig's pretrial motion to dismiss the possession charges, arguments made at the hearing held on the motion,

²³ (TR 51-53).

the trial court's oral and written orders overruling the motion, and this Court's order granting discretionary review.²⁴

Standard of Review

Statutory construction is an issue of law rather than fact, and this Court applies a *de novo* standard of review. *Cumberland Valley Contractors, Inc. v. Bell County Coal Corp.*, 238 S.W.3d 644, 647 (Ky. 2007). Conclusions reached by the lower courts are entitled to no deference. *Commonwealth v. Love*, 334 S.W.3d 92, 93 (Ky. 2011).

Law

Statutory Interpretation

Courts must interpret statutes in accord with their plain meanings, construing non-technical words by their common meanings and avoiding rendering any part inoperative, superfluous, void, or insignificant. *Love*, 334 S.W.3d at 93; *Travelers Indemnity Company v. Armstrong*, 565 S.W.3d 550, 563 (Ky. 2018).

Statutes shall be liberally construed to promote their objects and carry out the legislative intent. KRS 446.080(1). The cardinal rule of statutory construction is that the intention of the legislature should be ascertained and given effect. *MPM Fin. Group, Inc. v. Morton*, 289 S.W.3d 193, 197 (Ky. 2009). “[I]f a statute is clear and unambiguous and expresses the legislature's intent, the statute must be applied as written.” *Hall v.*

²⁴ (TR 42-43, 51-53); (VR: 8/27/18; 3:03:20-3:30:51); (VR: 9/14/18; 11:52:00-11:55:56).

Hosp. Res., Inc., 276 S.W.3d 775, 784 (Ky. 2008) (citing *Griffin v. City of Bowling Green*, 458 S.W.2d 456, 457 (Ky. 1970)).

The Good Samaritan Statute

KRS 218A.133, the Good Samaritan Statute, reads as follows:

(1) As used in this section:

(a) "Drug overdose" means an acute condition of physical illness, coma, mania, hysteria, seizure, cardiac arrest, cessation of breathing, or death which reasonably appears to be the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe requires medical assistance; and

(b) "Good faith" does not include seeking medical assistance during the course of the execution of an arrest warrant, or search warrant, or a lawful search.

(2) A person shall not be charged with or prosecuted for a criminal offense prohibiting the possession of a controlled substance or the possession of drug paraphernalia if:

(a) In good faith, medical assistance with a drug overdose is sought from a public safety answering point, emergency medical services, a law enforcement officer, or a health practitioner because the person:

1. Requests emergency medical assistance for himself or herself or another person;

2. Acts in concert with another person who requests emergency medical assistance; or

3. Appears to be in need of emergency medical assistance and is the individual for whom the request was made;

(b) The person remains with, or is, the individual who appears to be experiencing a drug overdose until the requested assistance is provided; and

(c) The evidence for the charge or prosecution is obtained as a result of the drug overdose and the need for medical assistance.

(3) The provisions of subsection (2) of this section shall not extend to the investigation and prosecution of any other crimes committed by a person who otherwise qualifies under this section. . . .

a. **The Court of Appeals' holding is contrary to the plain language of KRS 218A.133.**

The Court of Appeals relied solely on the following language from KRS 218A.133 to hold that Mr. Milner did not qualify for the statute's exemption:

The evidence for the charge or prosecution is obtained as a result of the drug overdose and the need for medical assistance.

KRS 218A.133(2)(c). Mr. Milner respectfully asserts that with this interpretation, the Court of Appeals has lost sight of the forest for trees.

The Court of Appeals' injection into KRS 218A.133(2)(c) of a requirement that Craig be experiencing an **actual** overdose and **actually** need medical treatment before he could qualify for immunity is not supported by the plain language of the statute. The Court must presume

that the General Assembly intended for the statute to be construed as a whole, for all of its parts to have meaning, and for it to harmonize with related statutes. *Maynes v. Commonwealth*, 361 S.W.3d 922, 924 (Ky. 2012) (citing *Hall v. Hospitality Resources, Inc.*, 276 S.W.3d 775 (Ky. 2008); *Lewis v. Jackson Energy Cooperative Corporation*, 189 S.W.3d 87 (Ky. 2005)). A court must not be guided by a single word or sentence of a statute but must look to the provisions of the whole statute and its object and policy. *Cosby v. Commonwealth*, 147 S.W.3d 56, 58–59 (Ky. 2004) (citing *County of Harlan v. Appalachian Reg'l Healthcare, Inc.*, 85 S.W.3d 607, 611 (Ky. 2002)).

The Court of Appeals' construction ignores the statute's definition of overdose as provided by the legislature. That definition reads:

(a) "Drug overdose" means an acute condition of physical illness, coma, mania, hysteria, seizure, cardiac arrest, cessation of breathing, or death which reasonably appears to be the result of consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a layperson would reasonably believe requires medical assistance;

KRS 218A.133(1)(a).

When read in conjunction with the above definition, KRS 218A.133(2)(c) cannot be read to require an **actual overdose** and **actual need for medical assistance**. The Court of Appeals' interpretation is contrary to the definition of "overdose" and renders that definition

superfluous. Rather, the statute must be construed to only require that the person for whom help is called be experiencing “an acute condition of physical illness, coma, mania, hysteria, seizure, cardiac arrest, cessation of breathing, or death **which reasonably appears to be the result of consumption or use of a controlled substance . . . that a layperson would reasonably believe requires medical assistance.**” KRS 218A.133(1)(a).

Statutes “must be interpreted in accordance with their plain meanings. *Love*, 334 S.W.3d at 93. The statute’s plain language does not require the person for whom help is called be experiencing an **actual** drug overdose or actually need medical help. The legislature intentionally defined overdose broadly. KRS 218A.133(1)(a). It is illogical to interpret the statute, which only requires good faith on the part of the caller and intentionally defines overdose in broad, objective, reasonable terms, to require that the person’s condition **actually** be an overdose and **actually** need medical attention before immunity would apply.

- b. Craig experienced an overdose as defined by the statute, and medical assistance was sought for him due to his condition. KRS 218A.133 exempts him from prosecution for possession of drugs and paraphernalia found as a result of the call for help.**

The Good Samaritan statute was the legislature’s direct response to the drug epidemic—during which overdose deaths surpassed motor vehicle deaths as the leading cause of unintentional injury death in the

United States.²⁵ The legislature declared the epidemic an emergency, and passed the Good Samaritan Statute to help curb overdose deaths by encouraging people to seek medical assistance. 2015 Kentucky Laws Ch. 66 (SB 192 § 25); *Allen v. Commonwealth*, 2017-CA-000389-MR, 2018 WL 4523207, *5 (Ky. App. Sept. 21, 2018) (unpublished opinion, attached at Appendix, Tab 3).

With the Good Samaritan Statute, the legislature reaffirmed its preference for community-based responses over incarceration as set forth in KRS 218A.005. While of secondary importance, the epidemic costs a significant amount of money due to the societal costs related to the increase in drug use. “Estimates of overall societal costs (i.e., healthcare, criminal justice, and workplace costs) associated with [Opioid Use Disorder] have risen from \$11.8 billion in 2001, to \$55.7 billion in 2007, and \$78.5 billion in 2016.”²⁶

In the face of such overwhelming societal costs, action had to be taken. Retired State Representative, Mike Denham, helped write the House’s heroin legislation, which was included in Senate Bill 192.²⁷ He

²⁵ Case, A., Deaton, A. (2017). Mortality and morbidity in the 21st century. Brookings papers on economic activity, 2017, 397.

²⁶ Douglas L. Leslie, PhD; Djibril M. Ba, MPH; Edeanya Agbese, MPH; Xueyi Xing, PhD; & Guodong Liu, PhD, [The Economic Burden of the Opioid Epidemic on States: The Case of Medicaid](https://www.ajmc.com/journals/supplement/2019/deaths-dollars-diverted-resources-opioid-epidemic/the-economic-burden-opioid-epidemic-on-states-case-of-medicaid), [ajmc.com](https://www.ajmc.com/journals/supplement/2019/deaths-dollars-diverted-resources-opioid-epidemic/the-economic-burden-opioid-epidemic-on-states-case-of-medicaid) (July 30, 2019) <https://www.ajmc.com/journals/supplement/2019/deaths-dollars-diverted-resources-opioid-epidemic/the-economic-burden-opioid-epidemic-on-states-case-of-medicaid> (last assessed February 7, 2020).

²⁷ Mike Denham, [Rep. Mike Denham: Bill to decrease state's drug problems has support from all sides](https://www.kyforward.com/rep-mike-denham-bill-to-decrease-states-drug-problems-has-support-from-all-sides/), [kyforward.com](https://www.kyforward.com/rep-mike-denham-bill-to-decrease-states-drug-problems-has-support-from-all-sides/) (March 18, 2015) <https://www.kyforward.com/rep-mike-denham-bill-to-decrease-states-drug-problems-has-support-from-all-sides/> (last accessed February 7, 2020).

wrote, “[The legislation] proposes much harsher penalties for those bringing heroin into Kentucky while expanding treatment for the addicts. Past lessons have taught us that we cannot incarcerate ourselves out of this problem.”²⁸ The Legislature recognized that addiction is a disease that cannot be penalized away.²⁹

Craig is the person for whom this legislation was intended. His circumstances are exactly what the statute contemplates—he was prosecuted for drugs and paraphernalia found as a result of a call for help by a Good Samaritan who recognized he needed help. Because his circumstances satisfy the elements of the Good Samaritan Statute, Craig qualifies as a person exempt from prosecution.

- 1. Craig experienced an overdose as defined by the statute, and his condition qualified as an overdose as defined in the Good Samaritan Statute.**

The Good Samaritan Statute forbids the prosecution of a person for simple possession of drugs and/or paraphernalia when, among other requirements, “[i]n good faith, medical assistance with a drug overdose is sought.” KRS 218A.133(2)(a). The Court must first determine whether Craig’s condition qualified as an overdose as defined by the Good Samaritan Statute.

²⁸ *Id.* (emphasis added).

²⁹ “The essential feature of a substance use disorder is a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance related problems.” AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 481-85 (5th ed. 2013).

The legislature intentionally defined overdose in broad, objective terms as:

[A]n acute condition of physical illness, coma, mania, hysteria, seizure, cardiac arrest, cessation of breathing, or death **which reasonably appears to be the result of consumption or use of a controlled substance**, or another substance with which a controlled substance was combined, and that **a layperson would reasonably believe requires medical assistance**[.]

KRS 218A.133(1)(a) (emphasis added). The definition only requires that Craig's condition of acute physical illness "reasonably appears to be the result of" drug use, which "a layperson would reasonably believe requires medical assistance." KRS 218A.133(1)(a).

The legislature adopted a "reasonable" standard. KRS 218A.133(1)(a). The legislature intended officers, prosecutors, and reviewing courts to determine whether, considering the circumstances, a reasonable person would have believed that drugs caused Craig's condition of acute physical illness and that condition required medical assistance. *See Turley v. Commonwealth*, 399 S.W.3d 412, 420 (Ky. 2013). In other words, would the facts available at the moment convince a reasonable layperson medical assistance was needed. *See Baker v. Commonwealth*, 5 S.W.3d 142, 146 (Ky. 1999). What is reasonable in any case must be ascertained by the application of reason to the facts of the particular case. *Hogan v. Tucker*, 116 Ky. 918, 77 S.W. 197, 199 (1903).

In this case, Craig's condition qualified as an overdose as that term is defined in the statute. Craig experienced an acute condition of physical

illness that reasonably appeared to be caused by drugs, and a layperson reasonably believed Craig's condition required medical assistance. Craig was "hunched over" unconscious in his car in the Home Depot parking lot.³⁰ Craig's car was running, and the front driver door was open despite it being nearly freezing outside.³¹ This demonstrates that Craig's condition was acute—he lost consciousness suddenly.

Additionally, drugs and drug paraphernalia were in plain sight inside Craig's running car.³² "It was pretty obvious" to the responding officer "with [Craig's] failure to comply to basic directions, his slurred speech, his blood-shot watery eyes, his mannerisms, that he was under the influence of something, some kind of unknown narcotic."³³ Craig's condition reasonably appeared to be the result of drug use.

Finally, in this case, a layperson, Leslie Phillips, actually called 911 because she saw Craig "hunched over" behind the wheel of a running car on a cold day with the door open.³⁴ Both an ambulance and police were sent to the scene.³⁵ The Good Samaritan's 911 call was in response to her observations of Craig's condition. The Commonwealth has never argued or suggested below that Leslie's 911 call for help was unreasonable

³⁰ (VR: 8/27/2018; 3:04:30-3:05:56, 3:06:38-3:06:42, 3:06:58-3:07:08, 3:08:37-3:08:45).

³¹ (VR: 8/27/2018; 3:07:50-3:08:15, 3:08:37-3:08:45, 3:13:45-3:13:54).

³² (VR: 8/27/2018; 3:04:30-3:05:56, 3:06:38-3:06:42, 3:06:58-3:07:08, 3:07:50-3:08:15, 3:08:37-3:08:45, 3:08:56-3:09:19, 3:13:45-3:13:54).

³³ (VR: 8/27/2018; 3:10:49-3:11:02).

³⁴ (VR: 8/27/2018; 3:04:30-3:05:56, 3:06:38-3:06:42, 3:06:58-3:07:08).

³⁵ (VR: 8/27/2018; 3:07:08-3:07:30, 3:12:07-3:12:14).

nor that Craig's condition did not reasonably appear to be the result of drug use.

Craig experienced a state of acute physical illness—being unconscious in a running car—that reasonably appeared to be caused by drugs—drugs were in plain view in the car. Leslie Phillips, a layperson and Good Samaritan, called for help because she saw Craig's condition. As such, Craig's condition qualified as an overdose under KRS 218A.133(1)(a).

2. Leslie Phillips sought medical assistance for Craig, who appeared to be in need of emergency medical assistance.

Next, to qualify for immunity, Craig must have either: (1) requested emergency medical assistance; **or** (2) acted in concert with another person who requested emergency medical assistance; **or** (3) appeared to be in need of emergency medical assistance and be the individual for whom the request was made. KRS 218A.133(2)(a)(1-3) (emphasis added).

Here, Craig fell under the third category because he appeared to be in need of emergency medical assistance and was the individual for whom Leslie Phillips called for help. Leslie noticed Craig's condition, called 911, and even parked close to Craig's car while seeking help.³⁶ An officer **and** EMS arrived in response to Leslie's call for help.³⁷

Craig was unconscious. He reasonably appeared to be in need of emergency medical assistance. Leslie, the Good Samaritan, called 911 and

³⁶ (VR: 8/27/2018; 3:05:30-3:06:58).

³⁷ (VR: 8/27/2018; 3:07:08-3:07:30, 3:12:07-3:12:14).

sought that help for Craig. This satisfied the first element of the Good Samaritan Statute, found in KRS 218A.133(2)(a)(3).

3. Leslie called 911 because of Craig's condition, Craig was present when the help arrived, and all the evidence for Craig's charges was discovered as a result of Leslie's call for help.

Next, Craig must have either remained with the person who needed help or be the actual person for whom help was called. KRS 218A.133(2)(b) (emphasis added). And finally, the evidence for the prosecution must also have been obtained as a result of the call for help. KRS 218A.133(2)(c).

Craig satisfied these final two requirements of the Good Samaritan Statute. Leslie called for help for Craig, who appeared to need emergency medical assistance.³⁸ Craig remained on scene until that assistance arrived.³⁹ Then, because the police arrived, the items found became "evidence." This satisfied KRS 218A.133(2)(b).

Furthermore, and contrary to the trial court's findings,⁴⁰ **all the evidence** that was the basis for the possession charges was obtained as a result of the call for help for Craig. KRS 218A.133(2)(c). This includes the ornament that the officer found in Craig's pocket after the officer pulled him from the car. He should have been exempted from prosecution for possession of a controlled substance and drug paraphernalia.

c. The Court of Appeals' holding is contrary to the legislative intent of KRS 218A.133.

³⁸ (VR: 8/27/2018; 3:05:30-3:06:58).

³⁹ (VR: 8/27/2018; 3:12:07-3:12:30).

⁴⁰ (TR 51-53).

Pursuant to KRS 446.080(1), “[a]ll statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature[.]” “[T]he cardinal rule of statutory construction is that the intention of the legislature should be ascertained and given effect.” *MPM Fin. Group, Inc. v. Morton*, 289 S.W.3d 193, 197 (Ky. 2009) (citing *Cabinet for Human Res., Interim Office of Health Planning and Certification v. Jewish Hosp. Healthcare Servs., Inc.*, 932 S.W.2d 388, 390 (Ky. App. 1996)).

In a prior unpublished opinion, the Court of Appeals held that the intent of KRS 218A.133 was to curb overdose deaths by encouraging overdose victims or those with them to seek medical assistance. *Allen v. Commonwealth*, 2017-CA-000389-MR, 2018 WL 4523207 at *5 (Ky. App. Sept. 21, 2018) (unpublished decision, attached at Appendix, Tab 3). KRS 218A.005, found in the same chapter as KRS 218A.133, dictates, “Successful, community-based treatment can be used as an effective tool in the effort to reduce criminal risk factors. Therapeutic intervention and ongoing individualized treatment plans prepared through the use of meaningful and validated, research-based assessment tools and professional evaluations offer a potential alternative to incarceration in appropriate circumstances and shall be used accordingly.”

KRS 218A.133 should be read to harmonize with KRS 218A.005’s preference for community-based treatment. It should be construed to be a continuation of the legislative effort to decriminalize the disease of

addiction because throwing addicts in jail does not address their underlying addiction.⁴¹

Yet, the Court of Appeals' interpretation of KRS 218A.133 fails to liberally promote the legislative intent and policy behind the statute. Requiring that the person for whom help is sought to actually be overdosing and actually need medical assistance would create uncertainty in the mind of the person calling for help. The caller may not be sure the person is actually experiencing an overdose or whether the person believed to be overdosing actually needs medical help. Because the caller may fear the person believed to be overdosing may get in legal jeopardy if help is sought, the caller may delay getting help or ultimately decide not to call for help at all.

It is also unwise to require the person seeking help for a person to confirm the person is actually overdosing or actually needs help before getting help. The legislature intended that the statute assist in getting professional medical assistance to a person who may be overdosing as swiftly as possible. The Court of Appeals' interpretation adds unnecessary delay by requiring a layperson to assess the person's condition before seeking help. Laypeople often do not have adequate training to make such an assessment. Likewise, requiring a person to attempt to make such an

⁴¹ AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 481-85 (5th ed. 2013) ("The essential feature of a substance use disorder is a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance related problems.").

assessment would expose the caller to unnecessary risk of injury at the hands of the person overdosing, who could be manic or hysteric.⁴² The caller may also be unnecessarily exposed to used needles when all that should be required is a call for help.

The legislature chose broad language when drafting the statute so people would not have to make these types of determinations before calling for help. The Court of Appeals' interpretation will create a chilling effect that stymies the statute's legislative intent to remove barriers that cause hesitation before help is sought. These outcomes are inconsistent with the intent and purpose of the Good Samaritan Statute.

The statute is clear. The legislative intent is clear. The Court of Appeals' misinterpretation will cause needless delay and continue to strain the resources of our overburdened criminal justice system.

CONCLUSION

The Good Samaritan Statute was intended to save lives—lives like Craig's. Then, and current, State Representative, Joni Jenkins, spoke of the Good Samaritan Statute shortly after SB 192 was passed. She said the Good Samaritan statute could have helped her nephew, who died of a heroin overdose. "He was with someone who wasn't doing drugs, who isn't a drug user and she did not call when he overdosed because she did not

⁴² KRS 218A.133(1)(a), the definition of overdose in the statute, contemplates that both "mania" and "hysteria" qualify as a condition considered to be an overdose.

want to get him in trouble,' Jenkins said . . . during a legislative committee overseeing the implementation of the new heroin policies."⁴³

KRS 218A.133 demonstrates that the legislature realized that addiction is needlessly taking lives, and it cannot be penalized away. It is not a coincidence that the legislature strengthened trafficking statutes concomitantly with immunizing addicts caught in their most vulnerable moments from prosecution.

Because Craig is the person the Good Samaritan statute was created to save, he respectfully requests that this Court reverse the Court of Appeals and remand this matter to the trial court with directions to grant Craig's motion to dismiss the charges of possession of a controlled substance and possession of drug paraphernalia for all the evidence seized as a result of the call for help.

Respectfully submitted,


for STEVEN NATHAN GOENS
COUNSEL FOR APPELLANT

⁴³ Ryland Barton, Kentucky Prosecutor Wants 'Good Samaritan' Policy Out of Anti-Heroin Law, wfpl.org (July 1, 2015) <https://wfpl.org/kentucky-prosecutor-wants-good-samaritan-policy-out-of-anti-heroin-law/> (last accessed February 7, 2020).