

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2008-CA-000610-DG

TIFFANY MATTINGLY

APPELLANT

ON DISCRETIONARY REVIEW FROM GRAYSON CIRCUIT COURT  
v. HONORABLE BRUCE T. BUTLER, JUDGE  
ACTION NO. 07-XX-00003

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: NICKELL AND VANMETER, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Tiffany Mattingly appeals from a judgment of the Grayson Circuit Court affirming a district court judgment entered pursuant to a conditional guilty plea on the charge of operating a motor vehicle under the influence of alcohol (DUI). The sole issue before this Court is whether a golf cart

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<sup>1</sup> Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

operating on a platted subdivision road constitutes a “motor vehicle” for purposes of KRS 189A.010. We affirm.

On September 2, 2007, a Kentucky state trooper observed Mattingly driving a golf cart with a mixed drink in her hand. Upon questioning, Mattingly admitted to the trooper that she had been drinking alcohol. After failing several field sobriety tests, Mattingly was arrested and charged with one-count of DUI and one-count of possession of an open container of alcohol in a motor vehicle.

Mattingly filed a motion to dismiss the DUI charge. She claimed the golf cart was not a “motor vehicle,” as required by KRS 189A.010, because it was not operated on a public highway. On November 5, 2007, the Grayson District Court denied her motion.

On December 13, 2007, Mattingly pled guilty to the DUI charge. In exchange for her plea, the open container charge was dismissed, and Mattingly received a sentence of six months, which was probated after ten days served in jail. In addition, her driver’s license was suspended for eighteen months, and Mattingly was ordered to pay fines and court costs. The plea was conditioned upon the appeal of the district court’s order denying her motion to dismiss. On December 17, 2007, Mattingly appealed to the Grayson Circuit Court. The circuit court affirmed the district court’s judgment. This Court accepted discretionary review.

KRS 189A.010 provides in relevant part:

(1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:

- (a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
- (b) While under the influence of alcohol;
- (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;
- (d) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or
- (e) Having an alcohol concentration of 0.02 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle, if the person is under the age of twenty-one (21).

Mattingly maintains that she cannot be convicted under KRS 189A.010 because a golf cart is not a "motor vehicle" when it is not operated on a "public highway." Because KRS 189A.010, the statute under which she was charged, does not contain a definition of "motor vehicle," Mattingly argues that this Court should adopt the definition of "motor vehicle" found in KRS 189.010(19). Under that statute, a motor vehicle is a motorized transportation agent used for the purpose of transporting people or property over or upon the public highways of the Commonwealth. Mattingly claims that this definition exempts golf carts because they are not legally driven on public roadways under KRS 186.010. Further, Mattingly cites *Kenton County Public Parks Corp. v.*

*Modlin*, 901 S.W.2d 876 (Ky. App. 1995), in which this Court held that a golf cart driven on a golf course fairway is not a “motor vehicle” under KRS 304.39-230, the Motor Vehicle Repairs Act (MVRA). We decline to apply either the definition found in KRS Chapter 189 or the MVRA.

“[T]he definition of ‘vehicle,’ as used in KRS Chapter 189, was for the use of that term as used in that chapter and not necessarily as used in KRS Chapter 189A.” *Nemeth v. Commonwealth*, 944 S.W.2d 871, 872 (Ky. App. 1997). Therefore, we must use the common usage and approved usage of the term. *Kentucky Unemployment Ins. Com’n v. Jones*, 809 S.W.2d 715, 716 (Ky. App. 1991); *Alliant Health Systems v. Kentucky Unemployment Ins. Com’n*, 912 S.W.2d 452, 454 (Ky. App. 1995).

MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 811 (11<sup>th</sup> ed. 2005) defines a “motor vehicle” as, “an automotive vehicle not operated on rails; *esp*: one with rubber tires for use on highways.” Golf carts have motors and rubber tires. However, they are not properly equipped for use on a highway. Nonetheless, golf carts are often used on many public roads as a mode of transportation for both people and equipment. Although Mattingly operated the golf cart on a private road, the road was located in a platted subdivision. The road is accessible to subdivision residents, guests, service providers, and others with reason to travel in and out of the subdivision. By driving the golf cart while under the influence of alcohol, Mattingly placed all surrounding persons in risk of harm. We find that the common usage of the word “motor vehicle” encompasses golf carts operated on

private subdivision roads. *See also Adams v. Commonwealth*, 275 S.W.3d 209, 210 (Ky. App. 2008) (holding that a moped is a motor vehicle for purposes of KRS 189A.010).

Accordingly, we affirm the judgment of the Grayson Circuit Court.

ALL CONCUR.

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