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## Supreme Court, New York County, People v. Garcia

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Supreme Court, New York County, People v. Garcia

Cover Page Footnote

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# SUPREME COURT OF NEW YORK

## People v. Garcia<sup>1</sup> (decided March 11, 2004)

On January 30, 2004, defendant Michael Garcia was “convicted of attempted assault in the second degree, assault in the third degree, criminal possession of a weapon in the third degree, criminal mischief in the third degree, endangering the welfare of a child, and aggravated cruelty to animals.”<sup>2</sup> Defendant moved to dismiss the aggravating cruelty to animals charge contending that the definition of “companion animal,” in Agriculture and Markets Law Section 353-a,<sup>3</sup> was unconstitutionally vague.<sup>4</sup> The court denied the defendant’s motion to dismiss in its entirety.<sup>5</sup>

On August 2, 2003, the defendant went to the home of Emalie Martinez with a gravity knife and assaulted her.<sup>6</sup> He also committed various other crimes against Ms. Martinez’s roommate and her three children.<sup>7</sup> That same day, defendant took a ten-gallon fish tank that belonged to the children and threw it into their television screen, breaking both the television and fish tank.<sup>8</sup>

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<sup>1</sup> 777 N.Y.S.2d 846 (N.Y. Sup. Ct. 2004).

<sup>2</sup> *Id.* at 847.

<sup>3</sup> N.Y. AGRIC. & MKTS. LAW § 353-a(1) (McKinney 1999) provides:  
A person is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty. For purposes of this section, “aggravated cruelty” shall mean conduct which: (i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially deprived or sadistic manner.

<sup>4</sup> *Garcia*, 777 N.Y.S.2d at 847.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Defendant then called one of the children into the room and said, “Hey, Juan, want to see something cool?”<sup>9</sup> Thereafter, the defendant crushed one of the three goldfish writhing on the floor with the heel of his shoe.<sup>10</sup>

The defendant was convicted of killing a companion animal due to the context of the situation by which he committed the act. The goldfish in the family’s aquarium all had names and were regularly looked after in terms of making sure the fish tank was clean and that the fish were fed.<sup>11</sup> The defendant awoke Ms. Martinez by threatening to throw the fish tank at her head before actually throwing it in to the family’s entertainment center.<sup>12</sup> Furthermore, he deliberately called Juan into the room to make sure that the child witnessed the killing of the goldfish.<sup>13</sup>

The defendant’s motion to dismiss the charge of aggravated cruelty to animals was based on his right to due process granted in both the United States Constitution<sup>14</sup> and the New York Constitution.<sup>15</sup>

Under New York’s Agriculture and Markets Law Section 350, a “companion animal” is defined as “any dog or cat, and shall also mean any other domesticated animal normally maintained in

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<sup>9</sup> *Garcia*, 777 N.Y.S.2d at 847.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 851.

<sup>12</sup> *Id.* at 852.

<sup>13</sup> *Id.*

<sup>14</sup> U.S. CONST. amend. XIV provides in pertinent part: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law. . . .”

or near the household of the owner or person who cares for such other domesticated animal” while an “animal” is defined as “every living creature except a human being.”<sup>16</sup> In *People v. Garcia*, Garcia argued that the statute was vague on its face because there were no adequate warnings as to which animals were protected as companion animals.<sup>17</sup> The defendant also argued that the statute was vague as applied to him since a goldfish cannot be considered a companion animal.<sup>18</sup>

The *Garcia* court noted that its “first duty is to examine the natural and obvious meaning of the words and language employed in a statute to determine the intent of the Legislature.”<sup>19</sup> If the statute is still unclear, the court will look to other sources such as the context of the statute, the mischief the statute looks to remedy, legislative history, and state public policy.<sup>20</sup> The court found that the definition of animal in the statute was in conformity with dictionary definitions of the term and that it was plain and unambiguous.<sup>21</sup> As to the meaning of “companion animal,” the court found that the statutory definition was sufficient and not vague as a “potential offender of ordinary intelligence . . . would be adequately informed of the nature of the offense prohibited by

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<sup>15</sup> N.Y. CONST. art I, § 6 provides in pertinent part: “No person shall be deprived of life, liberty or property without due process of law.”

<sup>16</sup> N.Y. AGRIC. & MKTS. LAW § 350 (McKinney 1999).

<sup>17</sup> *Garcia*, 777 N.Y.S. at 849.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 850.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 850-51.

the statute.”<sup>22</sup> The goldfish that was killed by the defendant had a name and was regularly looked after by both the mother and children.<sup>23</sup> These factors led the court to conclude the goldfish was a companion animal that was intended to be protected under the statute.<sup>24</sup>

New York public policy was also examined by the court in rendering its decision as the court looked at how the statute was interpreted in the past. In 1988, there was a case where the court found game cocks to be protected under a statute that prohibited any premises from charging money to see animals fight.<sup>25</sup> The statute also protected sea turtles after they were found to have their fins perforated by the defendant even though the sea turtles were in no way considered companion animals.<sup>26</sup>

A companion animal “need only be cared for and maintained in or near the household of its human owner.”<sup>27</sup> The goldfish in *Garcia* was a companion animal that was killed in front of the mother and children after the defendant got their attention.<sup>28</sup> The acts “clearly evince defendant’s understanding and intention of inflicting emotional pain on both the boy and his mother.”<sup>29</sup>

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<sup>22</sup> *Garcia*, 777 N.Y.S.2d at 851.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 852 (citing *People v. Klock*, 16 N.Y. St. 565 (4th Dep’t 1988)).

<sup>26</sup> *Id.* (citing *People v. Downs*, 136 N.Y.S. 440 (New York City Magis. Ct. 1911)).

<sup>27</sup> *Garcia*, 777 N.Y.S.2d at 852.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

In *Connally v. General Construction Co.*,<sup>30</sup> the United States Supreme Court defined a violation of due process as “a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.”<sup>31</sup> Due process ensures that a defendant has notice that his actions would constitute a crime under certain circumstances.

The standards for vagueness were refined in subsequent United States Supreme Court decisions. In *United States v. Salerno*,<sup>32</sup> the Court defined a facial vagueness standard that put the burden on the challenger to establish “that no set of circumstances exists under which the [statute] would be valid.”<sup>33</sup> The statute challenged in *Salerno* was The Bail Reform Act of 1984, which gave the federal courts the power to “detain an arrestee pending trial if the Government demonstrates by clear and convincing evidence after an adversary hearing that no release conditions ‘will reasonably assure . . . the safety of any other person and the community.’”<sup>34</sup> In *Salerno*, the defendants were detained after being charged under “a 29-count indictment alleging various Racketeer Influenced and Corrupt Organizations Act (RICO) violations, mail and wire fraud offenses, extortion, and various criminal gambling violations.”<sup>35</sup> The Government moved

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<sup>30</sup> 269 U.S. 385 (1926).

<sup>31</sup> *Id.* at 391 (citing *Int’l Harvester Co. v. Kentucky*, 234 U.S. 216 (1914)).

<sup>32</sup> 481 U.S. 739 (1987).

<sup>33</sup> *Id.* at 745.

<sup>34</sup> *Id.* at 741. See 18 U.S.C. § 3142(e) (1982).

<sup>35</sup> *Id.* at 743.

to detain the defendants under The Bail Reform Act stating that “no condition of release would assure the safety of the community or any person.”<sup>36</sup> The Court found that the Act was not facially vague since the detention of those charged with serious felonies may pose a threat to the community, and such threats are a primary concern of every government.<sup>37</sup>

The facial vagueness standard is more difficult for a challenger to overcome than the “as-applied” vagueness standard that was set forth in *Chapman v. United States*.<sup>38</sup> “An ‘as-applied’ challenge . . . requires a court only to consider whether the statute can be constitutionally applied to the defendant under the particular facts of the case.”<sup>39</sup> If a statute does provide a defendant with adequate notice, a court will inquire no further and the statute will not violate due process.<sup>40</sup> Furthermore, if an “as-applied” challenge fails, the facial challenge will fail as well since the court will have found that, at the very least, the statute was not vague as applied to the defendant himself. Therefore, a set of circumstances exists under which the statute is valid.<sup>41</sup> In *Chapman*, the defendants were convicted of selling ten sheets of blotter paper LSD that weighed approximately 5.7 grams although the weight of the LSD alone was about 50 milligrams.<sup>42</sup> Section 841(b)(1)(B)(v)

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<sup>36</sup> *Id.*

<sup>37</sup> *Salerno*, 481 U.S. at 755.

<sup>38</sup> 500 U.S. 453 (1991).

<sup>39</sup> *Garcia*, 777 N.Y.S.2d at 848 (citing *Chapman*, 500 U.S. at 467-68).

<sup>40</sup> *Id.* (citing *People v. Nelson*, 506 N.E.2d 907, 909 (N.Y. 1987)).

<sup>41</sup> *Id.* (citing *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 495 (1982); *People v. Stuart*, 797 N.E.2d 28, 36-37 (N.Y. 2003)).

<sup>42</sup> *Chapman*, 500 U.S. at 455.

of Title 21 of the United States Code created a mandatory minimum sentence of five years “for distributing more than 1 gram of a mixture or substance containing a detectable amount of LSD”<sup>43</sup> and the defendants were convicted under that section based on the 5.7 gram weight of the substances they possessed.<sup>44</sup> The defendants argued that the paper itself should not have been used in calculating the weight of the substance for sentencing purposes and including the weight of the paper was error since that was only a medium to carry the substance.<sup>45</sup> The Court found that the statute was not vague and that the carrier medium should be included in calculating the weight of the substance in determining the appropriate sentence.<sup>46</sup> It reasoned that the ordinary meaning of the word “mixture” was defined as “ ‘a portion of matter consisting of two or more components that do not bear a fixed proportion to one another and that however thoroughly commingled are regarded as retaining separate existence.’ ”<sup>47</sup>

The New York courts follow the same standards as the United States Supreme Court when analyzing whether or not a statute is vague. The New York Court of Appeals thoroughly examined facial and “as-applied” challenges in *People v. Stuart*.<sup>48</sup> In *Stuart*, the defendant challenged an anti-stalking statute<sup>49</sup> as

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<sup>43</sup> *Id.* at 456.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 468.

<sup>47</sup> *Chapman*, 500 U.S. at 462 (citing WEBSTER’S THIRD NEW INT’L DICTIONARY 1149 (1986)).

<sup>48</sup> *Stuart*, 797 N.E.2d at 35.

<sup>49</sup> N.Y. PENAL LAW § 120.45 (McKinney 1999) provides in pertinent part:

unconstitutionally vague both on its face and as-applied to him.<sup>50</sup> The defendant had followed a woman on several occasions, along with giving her gifts that he insisted that she take.<sup>51</sup> The defendant followed the woman to a coffee shop, deli, library, school, gymnasium, and other stores and restaurants for over a month.<sup>52</sup> After her fifth complaint to the police, the defendant was arrested and charged for stalking the woman.<sup>53</sup> The defendant claimed that the language of the statute failed “to provide adequate notice of what conduct it prohibits.”<sup>54</sup> The defendant was convicted because the trial court found that “the statute satisfied the requirements of due process.”<sup>55</sup> The Court of Appeals noted that “[i]n pursuing a facial challenge, the defendant must carry the ‘heavy burden’ of showing that the statute is impermissibly vague in *all* of its applications.”<sup>56</sup> If a challenger is successful in a facial challenge, the law is “ ‘invalid *in toto* – and therefore incapable of any valid

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A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct: (1) is likely to cause reasonable fear of material harm of such person, a member of such person’s immediate family or a third party with whom such person is acquainted; or (2) causes material harm to the mental or emotional health of such person, . . . and the actor was previously clearly informed to cease that conduct.

<sup>50</sup> *Stuart*, 797 N.E.2d at 30.

<sup>51</sup> *Id.* at 30-31.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 31.

<sup>54</sup> *Id.*

<sup>55</sup> *Stuart*, 797 N.E.2d at 31.

<sup>56</sup> *Id.* at 35 (citing *Salerno*, 481 U.S. at 745; *Matter of Wood v. Irving*, 647 N.E.2d 1332 (N.Y. 1995)).

application.”<sup>57</sup> In regard to the as-applied challenge, the role of the court is to decide “whether the assailed statute is impermissibly vague as applied to the defendant.”<sup>58</sup> If there is adequate notice, “[t]he court will not strain to imagine marginal situations in which the application of the statute is not so clear.”<sup>59</sup> The court in *Stuart* affirmed the defendant’s conviction finding that the statute was not vague as-applied to the defendant and therefore not vague on its face as well.<sup>60</sup>

The same statute challenged by the defendant in *Garcia* was addressed in *People v. Knowles*.<sup>61</sup> In *Knowles*, the defendant kicked a dog down a walkway and then picked it up and threw it against a brick wall.<sup>62</sup> The defendant challenged the charge of aggravated cruelty to animals claiming that the phrases “aggravated cruelty,” “extreme physical pain,” and “especially depraved or sadistic manner” were too vague and therefore violated his due process rights.<sup>63</sup> In analyzing the defendant’s challenge, the court stated that “[u]nskilled draftsmanship alone is no ground for declaring a statute void, and if an intent can be spelled out fairly from the words used, effect will be given to that intent, although such intent is not artistically expressed.”<sup>64</sup> The court further stated that “[f]ailure to define every word in a

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<sup>57</sup> *Id.* (quoting *Steffel v. Thompson*, 415 U.S. 452, 474 (1974)).

<sup>58</sup> *Id.* at 36.

<sup>59</sup> *Id.* (quoting *Nelson*, 506 N.E.2d at 909).

<sup>60</sup> *Stuart*, 797 N.E.2d at 41.

<sup>61</sup> 709 N.Y.S.2d 916 (N.Y. County Ct. 2000).

<sup>62</sup> *Id.* at 920.

<sup>63</sup> *Id.* at 919.

<sup>64</sup> *Id.*

criminal statute does not make the statute unconstitutionally vague.”<sup>65</sup> The statute was found to clearly cover the types of actions committed by the defendant and therefore was not unconstitutionally vague.<sup>66</sup>

In conclusion, New York follows the same analysis at the United States Supreme Court when determining a claim of statutory vagueness. Both look at the facial and “as-applied” validity of the statute to reach a conclusion as to whether the statute is vague and would violate the defendant’s due process rights. “As-applied” challenges are viewed on an *ad hoc* basis since courts will have to determine whether or not the statute is vague as to a particular defendant while a facial challenge looks at the language of the statute itself. In analyzing the statute, courts will look at legislative history, public policy, and other factors that would clarify the purpose of the statute. Courts will not strain to find a statute ambiguous if a person of ordinary intelligence would be on notice of the crime that is targeted.

*Yale Pollack*

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<sup>65</sup> *Id.*

<sup>66</sup> *Knowles*, 709 N.Y.S.2d at 920.

## **EFFECTIVE ASSISTANCE OF COUNSEL**

*United States Constitution Amendment VI:*

*In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence.*

*New York Constitution Article I, Section 6:*

*In any trial in any court whatever the party accused shall be allowed to appear and defend in person with counsel as in civil actions . . . .*