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City Court, Watertown New York, People v. Rogers

Cover Page Footnote

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CITY COURT, WATERTOWN

People v. Rogers¹
(decided January 12, 2000)

The defendant, Ralph Rogers, was charged with violating New York Agriculture and Markets Law § 353 (“NYAML § 353”).² The defendant claimed that § 353³ was unconstitutionally vague, pursuant to the due process guarantees of both the Fourteenth Amendment⁴ of the United States Constitution and Article I, § 6 of the New York State Constitution,⁵ on the ground that “a person of common intelligence could not ascertain what conduct is proscribed by the wording of the statute.”⁶ In addition, the defendant claimed that the use of the terms “unjustifiably”⁷ and “unjustifiable,”⁸ as a means of determining criminal conduct, did not refer to the defense of justification.⁹ The City Court of New York, Watertown, ruled in favor of the defendant, holding that,

based on the facts of this case involving the docking of a dog’s tail, Agriculture and Markets Law § 350(2) and § 353 ‘as applied’ to the defendant, violate the due process guarantees of both the

¹ 183 Misc. 2d 538, 703 N.Y.S.2d 891, (2000).

² *Id.* at 539, 703 N.Y.S.2d at 892.

³ N.Y. AGRIC. & MKTS. § 353 (2000). The statute provides in pertinent part: “[a] person who . . . unjustifiably injures, maims, mutilates or kills any animal . . . is guilty of a misdemeanor . . .” *Id.*

⁴ U.S. CONST. amend. XIV. The Fourteenth Amendment provides in pertinent part: “. . . nor shall any State deprive any person of life, liberty or property, without due process of law . . .” *Id.*

⁵ N.Y. CONST. art. I, § 6. This section provides in pertinent part: “No person shall be deprived of life, liberty or property without due process of law.” *Id.*

⁶ *Rogers*, 183 Misc. 2d at 539, 703 N.Y.S.2 at 892.

⁷ N.Y. AGRIC. & MKTS. § 353. The term “unjustifiably” is used to describe the criminal conduct for which a person may be found guilty of a misdemeanor. *Id.*

⁸ N.Y. AGRIC. & MKTS. § 350 (2000). The term “unjustifiable” is used to describe the type of physical pain that constitutes “torture” or “cruelty.” Paragraph 2 of the statute provides “‘torture’ or ‘cruelty’ includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted.” *Id.*

⁹ *Rogers*, 183 Misc. 2d at 539, 703 N.Y.S.2d at 892; *see also* N.Y. PENAL LAW § 35.05 (1999), which provides that, under certain circumstances, as provided by the statute, “conduct which would otherwise constitute an offense is justifiable and not criminal.” *Id.*

Fourteenth Amendment of the United States Constitution and Article I, § 6 of the New York Constitution. The court based its decision on the fact that the vagueness of the terms ‘unjustifiable’ and ‘unjustifiably’ used to define when the common conduct of tail docking becomes criminal conduct.¹⁰

A neighbor of the defendant, Ralph Rogers, had selected a particular puppy to purchase from the defendant on May 21, 1999.¹¹ The defendant agreed to sell her the puppy.¹² Afterwards, the neighbor became concerned about the condition of the puppy’s tail area.¹³ Prior to selling the puppy, the defendant had used a rubber band on the puppy’s tail in order to dock the tail.¹⁴ The purchaser took the puppy to a local animal shelter on May 22, 1999, due to the condition of the tail, where the puppy was kept under observation.¹⁵ Two days later, the puppy was taken to a veterinarian, where it was determined that the puppy had to be euthanized.¹⁶ As a result, the defendant was charged with violating NYAML § 353.¹⁷ However, the defendant argued that he believed that it was all right to dock his puppy’s tail himself.¹⁸

Before determining the constitutionality of the statute, the first issue the court decided was that of justification.¹⁹ It first turned to New York Penal Law § 35.05,²⁰ which is the statute that pertained to the defense of justification. The statute states that, “when a person, then, knows the conduct is an offense before engaging in it and nonetheless feels justified in engaging in it, then once charged with the offense the person can raise the justification defense.”²¹ This requires that the defendant actually know what

¹⁰ *Rogers*, 183 Misc. 2d at 544, 703 N.Y.S.2d at 896.

¹¹ *Id.* at 539, 703 N.Y.S.2d at 892.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Rogers*, 183 Misc. 2d at 539, 703 N.Y.S.2d at 892.

¹⁶ *Id.*, 703 N.Y.S.2d at 892-93.

¹⁷ *Id.* at 539, 703 N.Y.S.2d at 892.

¹⁸ *Id.*

¹⁹ *Id.* at 540, 703 N.Y.S.2d at 893.

²⁰ *Rogers*, 183 Misc. 2d at 539, 703 N.Y.S.2d at 892; *See also* N.Y. PENAL LAW § 35.05, *supra* note 9.

²¹ *Rogers*, 183 Misc. 2d at 540, 703 N.Y.S.2d at 893.

the statute prohibits, and engage in the proscribed conduct anyway, because he feels that he is justified.²² The defendant claimed that “the words ‘unjustifiably’ and ‘unjustifiable’ are too vague constitutionally to fairly apprise one of what conduct the statute prohibits.”²³ The court held that the terms “unjustifiable” and “unjustified” are “not specifically used to refer to the defense of justification under Penal Law § 35.02, but rather to set a verbal boundary between acceptable infliction of physical pain, suffering or death and/or the maiming or mutilation of an animal and when a person’s conduct exceeds such boundary.”²⁴

Next, the court discussed the constitutional vagueness issue, by stating that, “vagueness challenges to statutes which do not involve First Amendment freedoms must be examined in light of the facts of the case at hand.”²⁵ The defendant argued that the terms “unjustifiable” and “unjustifiably,” in NYAML § 350(2) and § 353, violated the Due Process Clause because the statutes failed to give adequate notice that docking a dog’s tail by using a rubber band was proscribed by the statute.²⁶

In another New York case, *People v. Bright*,²⁷ the constitutionality of a statute concerning loitering was at issue.²⁸ The defendant was arrested by a police officer at a platform of the Long Island Railroad.²⁹ The officer inquired as to whether he was going to take the train or whether he had money to purchase a ticket.³⁰ Based on the defendant’s reply in the negative, he was arrested for loitering, pursuant to Penal law § 240.35.³¹ The Court of Appeals of New York held that the statute was

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Rogers*, 183 Misc. 2d at 539, 703 N.Y.S.2d at 892. See also *United States v. Mazurie*, 419 U.S. 544, 550 (1975); *Maynard v. Carwright*, 486 U.S. 356 (1988).

²⁶ *Id.* at 540, 703 N.Y.S.2d at 893.

²⁷ *People v. Bright*, 71 N.Y.2d 376, 520 N.E.2d 1355, 526 N.Y.S.2d 66 (1988).

²⁸ *Id.* at 378, 520 N.E.2d at 1356, 526 N.Y.S.2d at 67.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* N.Y. PENAL LAW § 240.35(7) (2000) provides in pertinent part: “A person is guilty of loitering when he loiters or remains in any transportation facility, or is found sleeping therein, and is unable to give a satisfactory explanation of his presence.” *Id.*

“unconstitutionally vague under the Due Process Clauses of the Federal and State Constitutions because it fails to give fair notice to the ordinary citizen that the prohibited conduct is illegal, it lacks minimal legislative guidelines, thereby permitting arbitrary enforcement and, finally, it requires that a citizen relinquish his constitutional right against compulsory self-incrimination in order to avoid arrest.”³² In making this determination, the court reasoned that the Legislature is presumed to be valid and the heavy burden of demonstrating that a statute is unconstitutional lies with the party seeking to invalidate the statute.³³ In order to meet this burden, the court applied a well settled two-pronged analysis to determine the constitutionality of a statute.³⁴

“First, the statute must provide sufficient notice of what conduct is prohibited; second, the statute must not be written in such a manner as to permit or encourage arbitrary and discriminatory enforcement.”³⁵ The court in the present case relied heavily on the analysis of the *Bright* court concerning the first prong of the inquiry. The *Bright* court noted that this requirement, is necessary because “no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.”³⁶ This provides for basic fairness and due process, which requires that a statute must be definite in its terms, so a person of ordinary intelligence has fair notice that his acts, or contemplated acts, are forbidden by the statute.³⁷ “For this reason, under our State and Federal Constitutions, the Legislature may not criminalize conduct that is inherently innocent merely because such conduct is ‘sometimes attended by improper motives,’ since to do so would not fairly inform the ordinary citizen that an otherwise innocent act is illegal.”³⁸

³² *Bright*, 71 N.Y.2d at 378, 520 N.E.2d at 1356, 526 N.Y.S.2d at 67.

³³ *Id.* at 382, 520 N.E.2d at 1358, 526 N.Y.S.2d at 69.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Bright*, 71 N.Y.2d at 382-83, 520 N.E.2d at 1358, 526 N.Y.S.2d at 69.

³⁸ *Id.* at 383, 520 N.E.2d at 1358, 526 N.Y.S.2d at 69. *See also* *People v. Bunis* 9 N.Y.2d 1, 4 (1961) (stating that “[the] Legislature may not validly make it a crime to do something which is innocent in itself merely because it is sometimes done improperly, sometimes attended by improper motives or done as part of an illegal scheme”).

In the present case, the term “unjustified” created an ambiguity in the statute. The term means that there is physical injury caused by maiming or mutilation that may be justifiable, such as the clipping of a dog’s ears, for which guidelines are provided for in NYAML § 365(1).³⁹ However, it was not clear if conduct not specifically proscribed or prescribed by the statute constituted an unjustifiable or justifiable act.⁴⁰ The statute under review was silent as to whether the docking of a dog’s tail was prohibited, or if there were certain procedures to follow when clipping the tail.⁴¹ Therefore, it was not necessary for the defendant to take the dog to the veterinarian. “The act of docking a dog’s tail does not require . . . professional supervision, so an ordinary person of common intelligence is only required to avoid ‘unjustifiable physical pain’ and ‘suffering’ when engaging in such conduct.”⁴² The court reasoned that if the legislature wanted to proscribe a certain conduct, such as docking a dog’s tail, then it should have stated so explicitly.⁴³ The words “unjustifiably” and “unjustifiable” were unconstitutionally vague, in relation to docking a dog’s tail, and were in violation of the Due Process Clause because a reasonable person in the defendant’s circumstances would not have notice that his conduct placed him at risk of violating the law.⁴⁴

In comparison, the federal courts use the same requirement of notice, and the reasonableness standard, when analyzing a statute that is alleged to be unconstitutionally vague.⁴⁵ In

³⁹ *Rogers*, 183 Misc. 2d at 542, 703 N.Y.S.2d at 894. See also N.Y. AGRIC. & MKTS. § 365 (1) (2000), which provides in pertinent part: “Whoever clips or cuts off or causes or procures another to clip or cut off the whole or any part of an ear of any dog unless an anaesthetic shall have been given to the dog and the operation performed by a licensed veterinarian, is guilty of a misdemeanor. . . .”
Id.

⁴⁰ *Rogers*, 183 Misc. 2d at 542, 703 N.Y.S.2d at 894.

⁴¹ *Id.*

⁴² *Id.* at 542, 703 N.Y.S.2d at 894-95.

⁴³ *Id.* at 545, 703 N.Y.S.2d at 896.

⁴⁴ *Id.*

⁴⁵ See *Smith v. Gogean*, 415 U.S. 566, 574 (1974) (stating that “[d]ue process requires that all ‘be informed as to what the State commands or forbids,’ and that ‘men of common intelligence’ not be forced to guess at the meaning of the criminal law.”); see also *Maynard v. Cartwright*, 486 U.S. 356, 361 (1988) (stating that “[o]bjections to vagueness under the Due Process Clause rest on the

Maynard v. Cartwright,⁴⁶ Mr. and Mrs. Riddle were attacked by the defendant, whom Mrs. Riddle recognized as a disgruntled employee.⁴⁷ Mrs. Riddle was shot twice in the legs and Mr. Riddle was killed.⁴⁸ Mrs. Riddle dragged herself to a telephone, however the defendant then slit her throat and stabbed her twice with a hunting knife the Riddles had given him for Christmas.⁴⁹ The defendant then left the house and Mrs. Riddle, who survived the incident, called the police.⁵⁰ The defendant was tried and convicted of first-degree murder and the jury imposed the death penalty.⁵¹ The jury found that the defendant met two of the three statutory aggravating circumstances to impose the death penalty; “first, the defendant ‘knowingly created a great risk of death to more than one person’; second, the murder was ‘especially heinous, atrocious, or cruel.’”⁵² It was the second of these statutory circumstances that the defendant argued was unconstitutionally vague.⁵³

The court found that “if there are circumstances that any reasonable person would recognize as covered by the statute, it is not unconstitutionally vague even if the language would fail to give adequate notice that it covered other circumstances as well.”⁵⁴ Like the state court view, it is necessary to look at the individual facts of the case, in order to make that determination.⁵⁵ One of the concerns that the court raised, which was also recognized in the *Bright* case, is that of arbitrary enforcement.⁵⁶ The court stated that “a person of ordinary sensibility could fairly characterize

lack of notice, and hence may be overcome in any specific case where reasonable persons would know that their conduct is at risk.”); *U.S. v. Powell*, 423 U.S. 87, 92 (1975) (holding that, “[t]he [defendant] has been given clear notice that a reasonably ascertainable standard of conduct is mandated; it is for him to insure that his actions do not fall outside the legal limits”).

⁴⁶ 486 U.S. 356 (1988).

⁴⁷ *Id.* at 358.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Maynard*, 486 U.S. at 358-59

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 361.

⁵⁵ *Id.*

⁵⁶ *Maynard*, 486 U.S. at 363.

almost every murder as ‘outrageously or wantonly vile, horrible and inhuman.’”⁵⁷ The court held that the words used in the statute gave the jury no guidance and the jury’s interpretation of the circumstances could only be speculation.⁵⁸ The court stated that an ordinary person could honestly believe that every murder is “especially heinous.”⁵⁹ Therefore, because the statute could be used arbitrarily, the court held that the statute was unconstitutionally vague.⁶⁰

In conclusion, both the state courts and the federal courts deal with the issue of unconstitutionally vague statutes in the same manner. First, if the vagueness challenge to the statute does not involve First Amendment freedoms, it must be examined in light of the facts of the case at hand.⁶¹ In other words, a statute is not considered unconstitutionally vague on its face, but may be considered unconstitutionally vague when taken in light of the circumstances on a case by case basis. Secondly, due process requires the statute to be sufficiently definite in its terms, “so as to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.”⁶² This allows a reasonable person of ordinary intelligence to be able to understand and appreciate the statute, and make a decision as to whether to adhere to, or violate the statute. It also allows a court, judge, jury, police officer, etc., to refrain from enforcing the statute arbitrarily or discriminatorily.⁶³ Therefore, the legislature must incorporate the conduct that is prescribed or proscribed in each statute so there is no issue of vagueness.

Lisa Bartolomeo

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 365-66.

⁶¹ *Rogers*, 183 Misc. 2d at 540, 703 N.Y.S.2d at 893.

⁶² *Id.* at 541, 703 N.Y.S.2d at 894.

⁶³ *Bright*, 71 N.Y.2d at 382, 520 N.E.2d at 1358.

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