Touro Law Review

Volume 17
Number 1 *Supreme Court and Local Government Law: 1999-2000 Term & New York State Constitutional Decisions: 2001 Compilation*

Article 9

March 2016

Criminal Court, Queens County New York, People v. Iftikhar

Aron Rattner

Criminal Court, Queens County New York, People v. Iftikhar

Cover Page Footnote
17-1

CRIMINAL COURT, QUEENS COUNTY

People v. Iftikhar[1]
(decided September 11, 2000)

The facts of this case were supplied by the complaining witness, Luis Rodriguez.[2] On March 15, 2000 at 10:25 p.m., while Rodriguez was driving a motor vehicle in Queens County, the defendant, Iftikhar, entered the vehicle and demanded to be driven to the Midtown Tunnel.[3] Iftikhar represented that he was a New York City Police Officer, and to this end displayed a Police Department Shield.[4] Nevertheless, Rodriguez refused to drive Iftikhar to the tunnel.[5] After Rodriguez's refusal, Iftikhar pulled a firearm and "threatened Mr. Rodriguez's well being and placed him in fear of serious physical injury."[6] Rodriguez ran away from the vehicle, and while doing so he heard a gun shot fired. After fleeing the vicinity of the vehicle, Rodriguez called the police who later arrived and arrested Iftikhar. Additionally, the officer recovered an NYPD Detective shield from Iftikhar.[7]

The accusatory instrument, or complaint, against the defendant contained far fewer details.[8] Based upon the complaint, the defendant was charged with, (1) the violation of § 120.14 of the Penal Law, Menacing in the second degree;[9] (2) the violation of § 120.20 of the Penal Law, Reckless Endangerment in the second degree;[10] (3) the violation of the Administrative Code of the City of New York § 14-107, Possession of a Police Shield;[11] and (4)

---

1 713 N.Y.S.2d 671, 185 Misc. 2d 565 (Crim. Ct. New York County 2000).
2 *Iftikhar*, 713 N.Y.S.2d at 673, 185 Misc. 2d at 568.
3 *Id.*
4 *Iftikhar*, 713 N.Y.S.2d at 674, 185 Misc. 2d at 568.
5 *Id.*
6 *Id.*
7 *Id.*
8 *Iftikhar*, 713 N.Y.S.2d at 673, 185 Misc. 2d at 567. The complaint read as follows. "Deponent states that at the above mentioned date, time and place of occurrence, he is informed by the complainant, Luis Rodriguez, that the defendant, Khurram Iftikhar, did fire a gun placing the complainant in fear of serious physical injury. Deponent further states that he did recover a full size detective shield from the defendant's right rear pocket." *Id.*
9 N.Y. PENAL LAW § 120.14 (1) (2000).
10 N.Y. PENAL LAW § 120.20 (2000).
11 ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 14-107. The statute provides in pertinent part:

violation of § 240.26 of the Penal Law, Harassment in the second degree.[12] The defendant argued that the charges against him should have been dismissed because the accusatory instrument was defective.

Sections 170.35[13] and 170.30[14] of the Criminal Procedure Law provide a defendant the opportunity to dismiss a misdemeanor complaint as being defective. In order for a complaint to be valid it must contain "non-hearsay allegations of the factual part of the information and/or of any supporting depositions establish, if true, every element of the offense charged in the accusatory part of the information."[15] Additionally, the misdemeanor complaint must contain "facts of an evidentiary character supporting or tending to support the charges."[16]

The people attempted to cure the jurisdictional defects in the complaint, via an affirmation containing specific facts in accordance with §§ 100.15[17] and 100.40[18] of the Criminal

---

> It shall be unlawful for any person not a member of the police force to represent himself or herself falsely as being such a member with fraudulent design upon persons . . . or to have, use, wear or display without specific authority from the commissioner any . . . shield . . . in any way resembling that worn by members of the police force.

Id.

[12] N.Y. PENAL LAW § 240.26 (1) (2000).

[13] N.Y. CRIM. PROC. LAW § 170.35 (2000) Provides in pertinent part: "(a) It is not sufficient on its face pursuant to the requirements of section 100.40." *Id.* N.Y. CRIM. PROC. LAW § 100.40 (c) (2000) Provides in pertinent part: "Non-hearsay allegations of the factual part of the information and/or of any supporting depositions establish, if true, every element of the offense charged and the defendant's commission therof." *Id.*

[14] N.Y. CRIM. PROC. LAW § 170.30 (2000) Provides in pertinent part: "[U]pon motion of the defendant, dismiss such instrument or any count thereof upon the ground that: (a) it is defective within the meaning of section 170.35." *Id.*

[15] N.Y. CRIM. PROC. LAW § 100.40 (1)(C) (2000).

[16] N.Y. CRIM. PROC. LAW § 100.15 (3) (2000).

[17] *Id.*, providing in pertinent part:

> The factual part of such instrument must contain a statement of the complainant alleging facts of an evidentiary character supporting or tending to support the charges. Where more than one offense is charged, the factual part should consist of a single factual account applicable to all the counts of the accusatory part. The factual allegations may be based either

Procedure Law.[19] Despite the people's subsequent affirmation, the court held that the complaint did not satisfy the statutory requirements of an information, and was thus jurisdictionally defective.[20] The court, with respect to Reckless Endangerment, Menacing, and Harassment charges, ruled accordingly because the accusatory instrument did not allege specific facts demonstrating that the defendant committed the charged offenses.[21] "In fact, the accusatory instrument [did] not even allege the physical proximity of defendant to the complaining witness at any time during the incident."[22] Furthermore, the people did not include any facts that the alleged gun was even a real gun, in fact the court hypothecated that the "gun" may have actually been a pellet gun or a starter's pistol.[23] Next the court pointed out that the complainant merely "heard" a gun shot, he did not see the gun being fired, or, more importantly, did not see the defendant fire a weapon.[24]

The third count against the defendant was for his violation of §14-407 of the Administrative Code.[25] The administrative code, making it unlawful to use a police shield, criminalizes two distinct types of conduct. The first prohibition under the administrative code criminalizes misrepresentations that one is a member of the police force with fraudulent design.[26] However, this section of the statute did not apply to the defendant in this case, because the misdemeanor complaint does not allege that the defendant represented that he was a member of the police force.[27] Instead,

---

> upon personal knowledge of the complainant or upon information and belief.

Id.

[18] N.Y. CRIM. PROC. LAW § 100.40 (1)(C) (2000) provides in pertinent part: "that in order for an information or a count thereof to be sufficient on its face, every element of the offense charged and the defendant's commission thereof must be supported by non-hearsay allegations of such information and/or any supporting depositions." *Id.*

[19] *Iftikhar*, 713 N.Y.S.2d at 674, 185 Misc. 2d at 568.

[20] *Id.*

[21] *Id.*, 185 Misc. 2d at 569.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 14-107.

[26] *Id.*

[27] *Iftikhar*, 713 N.Y.S.2d at 674-75, 185 Misc. 2d at 569.

the people were required to rely on the second type of conduct the administrative code criminalizes, which makes it illegal to "have, use wear or display" a shield in a manner resembling a police department shield.[28] The defendant challenged this portion of the code as unconstitutionally vague under both the Federal[29] and New York[30] State Constitutions.

To help analyze the constitutionality of any penal law the court must conduct a two-pronged analysis to determine if a statue is "void for vagueness."[31] Firstly, a penal statute must define the particular criminal offense with specificity so that ordinary people will not be confused as to what conduct is criminal under the statute.[32] Secondly, the statute must not be written in a manner that encourages arbitrary or discriminatory enforcement.[33] The Court reasoned that if a statute is constructed without protective guidelines then persons in power, such as police officers and prosecutors, would be free to arbitrarily and randomly pursue their personal targets.[34] Moreover, penal statutes must provide adequate notice so that an individual will not be criminally liable for conduct that he reasonably believes to be lawful.[35]

In *Iftikhar*, the court concluded that neither prong of the vagueness test was satisfied.[36] The first element was not satisfied, because the vague wording of the statute made adherence difficult even for the "innocent minded."[37] The court explained the

---

[28] ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 14-107.

[29] *Iftikhar*, 713 N.Y.S.2d at 675, 185 Misc. 2d at 570 (the defendant alleged that the people violated the First and Fourteenth Amendments of the Constitution). *See* U.S. CONST. amends. I, XIV. U.S. CONST. amend. V provides in pertinent part: "In all criminal prosecutions, the accused shall . . . be informed of the nature and cause of the accusation." *Id.*

[30] N.Y. CONST. art. I, §§ 8, 11.

[31] Kolender v. Lawson, 461 U.S. 352, 357 (1982) (holding that a statute is unconstitutionally vague within the due process clause of the Fourteenth Amendment, because it encouraged arbitrary enforcement). *See also* People v. Nelson, 69 N.Y.2d 302, 307 (1987) (adopting an identical vagueness two part analysis to determine if a statute in question is constitutional).

[32] *Id.*

[33] *Id.*

[34] Smith v. Goguen, 415 U.S. 566,574 (1974).

[35] U.S. v. Harriss, 347 U.S. 612, 617 (1954).

[36] *Iftikhar*, 713 N.Y.S.2d at 676, 185 Misc. 2d at 571.

[37] *Id.*

common, and seemingly legal practice of the fashion industry, which will occasionally design clothing to resemble police uniforms.[38] Furthermore, buttons similar to the ones worn by police officers are available at sporting good stores.[39] The statute provided little guidance for the average citizen, and thus failed the notice requirement of the first prong of the test.[40]

The second prong of the vagueness test iss not directed at individuals' understanding of the law, but rather it establishes minimum guidelines for the purpose of regulating law enforcement.[41] This second prong protects individuals from potential violations of their First Amendment liberties,[42] and may therefore be the most significant requirement of the vagueness test.[43] Supreme Court Justice Powell discussed the importance of the second test in *Lewis v. City of New Orleans*.[44] The prong prohibiting arbitrary or discriminatory enforcement is virtually the only safeguard limiting the broad power of the police to arrest and charge individuals with crimes.[45] "The opportunity for abuse, especially where a statute has received a virtually open-ended interpretation, is self evident," and therefore such statutes have been deemed unconstitutionally vague.[46]

New York State courts have interpreted the New York State Constitution[47] to bar penal laws when it is entirely possible for reasonable minds to differ as to what the statute seeks to prohibit.[48] The New York Court of Appeals explained that statutes must give a reasonable person "subject to its notice of what is prohibited and what is required of him."[49] However, there exists a strong presumption that a statute enacted by the legislature is

---

[38] *Iftikhar*, 713 N.Y.S.2d at 677, 185 Misc. 2d at 572.
[39] *Iftikhar*, 713 N.Y.S.2d at 676, 185 Misc. 2d at 571.
[40] *Id.*
[41] *Kolender*, 461 U.S. at 358.
[42] *Id.*
[43] *Iftikhar*, 713 N.Y.S.2d at 676, 185 Misc. 2d at 572.
[44] Lewis v. City of New Orleans, 415 U.S. 130, 135 (1974) (Powell, J., concurring).
[45] *Id.*
[46] *Id.* at 136.
[47] N.Y. CONST. art. I, § 8 (2000).
[48] People v. Schenck, 154 Misc. 2d 937, 944 (City Ct. of Buffalo 1992).
[49] People v. Pagnotta, 25 N.Y.2d 333, 337 (1969).

constitutionally valid.[50] As long as the court determines that minimally fair notice of what the statute prohibits exists, the court will not hold a statute to be unconstitutionally vague on its face.[51]

In *Iftikhar*, the court acknowledged that the defendant was charged, in the misdemeanor complaint, with possessing a full size detective's badge.[52] Although the complaint was more specific than the language of the statute, nevertheless, application of the statute was still constitutionally vague.[53] The court explained that the complaint merely alleged that the defendant possessed the shield.[54] Holding such a complaint valid would give too much discretion to the police officer in interpreting an open-ended statute.[55] It must be noted, however, that when a defendant's actions are clearly within the meaning of a statute the court is less likely to hold that the statute is open-ended or unclear. Therefore, by ruling that the statute is unconstitutionally vague the court implicitly stated that the mere possession of a badge was not necessarily the type of criminal behavior that the Administrative Code sought to legislate against.[56]

The court correctly concluded that the accusatory instrument may not be corrected, despite the people's attempt to do so.[57] New York Criminal procedure law requires a misdemeanor complaint to allege specific factual allegations against the defendant.[58] The purpose of this requirement is twofold; it enables a criminal defendant to prepare for trial and also guards against re-prosecution.[59] The New York courts have determined that protection afforded by the penal law may be traced back to the New York Constitution Article I, § 6.[60] Furthermore, a defective

---

[50] *Id.*

[51] Richmond Boro Gun Club v. City of New York, 97 F.3d 681, 684 (2d Cir. 1996) (the more common way that a court may invalidate a statute is by challenging the statute on First Amendment grounds).

[52] *Iftikhar*, 713 N.Y.S.2d at 676-77, 185 Misc. 2d at 572.

[53] *Iftikhar*, 713 N.Y.S.2d at 677, 185 Misc. 2d at 572.

[54] *Id.*

[55] *Id.*

[56] *Iftikhar*, 713 N.Y.S.2d at 677, 185 Misc. 2d at 572.

[57] *Iftikhar*, 713 N.Y.S.2d at 674, 185 Misc. 2d at 568.

[58] N.Y. CRIM. PROC. LAW § 100.15.

[59] People v. McDermott, 69 N.Y.2d 889, 890 (1987).

[60] People v. Sanchez, 84 N.Y.2d 440, 446 (1994).

misdemeanor complaint may not be cured by the people's attempt to supplement the original accusatory instrument.[61] The purpose of an information is to reasonably enable a defendant to prepare for trial.[62] In the case at bar the complaint did not meet these criteria, and for this reason the court concluded that the people may not supplement the original complaint.[63]

For the aforementioned reasons, the court's analysis is consistent with both the State Constitution of New York and with the Federal Constitution. The decision reached by the court relies heavily on fundamental rights rooted in the preponderance of case law as well as the State and Federal Constitutions. Therefore, it is likely that the court's decision and similar trial court decisions will similarly be affirmed.

Aron Rattner

[61] People v. Alejandro, 70 N.Y.2d 133, 138 (1987).
[62] *Id.* at 136.
[63] *Iftikhar*, 713 N.Y.S.2d at 674, 185 Misc. 2d at 568.

[This page left intentionally blank].