State v. Bright

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The State appeals a superior court decision reversing Jeanne Bright's multiple district court convictions of cruelty to animals. Finding former RCW 16.52.070[1] unconstitutionally vague as applied, we affirm.

FACTS

The State charged Bright with 18 counts of animal cruelty under former RCW 16.52.070, the relevant portion of which provided:

"{W}hoever having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary suffering or pain upon the same, or unnecessarily fails to provide the same with the proper food, drink, air, light, space, shelter or protection from the weather . . . shall be guilty of a misdemeanor. For the purposes of this section, necessary sustenance or proper food means the provision at suitable intervals, not to exceed twenty-four hours, of wholesome foodstuff suitable for the species and age of the animal and sufficient to provide a reasonable level of nutrition for the animal."

Each count of the complaint stated:

"That said Defendant, Jeanne Bright, in the County of Mason, State of Washington, on or about the 18th day of October 1993, did commit cruelty to animals as defined in RCW 16.52.070, having custody of said animal, willfully and knowingly inflicted unnecessary suffering and/or pain and/or willfully and knowingly unnecessarily failed to provide the, dog # {description of gender and breed}, with the proper food and/or drink and/or air and/or light and/or space and/or shelter and/or protection from the weather: to wit; housing dog # in a cage or in an area that provides inadequate space and/or is dirty, covered with urine and feces and/or provides no light and/or protection from the weather and/or provided said animal with improper food or water and/or causing said animal to suffer unnecessary pain or suffering."

The facts leading to these charges were as follows. Responding to a report of possible animal abuse or neglect, a veterinarian, accompanied by an animal control officer, visited Bright's kennel. After Bright agreed to the inspection of the premises, the veterinarian looked at the animals contained in numerous indoor facilities and outdoor pens.

The veterinarian described some dogs as being in "acceptable condition" or in "good health" but

noted that some were severely matted and had "heavy flea infestations." He also noted that the animals housed in outside pens seemed in good health, stating that "the only problem noted here was the lack of shelter should weather conditions take a turn for the worse." But he further noted that the cats in one of three crates were "suffering from hygiene problems. All 3 cats were terribly matted as a result of poor hygiene and care. The bottoms of their paws were blistered as a result of the urine scalding."

The veterinarian concluded:

"In my opinion, hygiene is the primary problem associated with Ms. Bright. We talked about what needed to be done regarding her dogs' kennels and their upkeep. With regards to the cats, I suggested a treatment program and recommended rechecking in 2 weeks. Stool samples taken from various pens and stalls revealed no evidence of parasites. Parasites were evident in the pups which is not uncommon." Exhibit 18.

The animal control officer reviewed the report and then consulted with the veterinarian. After the consultation, the veterinarian submitted an amendment to his previous statement in which he stated: "After reviewing the RCW's, I feel there is sufficient neglect allowing for removal of the dogs and cats based on the following observations . . . ." He then made specific reference to some of the more serious findings in his original report.

Using the veterinarian's revised report, the State obtained a search warrant of the kennel. This led to the removal of 59 dogs and 4 cats, a number of which exhibited health and hygiene problems. The State then filed the charges at issue here.

Bright moved to suppress the evidence obtained from the search. The district court denied the motion and then, in a bench trial, convicted Bright on all 18 counts and sentenced her to a 60-day deferred sentence, fines, restitution of veterinary bills, and 250 hours community service.

Bright appealed to the superior court. The superior court reversed the convictions, finding former RCW 16.52.070 to be unconstitutionally vague because of its lack of sufficient standards to prevent arbitrary enforcement.[2] The State then sought and this court granted the State's motion for discretionary review on the constitutionality of former RCW 16.52.070.

DISCUSSION

"RALJ 9.1 governs appellate review of a superior court decision reviewing a decision of a district court." State v. Brokman, 84 Wn. App. 848, 850, 930 P.2d 354 (1997) (citing State v. Ford, 110 Wn.2d 827, 829, 755 P.2d 806 (1988); State v. Hodgson, 60 Wn. App. 12, 15, 802 P.2d 129 (1990)). We review the decision of the district court to determine whether that court committed any errors of law, accepting its factual determinations that are supported by substantial evidence and reviewing alleged errors of

law de novo. RALJ 9.1; Brokman, 84 Wn. App. at 850; Christianson v. Snohomish Health Dist., 82 Wn. App. 284, 287, 917 P.2d 1093 (1996), aff'd, 133 Wn.2d 647, 946 P.2d 768 (1997); Ford, 110 Wn.2d at 829-30.

Bright first claims that the State is precluded from appealing the constitutionality issue because it failed to provide an adequate record on appeal, particularly a verbatim report of district court proceedings.[3] "An appellant is required to submit only those portions of the report of proceedings that are necessary to present the issues raised on review." In re Marriage of Berg, 47 Wn. App. 754, 756, 737 P.2d 680 (1987) (citing RAP 9.2(b)). The central issue here is whether the statute was sufficiently definite to support the convictions. Because it appears that the trial court based its decision on a reading of the record, and because we have the complaint and the police report, which constituted the trial court's factual record, a verbatim record of the district court proceedings is not necessary to our review of the constitutionality of former RCW 16.52.070.[4]

We review Bright's constitutional vagueness claim under the Due Process Clause of the Fourteenth Amendment. City of Seattle v. Montana, 129 Wn.2d 583, 597 n.5, 919 P.2d 1218 (1996). The Due Process Clause requires fair warning of proscribed conduct. Montana, 129 Wn.2d at 596. Generally, and under the circumstances here, a claimant can challenge the constitutionality of a statute only as applied to the challenger, not as it may apply to others. Broadrick v. Oklahoma, 413 U.S. 601, 610, 93 S. Ct. 2908, 37 L. Ed. 2d 830 (1973); Montana, 129 Wn.2d at 598.[5] Thus, we consider only whether the statute applies with sufficient definiteness to Bright's particular conduct. Montana, 129 Wn.2d at 597; see also State v. Myles, 127 Wn.2d 807, 812 n.2, 903 P.2d 979 (1995).

Two principles limit the broad sweep of the vagueness doctrine. Myles, 127 Wn.2d at 812. First, we presume a statute is constitutional; the party challenging the statute must prove it is unconstitutional beyond a reasonable doubt. Montana, 129 Wn.2d at 589; Myles, 127 Wn.2d at 812. Second, because of the vagueness inherent in language, we do not require statutes to contain "'impossible standards of specificity' or 'mathematical certainty.'" Myles, 127 Wn.2d at 812 (quoting Seattle v. Eze, 111 Wn.2d 22, 26-27, 759 P.2d 366, 78 A.L.R.4th 1115 (1988)).

"The degree of vagueness that the Constitution tolerates - as well as the relative importance of fair notice and fair enforcement - depends in part on the nature of the enactment." Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982). Laws limiting business activities, "where the acts limited are in a narrow category," are given more leeway than criminal statutes. Papachristou v. City of Jacksonville, 405 U.S. 156, 162, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972) (vagrancy statute unconstitutionally vague as applied); see also Hoffman Estates, 455 U.S. at 498.

A criminal law is unconstitutionally vague if it (1) fails to define the criminal offense with sufficient definiteness that ordinary people can understand what is proscribed, or (2) fails to provide ascertainable standards of guilt to protect against arbitrary enforcement. Kolender v. Lawson, 461

U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983); Montana, 129 Wn.2d 583; Myles, 127 Wn.2d at 812; Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). "{A} law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves Judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case." Giaccio v. Pennsylvania, 382 U.S. 399, 402, 86 S. Ct. 518, 15 L. Ed. 2d 447 (1966). Here, neither the State nor Bright assigns error to the superior court's Conclusion that the statute is constitutional under the first prong of the vagueness test. But the State disputes the reviewing court's determination that the statute is unconstitutionally vague under the arbitrary enforcement prong of the test. Thus, we consider whether former RCW 16.52.070 provided "ascertainable standards of guilt." Myles, 127 Wn.2d at 814.

"In assessing the second prong of a vagueness analysis, the court determines whether the statute invites inordinate discretion on the part of law enforcement authorities." Montana, 129 Wn.2d at 597. A statute that lacks standards and allows "police officers, Judge, and jury to subjectively decide what conduct the statute proscribes or what conduct will comply with a statute in any given case" is unconstitutionally vague. State v. Maciolek, 101 Wn.2d 259, 267, 676 P.2d 996 (1984); see also Bellevue v. Miller, 85 Wn.2d 539, 543, 536 P.2d 603 (1975).

A statute must not be so lacking in standards so as to invite the trier of fact to create his or her own standard in each case. Herndon v. Lowry, 301 U.S. 242, 263, 57 S. Ct. 732, 81 L. Ed. 1066 (1937). A standardless statute leaves open "the wildest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against." United States v. L. Cohen Grocery Co., 255 U.S. 81, 89, 41 S. Ct. 298, 65 L. Ed. 516, 14 A.L.R. 1045 (1921). Consequently, a statute must define legal boundaries of conduct "sufficiently distinct for citizens, policemen, juries, and appellate Judges." Grayned v. City of Rockford, 408 U.S. 104, 114, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972) (quoting Chicago v. Fort, 262 N.E.2d 473, 476 (Ill. 1970)); see also Herndon, 301 U.S. at 264 ("So vague and indeterminate are the boundaries thus set to the freedom of speech and assembly that the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment.").

A statute provides adequate standards for enforcement when its operative terms are not inherently vague. Maciolek, 101 Wn.2d at 267-78 (statute proscribing use of weapon "in a manner that threatens another" set forth adequate standards). And a statute containing a vague term will survive a vagueness challenge if other terms in the statute define, qualify, or limit application of the term so that the reader can ascertain the standard of enforcement. See, e.g., Grayned, 408 U.S. at 113-14 ("noise or diversion" not vague when qualified by requirements that noise or diversion be actually incompatible with school activities, that there be causality between noise and disruption, and that the act be willful); City of Tacoma v. Luvene, 118 Wn.2d 826, 848, 827 P.2d 1374 (1992) (loitering ordinance not vague where it prohibited specific activities related to the sale and use of illegal drugs); Seattle v. Jones, 3 Wn. App. 431, 436, 475 P.2d 790 (1970), aff'd, 79 Wn.2d 626, 488 P.2d 750 (1971) (anti-loitering statute not vague when guidelines included prostitution among prohibited activities);

In re Matter of D., 557 P.2d 687, 690 (Or. App. 1976) (a list of qualifying guidelines will save an otherwise vague statute); City of Cleveland v. Howard, 532 N.E.2d 1325, 1330 (Ohio 1987) (citing both Jones and Matter of D. with approval).

However, a statute lacks adequate standards when the "vague contours" of its terms "are nowhere delineated." See Thornhill v. Alabama, 310 U.S. 88, 100-01, 60 S. Ct. 736, 84 L. Ed. 1093 (1940) (statute unconstitutionally vague because the term "picket" encompasses every conceivable act of publicizing labor dispute in the vicinity of the scene of the dispute); see also Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1250 (M.D. Pa. 1975) (provisions in curfew ordinance unconstitutionally vague because undefined terms "normal" and "well along the road to maturity" failed to provide enforcement guidelines). Washington appellate courts generally have held that a statute lacks ascertainable standards of guilt if it fails to describe the prohibited conduct with sufficient particularity. State v. Hilt, 99 Wn.2d 452, 455, 662 P.2d 52 (1983) (bail jumping statute unconstitutionally vague because no definition of "without lawful excuse"; thus, "predicting its potential application would be a guess, at best"); State v. White, 97 Wn.2d 92, 100, 640 P.2d 1061 (1982) ("lawfully required," "lawful excuse," and "public servant" too vague to provide fair notice and to prevent arbitrary or erratic arrests); Seattle v. Rice, 93 Wn.2d 728, 732, 612 P.2d 792 (1980) ("lawful order" not sufficiently specific to avoid the possibility of arbitrary enforcement); Miller, 85 Wn.2d at 545-47 (lack of terms defining "unlawful activity" renders ordinance void for lack of notice and standards); Seattle v. Pullman, 82 Wn.2d 794, 799, 514 P.2d 1059 (1973) ("'to loiter, idle, wander or play' do not provide ascertainable standards for locating the line between innocent and unlawful behavior"); City of Seattle v. Drew, 70 Wn.2d 405, 409, 423 P.2d 522, 25 A.L.R.3d 827 (1967) ("loitering cannot reasonably connote unlawful activity").

Here, the statute fails to define "proper . . . drink, air, light, space, shelter or protection from the weather." Former RCW 16.52.070 (emphasis added). The dictionary's broad definition of "proper" as "marked by suitability, fitness . . . compatibility" and "adequate to the purpose" allows room for a wide variety of opinions as to whether any particular food or facility is suitable or appropriate, and thus legal or criminal. See Webster's Third New International Dictionary 1817 (1969). Consequently, whether a person's conduct violates this statute initially is dependent upon an enforcing officer's subjective opinion as to what is proper. Maciolek, 101 Wn.2d at 267; see also State v. Worrell, 111 Wn.2d 537, 544, 761 P.2d 56 (1988).

The lack of clear definitions alone does not necessarily render the statute unconstitutionally vague. American Dog Owners Ass'n v. Yakima, 113 Wn.2d 213, 217, 777 P.2d 1046 (1989); Maciolek, 101 Wn.2d at 267. But when we examine former RCW 16.52.070 in light of the situation here, we see that these subjective words created the potential for arbitrary law enforcement. See Miller, 85 Wn.2d at 543-44.

Because the statute lacks guidelines, it permitted "'a standardless sweep {that} allows policemen, prosecutors, and juries to pursue their personal predilections.'" Kolender, 461 U.S. at 358 (quoting

Smith v. Goguen, 415 U.S. 566, 575, 94 S. Ct. 1242, 39 L. Ed. 2d 605 (1974)). Without definition, qualification, or limitation of the terms "proper drink, air, light, space, shelter and protection from the weather, there are no enforcement guidelines.

The statute's failure to describe the proscribed conduct with sufficient particularity invites law enforcement to exercise an inordinate amount of discretion. The facts here demonstrate this. After inspecting the kennels, the veterinarian concluded that hygiene was the "primary problem," and former RCW 16.52.070 made no reference to improper hygiene. The veterinarian did not decide that the facts were sufficient to establish a violation of the law until after he wrote his first report, which led to a Discussion with the animal control officer.

Because of the absence of statutory guidelines, we cannot fairly infer from the record that Bright's violation of the criminal statute led to the problems these animals suffered. Thus, the district court convicted Bright "without fair, solid, and substantial cause," United States v. Lotempio, 58 F.2d 358, 359-60 (W.D. N. Y. 1931) (defining arbitrary judicial action), and the superior court did not err in finding former RCW 16.52.070 to be unconstitutionally vague as applied to Bright's specific conduct. Having found the statute unconstitutionally vague, we need not discuss Bright's claim as to the validity of the warrant.

Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Seinfeld, J.

We concur:

Morgan, J.

Armstrong, A.C.J.

1. Repealed by Laws 1994, ch. 261, sec. 23. Replaced by RCW 16.52.205, RCW 16.52.207.

2. The superior court stated in relevant part: The concern I have is that as applied to these facts there was a constitutionally vague ordinance in that it did not adequately provide for law enforcement to be able to enforce this when we have a veterinarian going out at the auspices of the animal control officer, then in hindsight, looking at the statute and on day two, making the absolute opposite findings. As so I will find that with respect to the second prong of the vagueness test, as applied to this situation, that the former statute, RCW 16.52.070 does fail as vague - as a vague statute. Report of Proceedings at 44-45.

3. The record before this court contains the complaint, the police report, the district court Judgement and sentence, the verbatim record of the superior court's RALJ hearing, and that court's order reversing the convictions. The State did not provide this court with a verbatim record of the district court proceedings. Bright alleges that the Mason County District Court clerk's office lost or destroyed records of the district court proceedings. The State is silent on the issue.

4. Both the State and Bright conceded that the police report constituted the trial record. The reviewing court then noted that it had read the police report.

5. One exception to this rule is where the statute implicates conduct under the First Amendment. Broadrick, 413 U.S. at 611. Bright does not argue that the statute affects her First Amendment rights.