

SUPREME COURT OF OHIO

City of Columbus v. Kim

118 Ohio St. 3d 93 (Ohio 2008) · Decided April 23, 2008

SUMMARY

The Ohio Supreme Court held that Columbus City Code 2327.14, which prohibits harboring an animal that makes unreasonably loud or disturbing sounds, is not unconstitutionally vague on its face or as applied. The court affirmed Rebecca Kim’s conviction, concluding that the ordinance provides objective standards based on the character, intensity, and duration of the disturbance.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Pfeifer, J.; Moyer, C.J.; Lundberg Stratton, J.; O'Connor, J.; Lanzinger, J.; Cupp, J.; O'Donnell, J.
JURISDICTION	Ohio
DECIDED	April 23, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kim was convicted in municipal court of violating Columbus City Code 2327.14, the court of appeals affirmed, and the Supreme Court of Ohio accepted a certified conflict concerning whether the ordinance was unconstitutionally vague on its face and as applied.
STANDARD OF REVIEW	The court reviewed the constitutional vagueness challenge de novo and required Kim to prove beyond a reasonable doubt that the ordinance was so unclear that a person of ordinary intelligence could not reasonably understand the prohibited conduct.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Ohio.
PARTIES	Rebecca Kim v. City of Columbus

TOPICS

- void for vagueness
- ordinances
- municipal law
- criminal procedure

PRACTICE AREAS

- constitutional law
- municipal law
- criminal procedure

QUESTIONS PRESENTED

1. Whether Columbus City Code 2327.14 is unconstitutionally vague on its face.
2. Whether Columbus City Code 2327.14 is unconstitutionally vague as applied to Kim's conduct.

HOLDINGS

1. Columbus City Code 2327.14 is not unconstitutionally vague on its face because it provides objective standards—whether the noise is unreasonably loud or disturbing and its character, intensity, and duration—to place a person of ordinary intelligence on notice of the prohibited conduct.
2. The ordinance is not unconstitutionally vague as applied because a person of ordinary intelligence would understand that allowing a dog to bark nonstop for more than an hour at a volume audible over a lawn mower is prohibited conduct.

KEY QUOTATIONS

“We conclude that Columbus City Code 2327.14 is not unconstitutionally vague, because it sets forth sufficient standards to place a person of ordinary intelligence on notice of what conduct the ordinance prohibits.” (95)

“The ordinance incorporates an objective standard by prohibiting only those noises that are “unreasonably loud or disturbing.”” (95)

“We answer the certified question in the negative and affirm the judgment of the court of appeals.” (95)

FACTUAL BACKGROUND

Kim's dog barked constantly on May 13, 2004, from approximately 4:30 p.m. until 6:00 p.m. A neighbor testified that the barking was loud enough to be heard over a lawn mower and inside his house with the windows closed and air conditioning operating. A veterinarian who visited the neighbor's home testified that the dog barked incessantly during nearly the entire hour he was there.

PROCEDURAL HISTORY

Kim was charged with harboring an unreasonably loud or disturbing animal after her dog barked continuously for more than an hour. The trial court convicted her and imposed a \$100 fine plus costs. The court of appeals affirmed, found a conflict with *State v. Ferraiolo*, and certified the record to the Supreme Court of Ohio, which determined that a conflict existed and answered the certified question.

DISPOSITION

affirmed

CASES CITED

- *State v. Ferraiolo*, 140 Ohio App. 3d 585, 748 N.E.2d 584 (2000)
- *Columbus v. Kim*, 113 Ohio St. 3d 1464, 2007-Ohio-1722, 864 N.E.2d 651

- State v. Anderson, 57 Ohio St. 3d 168, 171, 566 N.E.2d 1224 (1991)
- Coates v. Cincinnati, 402 U.S. 611, 614, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971)
- United States Civ. Serv. Comm. v. Nat'l Ass'n of Letter Carriers, AFL-CIO, 413 U.S. 548, 578-579, 93 S. Ct. 2880, 37 L. Ed. 2d 796 (1973)

OPINION

PFEIFER, J.

Pfeifer, J. {¶ 1} Defendant-appellant Rebecca Kim was convicted of harboring an unreasonably loud or disturbing animal in violation of Columbus City Code 2327.14. Kim argues that Columbus City Code 2327.14 is unconstitutionally vague.

We disagree and affirm the decision of the court of appeals. {¶ 2} Kim's neighbor, Joseph Berardi, testified that on May 13, 2004, Kim's dog barked constantly from approximately 4:30 p.m. until approximately 6:00 p.m. Berardi stated that the dog barked so loudly that it could be heard over the sound of his lawn mower and from inside his house with the windows closed and the air conditioning running.

Dr. George H. Urham Jr., a veterinarian, testified that on May 13, 2004, he made a house call at the Berardi residence to vaccinate Berardi's dogs and that from just before 5:00 p.m., when he arrived, until just before 6:00 p.m., when he departed, the dog in Kim's yard had barked incessantly- {¶ 3} Kim was charged with violating Columbus City Code 2327.14 by harboring an unreasonably loud or disturbing animal.

The trial court concluded that the duration and intensity of the dog's barking were sufficient to establish a *94violation of Columbus City Code 2327.14 and convicted Kim and imposed a fine of \$100 plus costs. {¶ 4} Kim appealed, alleging that the ordinance is unconstitutionally vague.

The court of appeals affirmed the decision of the trial court, concluding that Columbus City Code 2327.14 contained sufficient standards to place a person of ordinary intelligence on notice of what conduct the ordinance prohibited. {¶ 5} The court of appeals found its judgment in this case to be in conflict with the judgment of the Eleventh District Court of Appeals in State v. Ferraiolo (2000), 140 Ohio App.3d 585, 748 N.E.2d 584, and certified the record to this court for review and final determination.

We determined that a conflict exists on the following issue: "Whether an ordinance that prohibits a person from keeping or harboring an animal which 'howls, barks, or emits audible sounds that are unreasonably loud or disturbing which are of such character, intensity, and duration as to disturb the peace and quiet of the neighborhood or to be detrimental to the life and health of any individual' is unconstitutionally vague on its face and as applied." Columbus v. Kim, 113 Ohio St.3d 1464, 2007-Ohio-1722, 864 N.E.2d 651. {¶ 6} Columbus City Code 2327.14(A) states that "[n]o person shall keep or harbor any animal which howls, barks, or emits audible sounds that are

unreasonably loud or disturbing and which are of such character, intensity and duration as to disturb the peace and quiet of the neighborhood or to be detrimental to life. and health of any individual.” {¶ 7} Kim asserts that Columbus City Code 2327.14 is unconstitutionally vague on its face and as applied.

In *State v. Anderson* (1991), 57 Ohio St.3d 168, 171, 566 N.E.2d 1224, quoting *Coates v. Cincinnati* (1971), 402 U.S. 611, 614, 91 S.Ct. 1686, 29 L.Ed.2d 214, we stated that “[i]n order to prove such an assertion, the challenging party must show that the statute is vague ‘not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all.’ ” In other words, the challenger “must show that upon examining the statute, an individual of ordinary intelligence would not understand what he is required to do” and “must prove, beyond a reasonable doubt, that the statute was so unclear that he could not reasonably understand that it prohibited the acts in which he engaged.” *Anderson*, 57 Ohio St.3d at 171, 566 N.E.2d 1224. {¶ 8} Kim asks us to adopt the reasoning of *Ferraiolo*, 140 Ohio App.3d 585, 748 N.E.2d 584, in which the owner’s conviction for violating an ordinance virtually identical to Columbus City Code 2327.14 was reversed by the court of appeals because it concluded that the ordinance was impermissibly vague.

The court of appeals stated that “all dogs will bark or emit audible sounds at one time or another” and that the reasonableness of the noise is a subjective matter that *95could vary from person to person given their different sensitivities. *Id.* at 587, 748 N.E.2d 584.

The court of appeals questioned how anyone can be expected to know whether his dog’s barks are of such an intensity and duration as to disturb the peace and quiet of the neighborhood and concluded that the ordinance offered no standard that could be used to determine what constituted a violation. *Id.* {¶ 9} But *Ferraiolo* is not before us, and it does not control our decision.

We conclude that Columbus City Code 2327.14 is not unconstitutionally vague, because it sets forth sufficient standards to place a person of ordinary intelligence on notice of what conduct the ordinance prohibits. The ordinance incorporates an objective standard by prohibiting only those noises that are “unreasonably loud or disturbing.” The ordinance provides specific factors to be considered to gauge the level of the disturbance, namely, the “character, intensity and duration” of the disturbance.

Further, we recognize that “there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with.” *United States Civ.*

Serv. Comm. v. Natl. Assn. of Letter Carriers, AFL-CIO (1973), 413 U.S. 548, 578-579, 93 S.Ct. 2880, 37 L.Ed.2d 796. We conclude that Kim has not proven that Columbus City Code 2327.14 provides “no standard of conduct * * * at all.” Anderson, 57 Ohio St.3d at 171, 566 N.E.2d 1224.

Accordingly, we hold that Columbus City Code 2327.14 is not unconstitutionally vague on its face. {¶ 10} Nothing in the record suggests that the constant barking of Kim’s dog for over one hour was not “unreasonably loud or disturbing” or not “of such a character, intensity and duration as to disturb the peace and quiet of the neighborhood.” We are convinced that a person of ordinary intelligence would understand that Columbus City Code 2327.14 prohibits her from allowing her dog to bark nonstop for over an hour at a level that can be heard while using a lawnmower.

Kim had not proven, “beyond a reasonable doubt, that the statute [is] so unclear that [she] could not reasonably understand that it prohibited the acts in which [she] engaged.” Anderson, 57 Ohio St.3d at 171, 566 N.E.2d 1224. {¶ 11} Accordingly, we conclude that Columbus City Code 2327.14 is not unconstitutionally vague as applied.

We answer the certified question in the negative and affirm the judgment of the court of appeals. Judgment affirmed. Moyer, C.J., and Lundberg Stratton, O’Connor, Lanzinger, and Cupp, JJ., concur. O’Donnell, J., concurs separately.