

SUPREME COURT OF ILLINOIS

The People of the State of Illinois v. Jerry S. Izzo

People v. Izzo, 195 Ill. 2d 109 (Ill. 2001) · No. No. 88887 · Decided February 16, 2001

SUMMARY

The Supreme Court of Illinois held that section 21-6 of the Illinois Criminal Code, prohibiting unauthorized possession or storage of specified weapons on public property, was not unconstitutionally vague as applied to Jerry Izzo. The court also rejected Izzo’s separation-of-powers challenge, concluding that the statute did not transfer prosecutorial authority from the State’s Attorney to a chief security officer. The court reversed the circuit court’s dismissal of the complaint and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Harrison; Justice Garman
JURISDICTION	Illinois
DECIDED	February 16, 2001
DOCKET	No. 88887
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State brought a direct appeal from the Du Page County circuit court's dismissal of a criminal complaint on constitutional grounds.
STANDARD OF REVIEW	The court reviewed the constitutional challenge to the statute in the factual context of the case and determined whether the statute was impermissibly vague as applied and whether it violated separation-of-powers principles.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; precedential
PARTIES	The People of the State of Illinois v. Jerry S. Izzo

TOPICS

- void for vagueness
- due process
- separation of powers
- statutory interpretation
- criminal procedure

PRACTICE AREAS

- criminal law
- constitutional law
- criminal procedure

QUESTIONS PRESENTED

1. Whether section 21-6 of the Criminal Code of 1961 is unconstitutionally vague because it does not define the term "chief security officer" with sufficient specificity.
2. Whether section 21-6 violates the separation-of-powers provision of the Illinois Constitution by allowing a chief security officer to authorize possession of a weapon and thereby allegedly affect the State's Attorney's prosecutorial authority.

HOLDINGS

1. Section 21-6 is not unconstitutionally vague on its face because it does not affect First Amendment rights and is capable of valid application. The statute also provided a person of ordinary intelligence, including Izzo in the circumstances presented, sufficient notice of the prohibited conduct and of the need to obtain advance written permission before possessing the knife at school.
2. Section 21-6 does not violate the separation-of-powers provision of the Illinois Constitution. The statute authorizes a chief security officer to grant permission to possess or store a weapon on public property, but it does not authorize that officer to decide whether criminal charges should be brought, modified, or dismissed. Prosecutorial authority remains with the State's Attorney.

KEY QUOTATIONS

"A principle deeply embedded in our system of jurisprudence is that one's ignorance of the law does not excuse unlawful conduct." (553)

"For the foregoing reasons, the circuit court should not have dismissed the complaint against Izzo on the grounds that section 21-6 is unconstitutional." (554)

FACTUAL BACKGROUND

Jerry Izzo, an 18-year-old high school student, was found carrying a folding Smith & Wesson S.W.A.T. knife with a blade exceeding three inches while at school. The State charged him under section 21-6 of the Criminal Code, which prohibited possession of specified weapons on public property without prior written permission from the chief security officer. Izzo had not sought or received permission to possess the knife at school.

PROCEDURAL HISTORY

Izzo was charged with violating section 21-6 of the Criminal Code of 1961 after he was found carrying a knife with a blade longer than three inches at school. The circuit court of Du Page County granted Izzo's motion to dismiss, concluding that the statute was unconstitutional. The State appealed directly to the Illinois Supreme Court under Illinois Supreme Court Rule 302(a).

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the circuit court for further proceedings on the criminal complaint.

CASES CITED

- People v. Bales, 108 Ill. 2d 182, 188, 91 Ill. Dec. 171, 483 N.E.2d 517 (1985)
- People v. Bossie, 108 Ill. 2d 236, 91 Ill. Dec. 634, 483 N.E.2d 1269 (1985)
- People v. Wawczak, 109 Ill. 2d 244, 249, 93 Ill. Dec. 378, 486 N.E.2d 911 (1985)
- In re C.E., 161 Ill. 2d 200, 210-11, 204 Ill. Dec. 121, 641 N.E.2d 345 (1994)
- Russell v. Department of Natural Resources, 183 Ill. 2d 434, 442, 233 Ill. Dec. 782, 701 N.E.2d 1056 (1998)
- People v. Anderson, 148 Ill. 2d 15, 28, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992)
- People v. Jihan, 127 Ill. 2d 379, 385-86, 130 Ill. Dec. 422, 537 N.E.2d 751 (1989)
- East St. Louis Federation of Teachers, Local 1220 v. East St. Louis School District No. 189 Financial Oversight Panel, 178 Ill. 2d 399, 425, 227 Ill. Dec. 568, 687 N.E.2d 1050 (1997)
- People v. Secor, 279 Ill. App. 3d 389, 396, 216 Ill. Dec. 126, 664 N.E.2d 1054 (1996)
- Granite City Division of National Steel Co. v. Pollution Control Board, 221 Ill. App. 3d 68, 75, 163 Ill. Dec. 549, 581 N.E.2d 703 (1991), *aff'd*, 155 Ill. 2d 149, 184 Ill. Dec. 402, 613 N.E.2d 719 (1993)
- People v. Sevilla, 132 Ill. 2d 113, 127, 138 Ill. Dec. 148, 547 N.E.2d 117 (1989)
- Murneigh v. Gainer, 177 Ill. 2d 287, 302, 226 Ill. Dec. 614, 685 N.E.2d 1357 (1997)
- People v. O'Donnell, 116 Ill. 2d 517, 527, 108 Ill. Dec. 489, 508 N.E.2d 1066 (1987)

OPINION

HARRISON, J.

745 N.E.2d 548 (2001) 195 Ill. 2d 109 253 Ill. Dec. 425 The PEOPLE of the State of Illinois, Appellant, v. Jerry S. IZZO, Appellee. No. 88887. Supreme Court of Illinois. February 16, 2001. *550 James E. Ryan, Attorney General, Springfield, and Joseph E. Birkett, State's Attorney, Wheaton (Joel D. Bertocchi, Solicitor General, and William L. Browers and Mary Beth Burns, Assistant Attorneys General, Chicago, of counsel), for the People.

George P. Lynch, Lisle, for appellee. Justice HARRISON delivered the opinion of the court: Jerry Izzo, an 18-year-old high school student, was charged by complaint with violating section 21-6 of the Criminal Code of 1961 (720 ILCS 5/21-6 (West 1998)), which prohibits the unauthorized possession or storage of weapons on public property.

The charge was filed after Izzo was found carrying "a folding silver & black Smith & Wesson S.W.A.T. [Special Weapons Assault Team] knife with a blade in excess of 3 inches" while at school. Izzo moved to dismiss the complaint pursuant to section 114-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-1 (West 1998)) on the grounds that section 21-6 is unconstitutional.

The circuit court of Du Page County granted that motion. The State took a direct appeal to our court. 134 Ill.2d R. 302(a). We now reverse and remand for further proceedings. Section 21-6 of

the Criminal Code states: "(a) Whoever possesses or stores any weapon enumerated in Section 33A-1 [of the Criminal Code of 1961 (720 ILCS 5/33A-1 (West 1998))] in any building or on land supported in whole or in part with public funds or in any building on such land without prior written permission from the chief security officer for such land or building commits a Class A misdemeanor. (b) The chief security officer must grant any reasonable request for permission under paragraph (a)."

720 ILCS 5/21-6 (West 1998). A S.W.A.T. knife of the type found in Izzo's possession is among the weapons enumerated in section 33A-1 of the Criminal Code of 1961 (720 ILCS 5/33A-1 (West 1998)). The public school where Izzo was carrying the knife is a building or land "supported in whole or in part with public funds" as those terms are used in section 21-6 (720 ILCS 5/21-6 (West 1998)).

If Izzo wanted to possess or store the knife on school property, he was therefore required by the express terms of the statute to obtain advance written permission to do so. Izzo did not seek permission to possess the knife at school, and no such permission was granted to him. Izzo nevertheless contends that he cannot be prosecuted for violation of the law because the law is unconstitutional.

Specifically, Izzo asserts that the law is vague and indefinite in violation of the due process provisions of the fifth and fourteenth amendments to the United States Constitution (U.S. Const., amends. V, XIV) and article I, section 2, of the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, § 2) because it does not adequately define who qualifies as a "chief security officer."

Second, he asserts that the law violates separation of powers principles under article II, section 1, of the Illinois Constitution (Ill. Const. 1970, art. II, § 1) because it allows someone other than the State's Attorney to bring, modify or nol-pros criminal charges.

In addressing Izzo's due process argument, we begin with the familiar proposition that all statutes are presumed to be constitutional. *People v. Bales*, 108 Ill. 2d 182, 188, 91 Ill. Dec. 171, 483 N.E.2d 517 (1985). Although the language challenged in this case is similar to language employed in the Illinois Public Demonstrations Law struck down by our court in *People v. Bossie*, 108 Ill. 2d 236, 91 Ill. Dec.

634, 483 N.E.2d 1269 (1985), the statute at issue here is different. Unlike the Illinois Public Demonstrations Law, section 21-6 of the Criminal Code is not alleged to trench on rights protected by the first amendment to the United States Constitution. Where, as here, a statute does not affect first amendment rights, it will not be declared unconstitutionally vague on its face unless it is incapable of any valid application (*People v. Wawczak*, 109 Ill. 2d 244, 249, 93 Ill. Dec.

378, 486 N.E.2d 911 (1985)), that is, unless no set of circumstances exists under which the act would be valid (*In re C.E.*, 161 Ill. 2d 200, 210-11, 204 Ill. Dec. 121, 641 N.E.2d 345 (1994)).

This is not such a case. Situations where one can readily identify a public facility's "chief security officer" are not difficult to imagine. County jails and this court's own building are two ready examples.

Because section 21-6 of the Criminal Code does not involve first amendment rights and because there are circumstances in which section 21-6 of the Criminal Code may be validly applied, the determination as to whether the statute is constitutionally infirm must be made in the factual context of this particular case. *Russell v. Department of Natural Resources*, 183 Ill. 2d 434, 442, 233 Ill. Dec.

782, 701 N.E.2d 1056 (1998). If Izzo's own conduct clearly falls within the statute's proscriptions, prosecuting him for violating the law does not offend due process protections even though the statute might be vague as to other conduct in other circumstances. *People v. Anderson*, 148 Ill. 2d 15, 28, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992). Izzo cannot escape the law's reach by arguing that the statute might be vague as applied to someone else.

See *People v. Jihan*, 127 Ill. 2d 379, 385-86, 130 Ill. Dec. 422, 537 N.E.2d 751 (1989). Where, as here, the challenged statute does not impinge on first amendment rights, due process is satisfied if: (1) the statute's prohibitions are sufficiently definite, when measured by common understanding and practices, to give a person of ordinary intelligence fair warning as to what conduct is prohibited, and (2) the statute provides sufficiently definite standards for law enforcement officers and triers of fact that its application does not depend merely on their private conceptions.

People v. Falbe, 189 Ill. 2d 635, 639-40, 244 Ill. Dec. 901, 727 N.E.2d 200 (2000). The second of these considerations is not at issue in this case. No claim is made that the absence of a more detailed definition of "chief security officer" has resulted in arbitrary and discriminatory enforcement and application by police officers, judges or juries. Izzo's due process challenge is premised solely on the notion that persons of ordinary intelligence cannot be sure in any given situation whom they must contact for authorization if they want to possess weapons on public property. *552 In support of his position, Izzo advances hypotheticals in which application of the law's requirements might be problematic.

Our court has held, however, that a statute is not unconstitutionally vague merely because one can imagine hypothetical situations in which the meaning of some terms might be called into question. *East St. Louis Federation of Teachers, Local 1220 v. East St. Louis School District No. 189 Financial Oversight Panel*, 178 Ill. 2d 399, 425, 227 Ill. Dec. 568, 687 N.E.2d 1050 (1997).

As we have previously indicated, the validity of the law must be judged in light of the particular facts at hand. Nothing in the record here suggests that the scenarios proposed by defendant are present in the case now before us. Unlike the situation in *People v. Bossie*, 108 Ill. 2d 236, 91 Ill.

Dec. 634, 483 N.E.2d 1269 (1985), this case does not involve multiple jurisdictions or multiple layers of governmental authority.

The events giving rise to Izzo's prosecution occurred at a single place, a school, with a fixed and easily ascertainable chain of authority. It is true that none of the administrators or employees at the school bore the specific title "chief security officer." Any person of ordinary intelligence would understand, however, that the "chief security officer" was whoever had responsibility for overseeing security issues at the school.

The particular title of that person will vary from institution to institution, and enumeration of every different title or position would be impractical. In such circumstances, the legislature may reasonably employ language sufficiently broad to encompass the varying circumstances without offending due process. See *People v. Secor*, 279 Ill.App.3d 389, 396, 216 Ill. Dec.

126, 664 N.E.2d 1054 (1996). Due process does not mandate absolute standards or mathematical precision. Although it does require that a regulation not be vague, indefinite or uncertain, it does not require that a regulation be more specific than is possible under the circumstances. See *Granite City Division of National Steel Co. v. Pollution Control Board*, 221 Ill.App.3d 68, 75, 163 Ill. Dec.

549, 581 N.E.2d 703 (1991), *aff'd*, 155 Ill. 2d 149, 184 Ill. Dec. 402, 613 N.E.2d 719 (1993). If anyone was confused as to who served as "chief security officer" at Izzo's school, they could simply have gone into the school office and asked. Significantly, however, there is no evidence in the record that anyone was, in fact, confused. There is no indication of any kind that any person had any doubt as to the meaning of section 21-6's provisions in the context of this specific dispute.

Izzo himself claims no such uncertainty. For him, the law's supposed vagueness was irrelevant. He was not confused by the statute's wording. The reason he did not seek advance written authorization before bringing his S.W.A.T. knife to school had nothing to do with not knowing whom, in particular, he was supposed to ask.

The reason he did not seek advance written authorization was because, he claims, he did not know that the law required him to do so. Indeed, one of his alternative arguments for dismissal in the circuit court was that the statute was never published at the school and school students were never notified that they were required to seek written permission in order to carry knives of the type he was carrying.

That Izzo himself may not have had actual knowledge of section 21-6's authorization requirement does not render the law impermissibly vague or bar its enforcement against him. A principle deeply embedded in our system of jurisprudence is that one's ignorance of the law does not excuse unlawful conduct. *People v. Sevilla*, *553 132 Ill. 2d 113, 127, 138 Ill. Dec.

148, 547 N.E.2d 117 (1989). Izzo does not cite any provision of the Criminal Code or any case law that would require or even suggest an exception to this principle under the facts of this case. There is likewise no merit to Izzo's separation of powers claim.

As indicated earlier in this opinion, Izzo asserts that section 21-6 violates separation of powers principles because it permits someone other than the State's Attorney to bring, modify or nol-pros criminal charges. There are two problems with this argument.

First, it misapprehends the effect of the law. Although the statute gives "chief security officers" power to grant individuals permission to possess or store weapons on public property, it does not give or purport to give such officers the authority to determine if or when individuals should be prosecuted for failing to obtain such permission. That power continues to reside with the local State's Attorney.

Similarly, section 21-6 does not confer on chief security officers the power to sanction the possession or storage of weapons which is otherwise illegal. If a chief security officer gives an individual permission to possess or store weapons on public property and it turns out that such possession or storage contravenes some other provision of the law, the offending individual can still be prosecuted for violation of that other provision.

The only effect of allowing advance written permission is that the individual cannot also be convicted of violating section 21-6. Such a result involves no usurpation of the State's Attorney's authority. The reason a conviction cannot be secured under section 21-6 is simply that the conditions of that statute will have been satisfied, i.e., there is no violation.

A second, and equally fundamental, flaw in Izzo's separation of powers argument is that it misapprehends the separation of powers doctrine. Under Illinois law, the principle of separation of powers is contained in article II, section 1, of the Illinois Constitution of 1970, which provides that the legislative, executive and judicial branches of government are separate and that "[n]o branch shall exercise powers properly belonging to another."

Ill. Const. 1970, art. II, § 1. The purpose of this doctrine is to insure that each of the three branches of government retains its own sphere of authority, free from undue encroachment by the other branches. *Murnigh v. Gainer*, 177 Ill. 2d 287, 302, 226 Ill. Dec. 614, 685 N.E.2d 1357 (1997).

The doctrine comes into play when one branch seeks to exert a substantial power belonging to another. *People v. O'Donnell*, 116 Ill. 2d 517, 527, 108 Ill. Dec. 489, 508 N.E.2d 1066 (1987). No such encroachment is present here. Even if section 21-6 could be construed as shifting part of the State's Attorney's prosecutorial power to another set of government officials, which it cannot, such a shift is not inherently improper.

The powers and duties of State's Attorneys are defined by statute (55 ILCS 5/3-9005 (West 1998)) and can be revised by statute. Although a separation of powers problem would arise if such a revision had the effect of transferring prosecutorial power to the judiciary or to the legislature itself, no possible claim can be made that section 21-6 has such an effect.

For the foregoing reasons, the circuit court should not have dismissed the complaint against Izzo on the grounds that section 21-6 is unconstitutional. The judgment of the circuit court dismissing the complaint against Izzo is therefore reversed, *554 and this cause is remanded to the circuit court for further proceedings. Reversed and remanded. Justice GARMAN took no part in the consideration or decision of this case.