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Constitutional Law: Vagrancy Ordinance Held Unconstitutional for Vagueness

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parative negligence statute. The drastic alteration of the status quo wrought by this case may provide the impetus needed for a reapportioned legislature to take positive action to remove from our law the antiquated and unjust doctrine of contributory negligence.

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CONSTITUTIONAL LAW: VAGRANCY ORDINANCE HELD UNCONSTITUTIONAL FOR VAGUENESS

Headley v. Selkowitz, 171 So. 2d 368 (Fla. 1965)

The defendant was convicted of disorderly conduct under a city of Miami ordinance[1] for standing, loitering, or strolling in the city and not being able to give a satisfactory account of himself. In a habeas corpus proceeding, the Circuit Court of Dade County held the ordinance unconstitutional and issued the writ of habeas corpus. The District Court of Appeal for the Third District affirmed,[2] and on certiorari, the Supreme Court of Florida HELD, the ordinance invalid on its face for vagueness. Judgment affirmed.

The Florida Supreme Court adopted the constitutional standard applied in two previous Florida decisions,[3] which held that an ordinance or statute must be written so that a reasonable man could know with an appreciable degree of certainty what conduct violates its provisions, and held that the language of the Miami ordinance was too broad and vague to meet that standard. The court also approved the reasoning of the Third District Court of Appeal, which attacked the ordinance because it did not limit the area involved within the city or limit the time of day it was applicable, and it subjected a person who might be acting lawfully to possible arrest merely because he could not give a satisfactory account of himself.[4]

1. MIAMI, FLA. CITY CODE §43-10.5: "Section 43-10. Disorderly conduct generally. Any person in the City shall be deemed guilty of disorderly conduct who: . . . (5) Is found standing, loitering or strolling about in any place in the City and not being able to give a satisfactory account of himself, or who is without any lawful means of support."

2. Headley v. Selkowitz, 163 So. 2d 13 (3d D.C.A. Fla. 1964).

3. Locklin v. Pridgeon, 158 Fla. 737, 30 So. 2d 102 (1947); McCall v. State, 156 Fla. 437, 23 So. 2d 492 (1945).

4. Headley v. Selkowitz, 163 So. 2d 13, 14 (3d D.C.A. Fla. 1964).

The case overruled in part a prior Florida Supreme Court decision[5] that upheld a city of Hollywood, Florida ordinance defining disorderly persons and disorderly conduct. The petitioners in that case had been charged with violating the ordinance and were seeking a writ of habeas corpus. The Hollywood ordinance provided in part, "all persons found . . . wandering about the streets either by night or by day without any known lawful means of support, or without being able to give a satisfactory account of themselves . . . shall be deemed guilty of disorderly conduct,"[6] and the court held the ordinance valid. Under the decision in the instant case this portion of the Hollywood ordinance would be invalid for vagueness.

The Florida Vagrancy Statute[7] also has similar language to the Miami ordinance. Under that statute "persons wandering or strolling around from place to place without any lawful purpose or object . . . ."[8] are deemed vagrants. Although the Vagrancy Statute was not involved in the instant case, the Florida Supreme Court attempted to distinguish it from the Miami disorderly conduct ordinance by saying the broadness and vagueness of the ordinance were apparent when compared with the language of the Vagrancy Statute.[9] Actually, the language of the Florida Vagrancy Statute is extremely broad and vague, and the instant decision has made the constitutionality of the statute questionable.

At common law, vagrancy was defined as the wandering about from place to place by an idle person with no lawful means of support, and who lived on charity and did not work although he was able to do so.[10] The common law definition is no longer very important because vagrancy is now largely defined by statutes.[11] Historically, the condition of being a vagrant and not a specific act or omission is the crime, but under various vagrancy-type statutes and ordinances, such as the Miami ordinance, a single act or omission may be punished.[12] Some vagrancy-type statutes and ordinances have been invalidated for vagueness, but these made loitering in specified places a crime without any qualifying clauses such as "without a lawful purpose" or "not being able to give a good account of oneself."[13] Some courts have

5. State v. Capehart, 138 Fla. 492, 189 So. 708 (1939).

6. *Id.* at 709.

7. FLA. STAT. §856.02 (1963).

8. *Ibid.*

9. Headley v. Selkowitz, 171 So. 2d 368, 370 (Fla. 1965).

10. State v. Grenz, 26 Wash. 2d 764, 768, 175 P.2d 633, 636, *appeal dismissed*, 332 U.S. 748 (1947).

11. *Id.* at 769, 175 P.2d at 637.

12. *Ibid.*

13. Territory of Hawaii v. Anduha, 48 F.2d 171 (9th Cir. 1931); Soles v. City of Vidalia, 92 Ga. App. 839, 90 S.E.2d 249 (1955); Commonwealth v. Carpenter,

interpreted loitering to include an unlawful purpose or an unsatisfactory account of oneself and have upheld these statutes as a valid exercise of the state's police power.[14] Statutes and ordinances with similar language to the Florida Vagrancy Statute and the Miami ordinance have generally been upheld as constitutional.[15]

Vagrancy-type legislation was originally enacted in England during the breakup of feudalism and after the depopulation caused by the Black Death, but its original purpose to force all able-bodied persons to work was an economic failure.[16] Many persons took to the road to avoid forced labor or to find better jobs, and vagrancy-type legislation became aimed at these out-of-work migrants who were viewed as potential criminals.[17] The American courts have justified the broad and vague vagrancy-type statutes as being necessary for efficient crime prevention.[18] They state that their purpose is to preserve the safety and good order of the community, and to stop crime in its beginnings by allowing the police to get at the persons most likely to commit crime.[19] Most of the vagrancy-type statutes are so broad and vague that they enable the police to arrest a person for a vagrancy violation and to hold him for investigation for another crime they suspect him of having committed or intending to commit.[20] In actuality these statutes allow the police to circumvent the constitutional require-

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325 Mass. 519, 91 N.E.2d 666 (1950); State v. Caez, 81 N.J. Super. 315, 195 A.2d 496 (1963); People v. Diaz, 4 N.Y.2d 469, 151 N.E.2d 871, 176 N.Y.S.2d 313 (1958); City of Akron v. Effland, 112 Ohio App. 15, 174 N.E.2d 285 (1960).

14. State v. Starr, 57 Ariz. 270, 113 P.2d 356 (1941); *In re* Cregler, 14 Cal. Rptr. 289, 363 P.2d 305, 56 Cal. 2d 308 (1961).

15. Harris v. District of Columbia, 192 A.2d 814 (D.C. Cir. 1963); Dominguez v. City & County of Denver, 147 Colo. 233, 363 P.2d 661 (1961); City of South Euclid v. Paladino, 30 Ohio Op. 2d 560, 204 N.E.2d 265 (1964); City of Portland v. Goodwin, 187 Ore. 409, 210 P.2d 577 (1949); State v. Grenz, 26 Wash. 2d 764, 175 P. 2d 633, *appeal dismissed*, 332 U.S. 748 (1947).

16. Foote, *Vagrancy-Type Law and Its Administration*, 104 U. PA. L. REV. 603, 615-17 (1956).

17. *Ibid.*

18. Harris v. District of Columbia, 192 A.2d 814, 816 (D.C. Cir. 1963); State v. Salerno, 27 N.J. 289, 294, 142 A.2d 636, 638 (1958); State v. Grenz, 26 Wash. 2d 764, 769, 175 P.2d 633, 638 (1946), *appeal dismissed*, 332 U.S. 748 (1947); Foote, *supra* note 16, at 614.

19. See Harris v. District of Columbia, *supra* note 18; Dominguez v. City & County of Denver, 147 Colo. 233, 236, 363 P.2d 661, 663 (1961).

20. People v. Craig, 152 Cal. 42, 91 Pac. 997 (1907) in which the court held that the arrest of the defendant, without a warrant, for the offense of vagrancy was justified, even though the officer had known the defendant was a vagrant for sometime and the real motive of arrest was a report to the officer that the defendant had assaulted a man. See also Douglas, *Vagrancy and Arrest on Suspicion*, 70 YALE L.J. 1, 13 (1960); Foote, *supra* note 16, at 625; Note, *Use of Vagrancy-Type Laws for Arrest and Detention of Suspicious Persons*, 59 YALE L.J. 1351 (1950).

ment of probable cause for an arrest,[21] and allow them to arrest persons on mere suspicion. Statutes in all states permit arrest without a warrant to allow the police to act quickly,[22] and the only protection given against arbitrary arrest under a vague vagrancy-type statute is that the officer have probable cause to believe that the person is a vagrant or a disorderly person. The Florida Vagrancy Statute[23] is so excessively broad and vague that it could be used to arrest almost any person who the police deem undesirable. A person might never be tried or convicted for the vagrancy violation, but his rights were violated when he was arrested.

The state and the cities should attack the problems of law enforcement and crime prevention directly and not use ill-defined and vague laws to enforce the public peace. The broad and vague vagrancy-type laws should be declared unconstitutional because a person cannot know with reasonable certainty whether his conduct violates the law, and also because they permit arrests on mere suspicion. The Florida Supreme Court has taken a step in the right direction by holding the Miami disorderly conduct ordinance invalid for vagueness.

The police will still need a law that enables them to question and detain suspicious persons, but the law must give adequate protection to the individual. Section 2 of the Uniform Arrest Act,[24] which has

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21. U.S. CONST., amend. IV; Henry v. United States, 361 U.S. 98 (1959).

22. *E.g.*, FLA. STAT. §856.03 (1963). See MIAMI, FLA. CITY CODE §43-45 (1965). This ordinance replaces the Miami ordinance, MIAMI, FLA. CITY CODE §43.10.5, declared unconstitutional in the instant case. Section 43-45 is also expressed in broad and vague terms which give the police wide discretion in arresting persons. A person can be arrested for a violation of §43-45 if he loiters and prowls in a place, in a manner, or at a time not usual for law-abiding persons and under circumstances that warrant alarm for the safety of persons or property in the vicinity.

23. FLA. STAT. §856.02 (1963): "Vagrants. Rogues and vagabonds, idle or dissolute persons who go about begging, common gamblers, persons who use juggling, or unlawful games or plays, common pipers and fiddlers, common drunkards, common night walkers, thieves, pilferers, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons who neglect their calling or employment, or are without reasonably continuous employment or regular income and who have not sufficient property to sustain them, and misspend what they earn without providing for themselves or the support of their families, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, idle and disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses or tippling shops, persons able to work but habitually living upon the earnings of their wives or minor children, and all able bodied male persons over the age of eighteen years who are without means of support and remain in idleness, shall be deemed vagrants . . . ."

24. See Warner, *The Uniform Arrest Act*, 28 VA. L. REV. 315, 320-24 (1942).