

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
COMMONWEALTH : No. CR-1061-2013
vs. :
JOHN BUDD, : Motion to Dismiss
Defendant :

OPINION AND ORDER

Before the Court is Defendant’s Omnibus Pretrial Motion that was filed on September 19, 2014. A hearing on said Motion was held on December 2, 2014. By separate Order, the Court addressed all of Defendant’s Motions contained in the Omnibus Motion except for the Motion to Dismiss Count 1, Drug Delivery Resulting in Death, a felony of the first degree.

This Opinion and Order shall address said Motion. Defendant contends that the statute at issue, 18 Pa. C.S.A. § 2506, is unconstitutionally void for vagueness.

Section 2506 (a) states: “A person commits a felony of the first degree if the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance...and another person dies as a result of using the substance.”

By way of history, when the statute was first enacted, it provided as follows: “A person commits murder of the third degree who...delivers...any controlled substance...and another person dies as a result of using the substance.”

In Commonwealth v. Ludwig, 583 Pa. 6, 874 A.2d 623 (2005), the Court addressed a challenge to the constitutionality of the original statute. The Supreme Court decided that the statute was not unconstitutionally vague. Considering the statutory language employed in the statute as well as other provisions of the Crime’s Code, the Court

determined that the statute provided a malice culpability element. The Court further concluded that the legislature, through those provisions, articulated the applicable mens rea with sufficient definiteness. Furthermore, by providing a mens rea, the Court concluded that the legislature supplied minimal guidelines regarding the elements necessary for a conviction pursuant to the statute. The Court concluded that the statute did not in any way encourage arbitrary or discriminatory enforcement.

Effective September 6, 2011, the language of the statute was amended to reflect the most recent version. Apparently in response to the Ludwig, decision, the amended statute removed the malice requirement. Inserted in the statute was the word “intentionally.”

Defendant argues that the word “intentionally” constitutes surplusage. Defendant argues that the additional language does nothing to correct the lack of a clear standard with respect to the mental state required for criminal liability. Defendant argues that because the word “intentionally” is surplusage, in essence the statute has no mens rea requirement and thus both lacks a clear standard and leads to a risk of arbitrary or discriminatory governmental action.

The Court cannot accept Defendant’s argument. With respect to a constitutional challenge based on vagueness, the United States Supreme Court stated:

“It is established that 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, 402-403 (1966). “Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning

with legal standards that courts must enforce.” Id. at 403. The Pennsylvania appellate courts have described the standard similarly.

A statute may be deemed unconstitutionally vague if it fails in its definiteness or adequacy of statutory expression. This void-for-vagueness doctrine, as it is known, implicates due process notions that a statute must provide reasonable standards by which a person may gauge his future conduct, i.e., notice and warning.

Ludwig, 874 A.2d at 628. If persons of common intelligence must necessarily guess at a statute’s meaning and differ as to its application, the statute may be found unconstitutional under the void-for-vagueness standard. Commonwealth v. Davidson, 595 Pa. 1, 938 A.2d 198, 207 (2007). If, however, the statute defines the criminal offense with sufficient definiteness that ordinary people understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement, it will pass a vagueness constitutional challenge. Id.

The Court concludes that the statute is not void for vagueness. The statute provides clear and understandable notice of what conduct is prohibited. Additionally, it is not drafted in a manner which encourages arbitrary or discriminatory enforcement. Clearly, under the statute, one who intentionally delivers a controlled substance to another person, and that person dies as a result of using the substance, is guilty of drug delivery resulting in death in violation of 18 Pa. C.S.A. § 2506. An ordinary person can certainly understand that if a person intentionally delivers a controlled substance to another person and that other person dies, the person commits criminal misconduct. The statute sets forth an objective standard which allows a person of common intelligence to know what is prohibited. In looking at the statutory language itself, including the definition of intentional conduct as set

forth in the Crimes Code, the Court is convinced that the statute is constitutional.

As well, in discerning the constitutionality of a statute, the courts may look to the legislative history. Ludwig, 874 A.2d at 629, citing Commonwealth v. Cotto, 562 Pa. 32, 753 A.2d 217, 221 (2000). As Congressman Pyle of Armstrong County noted:

What HB396 does is a very subtle nuance. It removes from the law the need for an attorney to prove malice, which is a subjective term, not one that is readily measurable. What it does is it substitutes for malice the phrase “willingly.” Can we prove a drug dealer had malice in his heart? No, we cannot, because we cannot see inside their hearts. What we can prove is that they willingly made a sale of a federally recognized schedule II narcotic or other.

Commonwealth of Pennsylvania Legislative Journal, Session of 2011, No. 29 (Wednesday, April 27, 2011).

The mens rea for a violation of the statute applies to the delivery of the controlled substance involved and does not apply to the victim’s death that resulted from using the controlled substance. The wording of the statute is clear. The Court notes further that it may define intentional through using the applicable statutory language, case law and standard jury instructions. The statute has “an understandable meaning with legal standards” that the courts can uniformly objectively enforce.

In closing, the Court notes that there are numerous other Pennsylvania criminal statutes which clearly prescribe intentional conduct resulting in certain consequences. See, for example, 18 Pa. C.S.A. § 2701 (simple assault); 18 Pa. C.S.A. § 2702 (aggravated assault); and 75 Pa. C.S.A. § 3732 (homicide by vehicle).¹

¹ In fact, in addressing a similar challenge to the homicide by vehicle statute, the Pennsylvania Supreme Court stated: “With unmistakable clarity, § 3732 defines ‘homicide by vehicle’ as a death caused by a person’s conduct violating law or municipal ordinance applying to vehicles or traffic regulation. This section does not employ ‘ambiguous’ words, ‘archaic classifications’, or words with ‘numerous and varied’ meanings.

Accordingly, the Court will deny Defendant's constitutional challenge.

ORDER

AND NOW, this ___ day of December 2014, following a hearing and argument on Defendant's Motion to Dismiss the Information based on the alleged unconstitutionality of the statute, the Court DENIES such. The Court finds that 18 Pa. C.S.A. § 2506 is not unconstitutionally void for vagueness.

By The Court,

Marc F. Lovecchio, Judge

cc: DA (NI)
PD (NS)
Gary Weber, Esquire (Lycoming Reporter)
Work file

Accordingly, any vagueness challenge must be rejected.” Commonwealth v. Field, 490 Pa. 519, 417 A.2d 160 (1980), quoting Commonwealth v. Burt, 490 Pa. 173, 178-179, 415 A.2d 89, 92 (1980)(citations omitted).