Ordinances: Los Angeles Ordinance Prohibiting Use of Vehicle on Public Property as "Living Quarters" is Unconstitutionally Vague

Desertrain v. City of Los Angeles, No. 11-56957 (9th Cir. June 19, 2014).

A long-standing Los Angeles ordinance prohibiting people from using their vehicles as "living quarters" while on public streets or parking lots has been struck down by the Ninth Circuit for vagueness in that it failed to provide adequate notice to potential arrestees and did not provide police with sufficiently clear standards for enforcement.

In 2010 Los Angeles received various complaints about homeless individuals living in cars on the streets of Venice. The City created a task force within the Los Angeles Police Department to cite and arrest people using their cars as "living quarters." The police relied on a 1983 ordinance to cite and arrest individuals, which stated "no person shall use a vehicle parked or standing upon any City street, or upon any parking lot owned by the City of Los Angeles and under the control of the City . . . as living quarters either overnight, day-by-day, or otherwise." The captain who ran the task force received informal, verbal training and an internal policy memo on how to enforce the ordinance. The memo directed officers to look for possessions normally found in homes to detect whether individuals were using vehicles as living quarters and instructed officers that individuals need not be sleeping in order to be in violation.

Officers began citing and arresting individuals under the ordinance. One plaintiff was cited while he was in his car parked on a public street waiting for a church to open so he could volunteer to serve food to homeless individuals. He knew the law and believed that since he did not sleep in his car on public streets – he had permission from the church to park in its lot at night – he was not breaking the law. A month later when officers saw him exiting his legally-parked vehicle they arrested him for violating the ordinance. A second plaintiff, after being issued a warning for sleeping in his car, began sleeping on the sidewalk near his parked car – which is legal in Venice. He was subsequently arrested when officers found him sitting in his car to avoid a rainstorm, despite his presenting an identification card from a local shelter where he was sleeping. A third plaintiff was driving through Venice when she was stopped by officers for failing to signal a left-hand turn and was issued a warning about the local ordinance. She had permission from a church in Santa Monica to park her RV at night and sleep there, but nonetheless the officers told her she would be arrested if ever again seen in Venice with her vehicle. A fourth plaintiff was cited and arrested after officers saw house-like items in his car, including bedding, boxed food, and bottles of medicine, despite his statements that he did not sleep in the vehicle.

Plaintiffs filed suit against the City under the Fourth, Fifth, and Fourteenth Amendments, alleging the ordinance was unconstitutionally vague and devoid of any standards to limit police discretion. The parties filed cross-motions for summary judgment and the District Court granted the City's motion on all claims.

HELD: On appeal, the Ninth Circuit reversed the District Court, holding the Los Angeles ordinance fails to provide sufficient notice to individuals of what conduct is prohibited and fails to provide guidelines to limit police discretion, enabling discriminatory enforcement.

DISCUSSION: The Ninth Circuit first dealt with the District Court ruling on summary judgment that it could not consider the plaintiff's vagueness challenge since it was not in the first amended complaint. The court held this was an abuse of discretion because the lower court should have granted the plaintiffs' request to amend. Noting that leave to amend should be granted freely and this policy should be "applied with extreme liberty," the court pointed out there are five factors courts use to determine whether an amendment should be granted. The factors include bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has already amended the complaint. The Ninth Circuit found none of these factors were an issue, and thus the lower court should have allowed the plaintiff's to amend their complaint a second time.

The court easily found the ordinance failed to provide fair notice such that citizens could conduct themselves accordingly. It did not define "living quarters" and did not set forth how long one must be using a car in this undefined fashion before breaking the law. As the Circuit Court put it, people "are left guessing as to what behavior would subject them to citation . . . . Is it impermissible to eat food in a vehicle? Is it illegal to keep a sleeping bag? Canned food? Books? What about speaking on a cell phone? Or staying in the car to get out of the rain? These are all actions plaintiffs were taking when arrested . . . all of which are otherwise perfectly legal."

The Ninth Circuit also found the ordinance unconstitutional for failing to provide any discernable guidelines to limit police discretion. The court found "arbitrary and discriminatory enforcement is exactly what occurred," given that the law is clearly broad enough to apply to anyone, but the police only targeted the homeless. The City argued that individuals were all cited and arrested because of health and safety concerns and that it was unsafe for them to be living in their vehicles. The court conceded that might well have been true, but the plaintiffs' conduct in each case "mimick[ed] the everyday conduct of many Los Angeles residents," and only the homeless were cited and arrested. The City also argued that it had legitimized an otherwise vague ordinance with limiting constructions given to the police, but the court rejected this argument, pointing out that the internal memo that was supposed to guide officers was completely ignored by the police and that the task force leader stated in his deposition that he did not favor that limiting construction and directed the task force members not to follow it.

http://cdn.ca9.uscourts.gov/datastore/opinions/2014/06/19/11-56957.pdf (last accessed July 5, 2014).

Procedure: Where City Declines to Appeal Injunction Against Religious Display, Non-Party Church Does Not Have Standing to Appeal As Intervenor

Cabral v. City of Evansville, 13-2914 (7th Cir. June 25, 2014).

Where residents enjoined a city from permitting a church to erect a large religious display, the church, which had not been a party to the injunction suit, did not have standing to appeal the injunction.