

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE)	
)	Case No.: 0711031808
)	Cr.A. Nos.: K08-02-2437
)	K08-02-2438
v.)	K08-02-2439
)	K08-02-2440
BENNETTA E. SPADY)	K08-02-2441
)	K08-02-2442
Defendant.)	

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DECISION ON MOTION TO DISMISS

Bennetta E. Spady (“Defendant”) has been charged with six counts of inhumane handling, care and treatment of dogs in violation of 7 *Del. C.* §1702 and §1704. Just prior to the start of her trial, she moved to dismiss the charges against her pursuant to Rule 12(b) of the *Criminal Rules Governing the Court of Common Pleas* on the grounds that the Court of Common Pleas does not have jurisdiction to hear the charges against her because they do not constitute crimes. They should be adjudicated as administrative

matters by the Department of Natural Resources and Environmental Control (“DNREC”). Additionally, the Defendant contends that 7 *Del. C.* §1704 and §1703, which addresses the enforcement of §1704, are constitutionally void for vagueness as they are unclear in many instances as to what conduct is forbidden and which punishment may be imposed. The Court holds that the charges pending against the Defendant are unclassified criminal misdemeanors and, as such, fall under the criminal jurisdiction of the Court of Common Pleas. Additionally, the Court finds that 7 *Del. C.* §§1703 and 1704 are not constitutionally void for vagueness as people of common intelligence can discern the specific acts that are prohibited and the punishment that may be imposed. Therefore, the Defendant’s Motion to Dismiss is denied.

FACTS

The Defendant, the owner/operator of a kennel, has been formally charged by the State with six counts of criminal misdemeanor as follows:

- One count of Failure to Display a dog license in violation of 7 *Del. C.* §1702(e);
- Two counts of failure to have Proper Drainage and Waste Disposal in violation of 7 *Del. C.* §1704(a)(3);
- One count of failing to have a Food Receptacle for Kennel Readily Accessible to Dogs in violation of 7 *Del. C.* §1704(e)(3);
- One count of failing to Clean Primary Enclosures as Often as Necessary to Prevent Contamination in violation of 7 *Del. C.* §1704(e)(5); and
- One count of Providing All Dogs With Adequate Water in violation of 7 *Del. C.* §1704(e) (4).

Pursuant to 11 *Del. C.* §1714, the penalty to be imposed for a violation of each of these statutes is a fine.

PARTY CONTENTIONS

In her Motion to Dismiss, the Defendant contends that the Court of Common Pleas does not have jurisdiction to hear the charges against her because they constitute administrative matters, not crimes. She argues that administrative proceedings should have been initiated against her rather than the filing of criminal charges and that the only remedies available against her are administrative fines that may be levied and orders by the Secretary of DNREC that may be issued to suspend her kennel and retail dog dealer license. It is her position that all enforcement powers, including the power to levy and collect fines related to non-compliance with the statutes listed by the State in her Information, are vested in DNREC and are only subject to judicial review under the State Administrative Procedures Act.

The Defendant also contends that the statutory provisions under which she has been charged are constitutionally void for vagueness “as it is unclear in many instances what conduct is forbidden and undoubtedly unclear on which punishment may be imposed”. It is the Defendant’s position that the statutory sections under which she has been charged criminally are so riddled with vague provisions that criminal enforcement would violate the Defendant’s due process rights.

The State contends that the non-compliance with the statutory provisions listed in the Information against the Defendant is both an administrative matter as well as a potential criminal matter. The State argues that it is not uncommon for Delaware statute

to allow for dual punishments under both the Administrative Procedures Act and the Criminal Code, such as the criminal and administrative remedies available against individuals driving under the influence. Additionally, the State maintains that the statutes under which the Defendant has been criminally charged are not void for vagueness. They are left intentionally broad to deal with matters involving a variety of animals.

STANDARD OF REVIEW

Pursuant to Court of Common Pleas Criminal Rule 12(b)(1), a Motion to Dismiss for lack of jurisdiction over a subject matter and constitutional vagueness should be granted when it appears that the Court does not have jurisdiction over the claim or that it is unconstitutional. The State bears the burden of establishing the Court's jurisdiction as an element of any criminal offense beyond a reasonable doubt. 11 *Del. C.* §232. *James v. State*, 377 A.2d 15 (1977). *Thornton v. State*, 405 A.2d 126 (1979). It is the Defendant's burden to establish that a state criminal statute is so vague that it violates his or her due process rights under the United States Constitution. *State of Delaware v. Darling*, 2007 WL 1784185, at *6 (Del. Super. Ct.). "To prevail on a claim of unconstitutional vagueness, the Defendant must show that the statute is vague as applied to his own conduct." *Id.*

DISCUSSION

Jurisdiction.

Before the Court determines whether the statutes under which the Defendant has been charged are constitutionally void for vagueness, it must determine whether the

charges are within the jurisdiction of the Court of Common Pleas. Upon a review of Delaware statute, it is evident that the charges pending against the Defendant are criminal in nature and are within the jurisdiction of the Court of Common Pleas.

“The Court of Common Pleas for the State [has] original jurisdiction to hear, try and finally determine all misdemeanors and violations alleged to have been committed within the State, except where jurisdiction over such offenses is vested exclusively in another court.” 11 *Del. C.* §2701(b). Under 11 *Del. C.* §233, the definition and classification of offenses are as follows:

- (a) “Crime” or “offense” means an act or omission forbidden by a statute of this State and punishable upon conviction by:
 - (1) Imprisonment; or
 - (2) Fine; or . . .
- (b) An act or omission is forbidden by statute of this State if a statute makes the act or omission punishable by any form of punishment mentioned in subsection (a) of this section.
- (c) An offense is either a felony, a misdemeanor or a violation. Any offense not specifically designated by law to be a felony or a violation is a misdemeanor.

11 *Del. C.* §233.

Pursuant to 11 *Del. C.* §233, should a fine be imposed for conduct prohibited by Delaware statute, the conduct is a criminal offense, unless otherwise specified by the General Assembly. Since the charges against the Defendant result in a fine if she is convicted, her conduct is considered a criminal offense. The provisions of Title 7 of the Delaware Code under which she has been charged are silent as to the type of offense the prohibited conduct constitutes. Therefore, pursuant to 11 *Del. C.* §233(c), these offenses must be considered unclassified misdemeanors. *See also* 11 *Del. C.* §4202(b). As the Court of Common Pleas for the State has original jurisdiction to hear, try and finally determine all misdemeanors alleged to have been committed within the State, except

where jurisdiction over such offenses is vested exclusively in another court, this Court has original jurisdiction to hear the Defendant's case. 11 *Del. C.* §2701(b).

Constitutional Vagueness.

Now that it has been established that the charges pending against the Defendant are criminal in nature and within the jurisdiction of this Court, the Court must consider the Defendant's contention that the statutes under which she has been charged are constitutionally void for vagueness in violation of the Fourteenth Amendment to the Federal Constitution. In this regard, the Defendant contends that "[t]he statutory sections under which [she] has been charged criminally are so riddled with vague provisions, that criminal enforcement would violate [her] Due Process rights".

In order to prevail on this contention, the Defendant must show that the statutes under which she has been charged either forbid or require the doing of an act in terms so vague that people of common intelligence must necessarily guess at its meaning and differ as to its application. *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926). "To prevail on a claim of unconstitutional vagueness, the Defendant must show that the statute is vague as applied to [her] own conduct." *State of Delaware v. Darling*, 2007 WL 1784185, at *6 (Del. Super. Ct.).

The statutes under which the Defendant has been charged are as follows:

- Failure to Display a Dog License in violation of 7 *Del. C.* §1702(e). This section of the Delaware Code states as follows:

Upon application and payment of the fee for a dog or kennel license, the applicant shall be entitled to receive a license, provided proof of a currently valid rabies vaccination can be presented for each dog for which the license is sought. Each dog

and kennel license shall show the date on which the license fee is paid. The Department or its duly authorized agents shall issue with each license a metal tag for each dog covered showing the year(s) for which the license fee is paid and the serial number of the license. The tag shall be of a design to be adopted by the Department, and shall be affixed to a substantial collar by the owner of such dog and shall be worn by such dog at all times. If any such tag should be lost, a new tag shall forthwith be secured from the Department for a fee of \$1.

- Failure to Have Proper Drainage and Waste Disposal in violation of

7 Del. C. §1704(a)(3). This section of the Delaware Code provides as follows:

Provision shall be made for the regular collection, removal and disposal of animal and food wastes, bedding, debris and dead animals in a manner that minimizes contamination and disease risks. If housing facilities are equipped with disposal facilities and drainage systems, they shall be constructed and operated so that animal wastes and water are rapidly eliminated and the dogs stay dry. All drains shall be properly constructed, installed and maintained. If closed drainage systems are used, they shall be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor.

- Failing to Have a Food Receptacle for Kennel Readily Accessible to Dogs

in violation of *7 Del. C. §1704(e)(3)*. This section of the Delaware Code provides as follows:

Food receptacles shall be readily accessible to all dogs and shall be located so as to minimize contamination by excreta. The receptacles shall be durable and shall be kept clean. The food receptacles shall be sanitized at least once per week. Disposable food receptacles may be used but shall be discarded after each feeding. Self feeders may be used for the feeding of dry food but shall be sanitized regularly to prevent molding, deterioration or caking of feed.

- Failing to Clean Primary Enclosures as Often as Necessary to Prevent Contamination in violation of *7 Del. C. §1704(e)(5)*. This section of the Delaware Code provides as follows:

Excreta and food waste shall be removed from a primary enclosure, including any floor area or ground surface beneath the primary enclosure on a daily basis. When steam or water is used to clean the primary enclosure, whether by hosing, flushing or other methods, dogs shall be removed, unless the enclosure is large enough to ensure that the dogs will not be harmed, wetted or distressed in the process. Standing water shall be removed from the primary enclosure and dogs in other primary enclosures shall be protected from being contaminated with water and other wastes during the cleaning.

- Providing All Dogs With Adequate Water in violation of *7 Del. C. §1704(e)(4)*. This section of the Delaware Code provides as follows:

If potable water is not continually available to the dogs, it shall be offered to the dogs as often as necessary to ensure their health and well-being. Watering receptacles shall be kept clean and shall be sanitized at least once per week.

The Defendant is the operator of a kennel and, under *7 Del. C. § 1703(c)*, must be warned and provided an opportunity to bring her facility into compliance before she can be charged and convicted of a §1704 violation and fined under §1714. Under *7 Del. C. § 1703(a)*, dog wardens are authorized to inspect the kennel facilities during normal business hours to ascertain whether or not the facilities satisfy the requirements for the humane handling, care and treatment of dogs as specified in *7 Del. C. § 1704*. If there is probable cause to believe that there may be a violation of *7 Del. C. § 1704*, the dog warden may investigate as long as he does not enter any dwelling house or structure without permission. *7 Del. C. § 1703(b)*. Once a violation of *7 Del. C. §1704* is found, the following administrative procedures must be followed:

[The operator of the facility must] be issued a warning identifying the deficiencies. Such operator [then has] at least 10 days to bring the premises or facility into compliance with §1704 of this title; provided that this time period may be extended by [DNREC], at its direction, for up to 60 days depending upon the nature of the violation and the action necessary for compliance. If, upon expiration of the warning period, such premises or facilities have not been brought into compliance, the operator shall be fined in accordance with the terms specified in §1714 of this title. 7 *Del. C.* § 1703(c).

As discussed earlier, under 11 *Del. C.* §1714, a criminal fine is the penalty to be imposed for a violation of any of these statutes.

Each of the above statutes are clear on their face. It is not necessary for people of common intelligence to guess at their meaning and to differ as to their application.

Therefore, they are not constitutionally void for vagueness. People of common intelligence can discern the specific acts that are prohibited and the punishment that may be imposed. The administrative procedures set forth in 7 *Del. C.* §1703, that must be followed prior to the imposition of a criminal fine under 7 *Del. C.* §1714, merely provide notice to the Defendant as to her kennel's specific violations of 7 *Del. C.* § 1704 and how to remedy those violations to be in compliance before criminal charges can be brought. Therefore, the defendant's arguments of constitutional vagueness fail.

CONCLUSION

The charges pending against the Defendant for violations of 7 *Del. C.* §1702 and 1704 are unclassified misdemeanors and, as such, fall under the criminal jurisdiction of the Court of Common Pleas. Additionally, 7 *Del. C.* §1704 and §1703, which addresses the enforcement of §1704, are not constitutionally void for vagueness as people of common intelligence can discern the specific acts that are prohibited and the punishment

that may be imposed. Therefore, the Defendant's Motion to Dismiss the charges against her on the grounds of lack of jurisdiction and constitutional vagueness is denied.

IT IS SO ORDERED this 7th day of November, 2008.

CHARLES W. WELCH
JUDGE