

[J-23-2004, J-24-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 19 WAP 2003
	:	
Appellant	:	Appeal from the Order of the Court of
	:	Common Pleas of Mercer County entered
v.	:	September 4, 2002 at No.
	:	1020Criminal2002.
RICHARD CARROLL NOEL ,	:	
	:	
Appellee	:	
	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	No. 20 WAP 2003
	:	
Appellant	:	Appeal from the Order of the Court of
	:	Common Pleas of Mercer County entered
v.	:	September 4, 2002 at No.
	:	1023Criminal2002.
KEITH DOUGLAS TRAVIS,	:	
	:	
Appellee	:	ARGUED: March 3, 2004

DISSENTING OPINION

MR. JUSTICE EAKIN

DECIDED: SEPTEMBER 22, 2004

A horse is a horse, of course, of course,
And no one can talk to a horse of course
That is, of course, unless the horse is the famous Mr. Ed.

Go right to the source and ask the horse
He'll give you the answer that you'll endorse.
He's always on a steady course.
Talk to Mr. Ed.

Ray Evans and Jay Livingston, Mr. Ed, (CBS, 1961-1966).

Mr. Ed would know which sections of Part III do not “by their very nature” apply to his rider, and I attribute the equivalent horse sense to the ordinary reasonable person. Because I cannot agree § 3103(a) of the Vehicle Code is unconstitutionally vague, I offer my respectful dissent.

75 Pa.C.S. § 3103(a) states that persons riding animals or animal-drawn vehicles upon a roadway are subject to all provisions of Part III of the Vehicle Code (Chapters 31 through 37) except those “which by their very nature can have no application.” Appellees were charged with violating § 3731, which states, “[a] person shall not drive, operate or be in actual physical control of the movement of any vehicle... while under the influence of alcohol to a degree which renders the person incapable of safe driving.” 75 Pa.C.S. § 3731(a)(1). Clearly, this is a provision of the Vehicle Code which is not “by [its] very nature” without application to persons riding an animal on the roadway.

In order for a penal statute to be constitutionally firm, the offense must be defined with “sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” Commonwealth v. Mayfield, 832 A.2d 418, 422 (Pa. 2003) (citations omitted). “Due process is satisfied if the statute provides reasonable standards by which a person may gauge his future conduct.” Id. (citing Commonwealth v. Heinbaugh, 354 A.2d 244, 246 (Pa. 1976)).

Due process simply requires the statute in question to contain reasonable standards to guide prospective conduct. Id. (citations omitted). The majority rides far afield, wondering whether an equestrian could be cited for driving the horse over a fire hose (§ 3708), or on a sidewalk (§ 3703), or whether § 3746 requires a person falling off a horse to notify police. The answer to the first two is “of course.” At a fire, the offense

is not merely driving over hoses - it is driving over hoses without consent of the person regulating traffic. The statute involves regulating traffic away from the firefighting equipment, which makes eminent sense, and the offense is not “by its nature” inapplicable to drivers of animals. Likewise, one is no more allowed to endanger pedestrians by riding a horse on the sidewalk than one is allowed to drive one’s car there, momentarily or otherwise. As for the third hypothetical, the situation remains one of common sense; any ambiguity in this section involves the word “accident,” not its application to equestrians. Whether falling from a horse or a car, if it is on the highway and comprises an accident which results in injury, one must report; if there is no accident or injury, there is no need to report. The rationale for police involvement is no different just because the highway accident involved a horse.

Besides, appellant is charged with DUI, not a fire hose or sidewalk violation. “It is well established that vagueness challenges to statutes which do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand.” Heinbaugh, at 245 (citation omitted). It is not within the purview of this Court to adjudicate the rights of hypothetical individuals engaged in hypothetical conduct. Id. We could fashion imaginary fact situations until the livestock returns to the barn, but that is not proper constitutional analysis.

Trotting through Part III, it is not difficult to discern which statutes “by their very nature” cannot apply to equestrians. Section 3113 deals with pedestrians, not drivers. Section 3343 describes how specific heavy equipment shall be moved over railroad crossings; a horse is not one of the listed pieces of equipment. Section 3366 deals with contents of speeding citations and § 3368 involves devices with which speed may be

timed. The whole of Chapter 35 deals specifically with pedalcycles, motorcycles,¹ and pedestrians; animals “by their very nature” are not pedalcycles, motorcycles, or pedestrians, and not subject to these specially tailored sections.

These are statutes “by their very nature” not applicable to animal drivers; interestingly, they are not by nature applicable to the driver of a car, either. It is the “rules of the road” that apply to the driver of the mustang and Mustang alike. Here, an ordinary person of common intelligence would know that riding a horse while intoxicated would be a violation of § 3731, just as the same person would recognize that the rider of a horse must stop at a stop sign, ride on the right side of the road, and signal before turning. See Mayfield, at 423 (statute sufficiently definite that ordinary people can understand what conduct is prohibited and is not so vague men of common intelligence must guess at its meaning and differ as to its application).

A horse is a horse, of course, of course,
but the Vehicle Code does not divorce
its application from, perforce,
a steed, as my colleagues said.

“It’s not vague” I’ll say until I’m hoarse,
and whether a car, a truck or horse
this law applies with equal force,
and I’d reverse instead.

Because I cannot agree this statute is vague or ambiguous, I respectfully dissent.

¹ There is an equivalent section to § 3103 for pedalcycles (§ 3501) and motorcycles (§ 3521), each excluding offenses “by their nature” inapplicable to that particular user of the highways. One must assume the same vagueness arguments make these sections unconstitutional as well.