

Supreme Court of the United States
405 U.S. 156

Margaret PAPACHRISTOU et al., Petitioners,
v.
CITY OF JACKSONVILLE

Decided Feb. 24, 1972

Mr. Justice DOUGLAS delivered the opinion of the Court.

This case involves eight defendants who were convicted in a Florida municipal court of violating a Jacksonville, Florida, vagrancy ordinance.¹ Their convictions, entailing fines and jail sentences . . . were affirmed by the Florida Circuit Court in a consolidated appeal, and their petition for certiorari was denied by the District Court of Appeal[.] The case is here on a petition for certiorari. . . . For reasons which will appear, we reverse.

At issue are five consolidated cases. Margaret Papachristou, Betty Calloway, Eugene Eddie Melton, and Leonard Johnson were all arrested early on a Sunday morning, and charged with vagrancy—"prowling by auto."

Jimmy Lee Smith and Milton Henry were charged with vagrancy—"vagabonds."

Henry Edward Heath and a codefendant were arrested for vagrancy—"loitering" and "common thief."

Thomas Owen Campbell was charged with vagrancy—"common thief."

Hugh Brown was charged with vagrancy—"disorderly loitering on street" and "disorderly conduct—resisting arrest with violence."

The facts are stipulated. Papachristou and Calloway are white females. Melton and Johnson are black males. Papachristou was enrolled in a job-training program sponsored by the State Employment Service at Florida Junior College in Jacksonville. Calloway was a typing and shorthand teacher at a state mental institution located near Jacksonville. She was the owner of the automobile in which the four defendants were arrested. Melton was a Vietnam war veteran who had been released from the Navy after nine months in a veterans' hospital. On the date of his arrest he was a part-time computer helper while attending college as a full-time student in Jacksonville. Johnson was a tow-motor operator in a grocery chain warehouse and was a lifelong resident of Jacksonville.

At the time of their arrest the four of them were riding in Calloway's car on the main thoroughfare in Jacksonville. They had left a restaurant owned by Johnson's uncle where they had eaten and were on their way to a nightclub. The arresting officers denied that the racial mixture in the car played any part in the decision to make the arrest. The arrest, they said, was made because the defendants had stopped near a used-car lot which had been broken into several times. There was, however, no evidence of any breaking and entering on the night in question.

Of these four charged with “prowling by auto” none had been previously arrested except Papachristou who had once been convicted of a municipal offense.

Jimmy Lee Smith and Milton Henry (who is not a petitioner) were arrested between 9 and 10 a.m. on a weekday in downtown Jacksonville, while waiting for a friend who was to lend them a car so they could apply for a job at a produce company. Smith was a part-time produce worker and part-time organizer for a Negro political group. He had a common-law wife and three children supported by him and his wife. He had been arrested several times but convicted only once. Smith's companion, Henry, was an 18-year-old high school student with no previous record of arrest.

This morning it was cold, and Smith had no jacket, so they went briefly into a dry-cleaning shop to wait, but left when requested to do so. They thereafter walked back and forth two or three times over a two-block stretch looking for their friend. The store owners, who apparently were wary of Smith and his companion, summoned two police officers who searched the men and found neither had a weapon. But they were arrested because the officers said they had no identification and because the officers did not believe their story.

Heath and a codefendant were arrested for “loitering” and for “common thief.” Both were residents of Jacksonville, Heath having lived there all his life and being employed at an automobile body shop. Heath had previously been arrested but his codefendant had no arrest record. Heath and his companion were arrested when they drove up to a residence shared by Heath's girlfriend and some other girls. Some police officers were already there in the process of arresting another man. When Heath and his companion started backing out of the driveway, the officers signaled to them to stop and asked them to get out of the car, which they did. Thereupon they and the automobile were searched. Although no contraband or incriminating evidence was found, they were both arrested, Heath being charged with being a “common thief” because he was reputed to be a thief. The codefendant was charged with “loitering” because he was standing in the driveway, an act which the officers admitted was done only at their command.

Campbell was arrested as he reached his home very early one morning and was charged with “common thief.” He was stopped by officers because he was traveling at a high rate of speed, yet no speeding charge was placed against him.

Brown was arrested when he was observed leaving a downtown Jacksonville hotel by a police officer seated in a cruiser. The police testified he was reputed to be a thief, narcotics pusher, and generally opprobrious character. The officer called Brown over to the car, intending at that time to arrest him unless he had a good explanation for being on the street. Brown walked over to the police cruiser, as commanded, and the officer began to search him, apparently preparatory to placing him in the car. In the process of the search he came on two small packets which were later found to contain heroin. When the officer touched the pocket where the packets were, Brown began to resist. He was charged with “disorderly loitering on street” and “disorderly conduct—resisting arrest with violence.” While he was also charged with a narcotics violation, that charge was nolle.

Jacksonville's ordinance [was] derived from early English law, and employs archaic language in [its] definitions of vagrants. The history is an often-told tale. The break-up of feudal estates in England led to labor shortages which in turn resulted in the Statutes of Laborers, designed to stabilize the labor force by prohibiting increases in wages and prohibiting the movement of workers from their home areas in search of improved conditions. Later vagrancy laws became

criminal aspects of the poor laws. The series of laws passed in England on the subject became increasingly severe. But “the theory of the Elizabethan poor laws no longer fits the facts[.]” The conditions which spawned these laws may be gone, but the archaic classifications remain.

This ordinance is void for vagueness, both in the sense that it “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,” . . . and because it encourages arbitrary and erratic arrests and convictions.

Living under a rule of law entails various suppositions, one of which is that “(all persons) are entitled to be informed as to what the State commands or forbids.” . . . In the field of regulatory statutes governing business activities, where the acts limited are in a narrow category, greater leeway is allowed.

The poor among us, the minorities, the average householder are not in business and not alerted to the regulatory schemes of vagrancy laws; and we assume they would have no understanding of their meaning and impact if they read them. Nor are they protected from being caught in the vagrancy net by the necessity of having a specific intent to commit an unlawful act.

The Jacksonville ordinance makes criminal activities which by modern standards are normally innocent. “Night walking” is one. Florida construes the ordinance not to make criminal one night's wandering, only the “habitual” wanderer or, as the ordinance describes it, “common night walkers.” We know, however, from experience that sleepless people often walk at night, perhaps hopeful that sleep-inducing relaxation will result.

Luis Munoz-Marin, former Governor of Puerto Rico, commented once that “loafing” was a national virtue in his Commonwealth and that it should be encouraged. It is, however, a crime in Jacksonville.

“[P]ersons able to work but habitually living upon the earnings of their wives or minor children”—like habitually living “without visible means of support”—might implicate unemployed pillars of the community who have married rich wives.

“[P]ersons able to work but habitually living upon the earnings of their wives or minor children” may also embrace unemployed people out of the labor market, by reason of a recession⁵ or disemployed by reason of technological or so-called structural displacements.

Persons “wandering or strolling” from place to place have been extolled by Walt Whitman and Vachel Lindsay.⁶ The qualification “without any lawful purpose or object” may be a trap for innocent acts. Persons “neglecting all lawful business and habitually spending their time by frequenting . . . places where alcoholic beverages are sold or served” would literally embrace many members of golf clubs and city clubs.

Walkers and strollers and wanderers may be going to or coming from a burglary. Loafers or loiterers may be “casing” a place for a holdup. Letting one's wife support him is an intra-family matter, and normally of no concern to the police. Yet it may, of course, be the setting for numerous crimes.

The difficulty is that these activities are historically part of the amenities of life as we have known them. They are not mentioned in the Constitution or in the Bill of Rights. These unwritten amenities have been in part responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity. These amenities have dignified the right of dissent and have honored the right to be nonconformists and the right to defy submissiveness. They have encouraged lives of high spirits rather than hushed, suffocating silence.

They are embedded in Walt Whitman's writings, especially in his "Song of the Open Road." They are reflected too, in the spirit of Vachel Lindsay's "I Want to Go Wandering," and by Henry D. Thoreau.⁷

This aspect of the vagrancy ordinance before us is suggested by what this Court said in 1876 about a broad criminal statute enacted by Congress: "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large."

[T]he due process implications are equally applicable to the States and to this vagrancy ordinance. Here the net cast is large, not to give the courts the power to pick and choose but to increase the arsenal of the police. [As Mr. Justice Frankfurter has said], vagrancy "statutes are in a class by themselves, in view of the familiar abuses to which they are put. . . . Definiteness is designedly avoided so as to allow the net to be cast at large, to enable men to be caught who are vaguely undesirable in the eyes of police and prosecution, although not chargeable with any particular offense. In short, these 'vagrancy statutes' . . . are not fenced in by the text of the statute or by the subject matter so as to give notice of conduct to be avoided."

Where the list of crimes is so all-inclusive and generalized as the one in this ordinance, those convicted may be punished for no more than vindicating affronts to police authority. [As Caleb Foote explained in his law review article on vagrancy], "The common ground which brings such a motley assortment of human troubles before the magistrates in vagrancy-type proceedings is the procedural laxity which permits 'conviction' for almost any kind of conduct and the existence of the House of Correction as an easy and convenient dumping-ground for problems that appear to have no other immediate solution."

Another aspect of the ordinance's vagueness appears when we focus, not on the lack of notice given a potential offender, but on the effect of the unfettered discretion it places in the hands of the Jacksonville police. Caleb Foote, an early student of this subject, has called the vagrancy-type law as offering "punishment by analogy." Such crimes, though long common in Russia,¹² are not compatible with our constitutional system. We allow our police to make arrests only on "probable cause," a Fourth and Fourteenth Amendment standard applicable to the States as well as to the Federal Government. Arresting a person on suspicion, like arresting a person for investigation, is foreign to our system, even when the arrest is for past criminality. Future criminality, however, is the common justification for the presence of vagrancy statutes. Florida has, indeed, construed her vagrancy statute "as necessary regulations," *inter alia*, "to deter vagabondage and prevent crimes."

A direction by a legislature to the police to arrest all "suspicious" persons would not pass constitutional muster. A vagrancy prosecution may be merely the cloak for a conviction which

could not be obtained on the real but undisclosed grounds for the arrest. But as Chief Justice Hewart said in *Frederick Dean*, 18 Crim.App. 133, 134 (1924):

“It would be in the highest degree unfortunate if in any part of the country those who are responsible for setting in motion the criminal law should entertain, connive at or coquette with the idea that in a case where there is not enough evidence to charge the prisoner with an attempt to commit a crime, the prosecution may, nevertheless, on such insufficient evidence, succeed in obtaining and upholding a conviction under the Vagrancy Act”

Those generally implicated by the imprecise terms of the ordinance—poor people, nonconformists, dissenters, idlers—may be required to comport themselves according to the lifestyle deemed appropriate by the Jacksonville police and the courts. Where, as here, there are no standards governing the exercise of the discretion granted by the ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law. It furnishes a convenient tool for ‘harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure.’” It results in a regime in which the poor and the unpopular are permitted to ‘stand on a public sidewalk . . . only at the whim of any police officer.’” Under this ordinance, “[I]f some carefree type of fellow is satisfied to work just so much, and no more, as will pay for one square meal, some wine, and a flophouse daily, but a court thinks this kind of living subhuman, the fellow can be forced to raise his sights or go to jail as a vagrant.” Anthony G. Amsterdam, *Federal Constitutional Restrictions on the Punishment of Crimes of Status, Crimes of General Obnoxiousness, Crimes of Displeasing Police Officers, and the Like*, 3 Crim.L.Bull. 205, 226 (1967).

A presumption that people who might walk or loaf or loiter or stroll or frequent houses where liquor is sold, or who are supported by their wives or who look suspicious to the police are to become future criminals is too precarious for a rule of law. The implicit presumption in these generalized vagrancy standards—that crime is being nipped in the bud—is too extravagant to deserve extended treatment. Of course, vagrancy statutes are useful to the police. Of course, they are nets making easy the roundup of so-called undesirables. But the rule of law implies equality and justice in its application. Vagrancy laws of the Jacksonville type teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds society together.

The Jacksonville ordinance cannot be squared with our constitutional standards and is plainly unconstitutional.

Reversed.

Mr. Justice POWELL and Mr. Justice REHNQUIST took no part in the consideration or decision of this case.

Footnotes

¹ Jacksonville Ordinance Code Section 26—57 provided at the time of these arrests and convictions as follows:

“Rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished as provided for Class D offenses.” Class D offenses at the time of these arrests and convictions were punishable by 90 days' imprisonment, \$500 fine, or both.

⁵ [We have] said: “Whatever may have been the notion then prevailing, we do not think that it will now be seriously contended that because a person is without employment and without funds he constitutes a ‘moral pestilence.’ Poverty and immorality are not synonymous.”

⁶ And see Reich, *Police Questioning of Law Abiding Citizens*, 75 *Yale L.J.* 1161, 1172 (1966): “If I choose to take an evening walk to see if Andromeda has come up on schedule, I think I am entitled to look for the distant light of Almach and Mirach without finding myself staring into the blinding beam of a police flashlight.”

⁷ “I have met with but one or two persons in the course of my life who understood the art of Walking, that is, of taking walks,—who had a genius, so to speak, for sauntering: which word is beautifully derived ‘from idle people who roved about the country, in the Middle Ages, and asked charity, under pretence of going a la Sainte Terre,’ to the Holy Land, till the children exclaimed, ‘There goes a Sainte Terre,’ a Saunterer, a Holy-Lander. They who never go to the Holy Land in their walks, as they pretend, are indeed mere idlers and vagabonds; but they who do go there are saunterers in the good sense, such as I mean. Some, however, would derive the word from sans terre, without land or a home, which, therefore, in the good sense, will mean, having no particular home, but equally at home everywhere. For this is the secret of successful sauntering. He who sits still in a house all the time may be the greatest vagrant of all; but the saunterer, in the good sense, is no more vagrant than the meandering river, which is all the while sedulously seeking the shortest course to the sea. But I prefer the first, which, indeed, is the most probable derivation. For every walk is a sort of crusade, preached by some Peter the Hermit in us, to go forth and reconquer this Holy Land from the hands of the Infidels.” *Excursions* 251—252 (1893).