

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

State of Idaho)	
)	
Plaintiff,)	CASE NO. CR – 12 – 00159
)	
vs.)	
)	
Jeffrey Reid,)	
)	
Defendant.)	MEMORANDUM OPINION AND
)	ORDER RE: STATE’S MOTION
)	TO CONFISCATE SEIZED EVIDENCE
)	AND DEFENDANTS’ REQUEST
)	TO DISMISS THE STATE’S MOTION
STATE OF IDAHO,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. CR-12-00148
)	
Sandra M. Snyder-Reid,)	
)	
Defendant.)	

Donna Gardner, Kootenai County Prosecuting Attorney’s Office, for Plaintiff.

Staci L. Anderson, Anderson & Walsh, PLLC, for Defendant Jeffrey Reid.

Nicolas V. Vieth, Vieth Law Offices, Chtd., for Defendant Sandra M. Snyder-Reid.

The Court heard oral argument for this matter on September 17, 2012. The Court then asked parties for further briefing, and took the motion under advisement on October 12, 2012.

Now, having reviewed the files and records herein, the Court hereby renders its Memorandum

Decision and Order.

MEMORANDUM OPINION AND ORDER RE: STATE’S MOTION TO CONFISCATE SEIZED EVIDENCE AND DEFENDANTS’ REQUEST TO DISMISS THE STATE’S MOTION - I

I. FINDINGS OF FACT AND COURSE OF PROCEDURE

Sandra Snyder-Reid and Jeffrey Reid were arrested for and convicted of drug-related charges. Jeffrey Reid had been pulled over in his car prior to his arrest. Officers found marijuana in Mr. Reid's car and arrested him. While Mr. Reid was detained, the police then went to Jeffrey Reid's home where his wife, Sandra Reid, consented to a search of the Reids' house. Officers found marijuana in a grow room and a computer room. In the master bedroom, officers found no marijuana, but found firearms that they also confiscated. The police then arrested Sandra Snyder-Reid. Both were charged with drug-related offenses. Jeffrey Reid pled guilty to delivery of a controlled substance. His judgment was withheld and he was placed on supervised probation. Sandra Reid pled guilty to manufacturing a controlled substance. Her judgment was also withheld and she was placed on supervised probation.

The State moved to confiscate the firearms that were seized from the Reids' residence. The State argued that the defendants constructively possessed the weapons seized, thus the weapons were forfeited under Idaho Code section 19-3807. The State has not established that the firearms were used in connection with the felony charges. The defendants have requested this Court to dismiss the state's motion to confiscate based on article I, section 11 of the Idaho Constitution.

II. DISCUSSION

The defendants have argued that article I, section 11 of the Idaho Constitution prevents the state from confiscating the Reids' weapons under Idaho Code section 19-3807. Article I, section 11 of the Idaho Constitution reads as follows:

Article I, section 11. Right to keep and bear arms. The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent the passage of legislation providing penalties for the possession of firearms by a convicted felon, nor prevent the passage of any legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony.

The Idaho Supreme Court has not often addressed this constitutional provision, but the Court has established a few clear guidelines about what this section of the Idaho Constitution does and does not include. Most fundamental is the legislature may not deny the right to bear arms. *In re Brickey*, 8 Idaho 597, 597, 70 P. 609, 609 (1902). Rather, the legislature may only regulate: “[I]t may prohibit carrying concealed weapons, or prescribe the kind or character of arms that may or may not be kept, carried, or used, and various other things of a regulatory character.” *State v. Woodward*, 58 Idaho 385, 388, 74 P.2d 92, 95 (1937). *See also State v. Hart*, 68 Idaho 217, 221, 157 P.2d 72, 76 (1945). Section 19-3807 of the Idaho Code (2012) regulates firearms, explosives, or contraband upon conviction. Section 19-3807 includes the following language:

At the time any person is convicted of a felony in any court of the state of Idaho, firearms, ammunition, . . . or any other deadly weapons or contraband found in his possession or under his control at the time of his arrest may be confiscated and disposed of in accordance with the order of the court....

The State has moved to confiscate the firearms based on the language of 19-3807 above, and Defendants have opposed, making three arguments. The defendants have argued that the entire statute should be struck down as facially unconstitutional because it is vague and violates

due process. The defendants also argue that the statute is unconstitutional as applied to the defendants. Finally, the defendants argue that the plain meaning of last sentence of section 11 invalidates section 19-3807. This Court will address the arguments in that order.

A. Constitutionality of Idaho Code section 19-3807

Two of the defendants' three arguments are based on the Constitution of the United States. Defendants assert that Idaho Code 19-3807 is facially overbroad or ambiguous as applied to the defendants. Overbroad statutes or vague statutes are concepts that are related to the Due Process Clause of the United States Constitution, which is applicable to the states through the Fourteenth Amendment. *See Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972); *Schwartzmiller v. Gardner*, 752 F.2d 1341, 1345 (1984).

The doctrines of overbreadth and vagueness are related, however, there is a difference between finding a statute unconstitutional because it is overbroad and finding a statute unconstitutional because it is vague. *Schwartzmiller*, 752 F.2d at 1345-46 (9th Cir. 1984); *see generally Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494-95 (1982); *State v. Korsen*, 138 Idaho 706, 69 P.3d 126 (2003). Overbroad statutes are overinclusive: "A law is overbroad if it prohibits not only acts the legislature may forbid, but also constitutionally protected conduct." *Schwartzmiller*, 752 F.2d at 1346. Vague statutes are not overinclusive; rather, vague statutes lack definiteness. "The void-for vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *see also Wyckoff v. Board of County Commissioners of Ada County*, 101 Idaho 12, 15, 607 P.2d

1066, 1069 (1980) (“[A] statute is unconstitutionally vague when its language does not convey sufficiently definite warnings as to the proscribed conduct, and its language is such that men of common intelligence must necessarily guess at its meaning.”).

Defendants first argue that section 19-3807 is facially unconstitutional because it is overbroad; the statute encompasses so wide of a range of conduct that it is impossible to limit the statute’s application. Alternatively, Defendants argue that the statute is constitutionally vague as applied to Mr. and Mrs. Reid because the statute does not provide fair notice that the defendants’ conduct was proscribed. This Court disagrees that the statute is facially unconstitutional, but agrees that the statute is unconstitutional as applied to the unique facts of the defendants’ case.

1. Idaho Code section 19-3807 is constitutional on its face

The defendants argue that Idaho Code section 19-3807 is facially unconstitutional because if section 19-3807 were given a broad literal interpretation, then the State could confiscate any weapons owned by the defendants. Regardless of whether this argument has merit, this Court is bound by precedent that has upheld the statute as constitutional on its face. In *State v. Money*, Defendant Money challenged section 19-3807 as unconstitutional because it was vague and overbroad. 109 Idaho 757, 761, 710 P.2d 667, 671 (Ct. App. 1985). The Court of Appeals of Idaho upheld the constitutionality of the statute on its face. *Id.* The Court upheld the statute because there were two specific conditions required for confiscation: “(1) conviction of a felony and (2) that the firearm be found in the possession or under the control of the convicted felon at the time of his arrest.” *Id.* The Court of Appeals agreed with the district court that the “statute leaves no room for arbitrary or discriminatory enforcement by police, prosecutors or judges because it uniformly applies to all persons convicted of a felony who are found in

possession or control of a firearm at the time of their arrest.” *Id.* This Court is bound by the precedent of *Money*, and therefore holds that Idaho Code section 19-3807 is constitutional on its face.

2. Idaho Code section 19-3807 is ambiguous as applied to the defendants

The defendants also argue that section 19-3807 is unconstitutional as applied to the defendants in this case. The State has chosen not to respond to the defendant’s argument that the statute is unconstitutional as applied. Nonetheless, the Court will address this argument here because facial and as-applied constitutional challenges must be separately analyzed.

Schwartzmiller, 752 F.2d at 1346; *Korsen*, 138 Idaho at 712, 69 P.3d at 132 (“[A]lthough a statute may be challenged for vagueness either ‘on its face’ or ‘as applied,’ a ‘facial’ vagueness analysis is mutually exclusive from an ‘as applied’ analysis.”).

The success of a challenge to a statute for vagueness will depend on how adequately the statute provides notice of conduct. “To succeed on an ‘as applied’ vagueness challenge, a complainant must show that the statute, as applied to the defendant’s conduct, failed to provide fair notice that the defendant’s conduct was proscribed. . . .” *Id.* This Court holds, in the narrow set of facts that distinguish this case, that there was not fair notice to the defendants that their conduct was unlawful.

In this case, the defendants did not have fair notice that “possession and control” of firearms would extend to firearms separate from the illegal activity, nor did they have fair notice that “possession or control” would extend to firearms not proven to be used in the commission of the felonies to which the defendants were convicted. The firearms were not on either of the

defendants’ persons when they were arrested. The firearms also were not in the immediate area

MEMORANDUM OPINION AND ORDER RE: STATE’S MOTION TO CONFISCATE SEIZED EVIDENCE
AND DEFENDANTS’ REQUEST TO DISMISS THE STATE’S MOTION - 6

of the defendants at the time of their arrests. The firearms were found in a different room separate from the rooms with marijuana, and the State has not established a connection between the firearms and the felonies of delivering or manufacturing marijuana. The seizure of firearms occurred when Mrs. Reid gave the officers permission to search the whole house, which placed no limits on what the officers could seize. Because the search did not have the scope that a warrant might have provided, "possession or control" could be interpreted to mean anything in the house. In this case, "possession or control" could mean actual possession or constructive possession. An item "in his possession or control at the time of his arrest," as required by 19-3807, could mean an item on the defendant, an item within reach of the defendant, or an item located in a different part of the house from the arrest or miles away from the arrest. In this case, because the firearms that the police seized were not connected to the crime charged, and were not on or within an arms' reach of either defendant, the defendants did not have fair notice that section 19-3807 would result in the forfeit of their firearms to the State. Accordingly, section 19-3807 is unconstitutional as applied to the defendants' unique set of facts.

B. The last section of article I, section 11 of the Idaho Constitution does not invalidate section 19-3807 if "control or possession" means actual possession or immediate control of a firearm at the time of arrest

The State and Defendants disagree on which part of article I, section 11 applies to this case. Each cites a different sentence in section 11 and then asks this Court to adopt a plain-meaning interpretation of that sentence. The State argues that the right to keep and bear arms is limited. In the same sentence that the right is expressed, however, the State emphasizes a qualification: "[T]his provision shall not prevent...the passage of legislation providing penalties for the possession of firearms by a convicted felon..." Idaho Constitution, art. I, § 11. The

State asserts that section 19-3807 is based on this regulatory authority. Defendants argue that the last sentence of article I, section 11 is the operative sentence: “Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony.” *Id.* The State has not offered any explanation as to how its plain-meaning interpretation of the first sentence in section 11 might trump the last sentence and allow the taking of guns that were not used in commission of a felony. Without a further explanation from the State, this Court must interpret section 19-3807 so that article I, section 11 does not contradict itself.

This Court holds that “possession or control” means actual possession or immediate control of the firearms at the time of arrest. To hold otherwise would violate the last sentence of article I, section 11 of the Idaho Constitution because it would allow the State to confiscate remote weapons that were not used in the commission of the crimes. Although higher courts have addressed section 19-3807, none have interpreted the meaning of “possession or control.” *See e.g., Money*, 109 Idaho 757, 710 P.2d 667 (Ct. App. 1985); *State v. Peterson*, 148 Idaho 593, 226 P.3d 535 (2009). A broad interpretation of “possession or control” in section 19-3807 that permits the State, when conducting a search with an individual’s consent as is the case here, to confiscate any weapon a person may own without consideration of location or connectivity to the crime charged, is impermissible. Reading “possession or control” in this manner is compatible with *Money*, where the firearm was seized, because in *Money*, the firearm confiscated was the murder weapon. *See Money*, 109 Idaho at 759, 710 P.2d at 669. In contrast, the State in this case has not established that the Reids’ firearms were used in the commission of their drug manufacturing or drug delivery crimes.

III. CONCLUSION

Because the confiscation of the Reids' firearms would violate the last sentence of article I, section 11 of the Idaho Constitution, and because confiscation violates the defendants' due process rights as they apply to the facts of this case, the State's motion to confiscate seized evidence must be DENIED. For the same reasons, the State's motion to confiscate seized evidence must also be DISMISSED.

DATED this 19th day of November, 2012.



John Patrick Luster
District Judge