

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 23, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP1351

Cir. Ct. No. 2004FO1050

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TERRY D. COUCH,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Sauk County: GUY D. REYNOLDS, Judge. *Affirmed.*

¶1 LUNDSTEN, P.J.¹ Terry Couch appeals an order of the circuit court denying his motion to dismiss a citation for littering pursuant to WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2003-04).

§ 287.81(2)(a) (2001-02).² Couch admits to having released a number of ceramic objects into the Wisconsin River. However, Couch argues on appeal that the objects are not “solid waste” under § 287.81(2)(a). In the alternative, Couch argues that § 287.81(2)(a) is unconstitutionally vague as applied. We reject both arguments and affirm the circuit court.

Background

¶2 Terry Couch is a self-described “artist.” One of Couch’s art projects involves creating ceramic balls the “size of [] softball[s]” that act as “floats,” which he then releases into bodies of water. He imprints each of these balls with his name, mailing address, website address, phone number, the date, and an individualized serial number. The proclaimed purpose of the project is for those who find these “floats” to “communicate” with Couch as part of a larger artistic endeavor.

¶3 On February 28, 2004, Couch deposited eighty-seven of these ceramic balls into the Wisconsin River in Sauk County. After fielding complaints from two individuals regarding the ceramic balls, State Department of Natural Resources Law Enforcement Warden John Buss issued Couch a citation for littering in the Wisconsin River.

¶4 Couch moved the circuit court to dismiss the citation. He argued that his ceramic objects were not “solid waste” for purposes of the littering statute and, alternatively, that the littering statute was vague as applied because it did not

² All further references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

give him fair warning that the objects were considered solid waste. The circuit court denied that motion. Couch was ordered to pay a forfeiture, costs, and fees in the amount of \$143.80. Couch appeals.

Discussion

Whether Couch’s Ceramic Balls Are “Salvageable Material”

¶5 WISCONSIN STAT. § 287.81(2)(a) provides that “a person who ... [d]eposits ... any solid waste ... in any waters of the state” is subject to a civil forfeiture of not more than \$500.³ “Solid waste” has the meaning given in WIS. STAT. § 289.01(33). WIS. STAT. § 287.01(10). Section 289.01(33) defines solid waste as “any ... salvageable materials ... resulting from ... community activities.”⁴

³ WISCONSIN STAT. § 287.81(2)(a) reads, in its entirety:

(2) Except as provided in sub. (3), a person who does any of the following may be required to forfeit not more than \$500:

(a) Deposits or discharges any solid waste on or along any highway, in any waters of the state, on the ice of any waters of the state or on any other public or private property.

⁴ WISCONSIN STAT. § 289.01(33) states, in full:

“Solid waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source material, as defined in s. 254.31(10),

(continued)

¶6 The circuit court consulted the dictionary definition of “salvage” and determined that the ceramic balls Couch deposited into the Wisconsin River were salvageable materials under the statute because they were capable of being “save[d] from loss or destruction” or “save[d] for further use.”

¶7 Couch argues that the ceramic balls were not “salvageable material” for purposes of the littering statute. Couch asserts that “[s]alvageable material is not new material; rather salvageable material is secondary of something that was once new.” He contends that “[h]is objects had a new, present and immediate use that had not been affected by time or use, as salvageable materials are so affected.” We are not persuaded.

¶8 We review questions of statutory interpretation *de novo*. *State v. Setagord*, 211 Wis. 2d 397, 405-06, 565 N.W.2d 506 (1997). In *State v. Peters*, 2003 WI 88, 263 Wis. 2d 475, 665 N.W.2d 171, the supreme court explained the following rule of statutory interpretation:

If the language of a statute is clear on its face, we need not look any further than the statutory text to determine the statute’s meaning. *See Bruno v. Milwaukee County*, 2003 WI 28, ¶¶18-22, 260 Wis. 2d 633, 660 N.W.2d 656. “When a statute unambiguously expresses the intent of the legislature, we apply that meaning without resorting to extrinsic sources” of legislative intent. *State ex rel. Cramer v. Wis. Ct. App.*, 2000 WI 86, ¶18, 236 Wis. 2d 473, 613 N.W.2d 591. Statutory language is given its common, ordinary and accepted meaning. *Bruno*, 260 Wis. 2d 633, ¶20.

special nuclear material, as defined in s. 254.31(11), or by-product material, as defined in s. 254.31(1).

Id., ¶14. Furthermore, when a term in a statute is undefined, we may consult its dictionary definition to discern its common meaning. See *Garcia v. Mazda Motor of Am., Inc.*, 2004 WI 93, ¶14, 273 Wis. 2d 612, 682 N.W.2d 365.

¶9 The dictionary definition of “salvageable” is “capable of being salvaged.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2006 (unabridged ed. 1993). “Salvage” is defined as “something extracted (as from wreckage, ruins, or rubbish) as valuable or having further usefulness.” *Id.* In short, a material is salvageable if it is capable of being extracted as valuable or as having further usefulness.

¶10 Couch cites no support for his argument that materials are salvageable only if they are “affected by time or use,” or that salvageable material is “secondary of something that was once new.” Such an interpretation finds no support in the dictionary definition of salvageable. That definition states only that salvageable material has *further* use, meaning continued use, in any form or manner. It does not require that the use be “secondary.”

¶11 To the extent that Couch is arguing that his ceramic balls could not be salvaged because they were *in use* after being deposited in the river, we are not persuaded. Such an argument presupposes that eventually all of his ceramic balls will be extracted from the river in the manner he expected. Even if that were the case, the statute does not make an exception for such deposits.

¶12 We also find support for the inclusion of Couch’s ceramic objects in the term “solid waste” based on the statutory context in which WIS. STAT. § 287.81 is placed. WISCONSIN STAT. chapter 287 is entitled “solid waste reduction, recovery and recycling.” The chapter’s primary policy concern is that “maximum solid waste reduction, reuse, recycling, composting and resource

recovery is in the best interest of the state in order to ... protect the quality of the natural environment.” WIS. STAT. § 287.05(1). Undoubtedly, one goal of ch. 287, and specifically § 287.81, is to reduce the amount of foreign objects within the state’s waterways. To conclude that Couch’s ceramic balls do not constitute solid waste deposited in one of the state’s waterways would run contrary to that goal. We, therefore, conclude that the ceramic balls constitute salvageable material and, thus, are solid waste for purposes of § 287.81.

Whether WIS. STAT. § 287.81 Is Vague As Applied

¶13 Couch argues that WIS. STAT. § 287.81 is unconstitutionally vague as applied for two reasons.⁵ First, Couch asserts he was not given notice that his ceramic balls were salvageable material and, therefore, solid waste. Second, Couch contends that the statute impermissibly delegates discretion to the Department of Natural Resources’ officials regarding the enforcement of § 287.81.

¶14 Vagueness is a due process issue, and due process determinations are questions of law that this court decides *de novo*. *State v. Aufderhaar*, 2005 WI 108, ¶10, ___ Wis. 2d ___, 700 N.W.2d 4. “A statute is unconstitutionally vague if it either fails to afford proper notice of the prohibited conduct or fails to provide an objective standard for enforcement.” *State v. Thomas*, 2004 WI App 115, ¶14, 274 Wis. 2d 513, 683 N.W.2d 497, *review denied*, 2004 WI 138, 276 Wis. 2d 28, 689 N.W.2d 56 (No. 2003AP1369-CR). We interpret Couch’s argument as

⁵ In his appellate briefs, Couch states that both WIS. STAT. § 287.81, the littering statute, and WIS. STAT. § 289.01(33), defining “solid waste,” are vague as applied. Although much of our discussion focuses on “salvageable material,” as that term is used in § 289.01(33), we conclude that Couch’s constitutional attack is principally on § 287.81 and, therefore, limit our discussion to that section.

challenging both the “proper notice” and the “objective standard for enforcement” aspects of WIS. STAT. § 287.81. To succeed on his vagueness claim, Couch must “prove, beyond a reasonable doubt, that as applied to him the statute is unconstitutional.” *State v. Joseph E.G.*, 2001 WI App 29, ¶5, 240 Wis. 2d 481, 623 N.W.2d 137.

¶15 Couch argues that he did not have notice that his ceramic balls were “salvageable material” and, therefore, solid waste because WIS. STAT. § 287.81 does not make that clear. As we have explained above, however, through the ordinary process of construction, it is clear that the common meaning of “salvageable” includes Couch’s objects. And a statute is not vague if “by the ordinary process of construction, a practical or sensible meaning may be given to the ... [law].” *State v. Smith*, 215 Wis. 2d 84, 92, 572 N.W.2d 496 (Ct. App. 1997) (quoting *State v. Arnold*, 217 Wis. 340, 345, 258 N.W. 843 (1935)).

¶16 Couch argues that WIS. STAT. § 287.81 “impermissibly delegated power to the State’s DNR official who wrote the citation against Couch.” Because the argument is unclear, we assume that Couch is arguing that the term salvageable material is too ambiguous to give authorities objective standards of enforcement. Couch’s argument fails because we have already determined that the term salvageable is neither vague nor ambiguous. The vagueness concern regarding arbitrary enforcement of a statute requires that the legislature give authorities minimal guidelines to determine what behavior violates that statute such that its enforcement is not solely a standardless sweep. *See Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983). Because we have already determined that the prohibitions in § 287.81 are clearly defined, the standard of enforcement is equally so.

¶17 We therefore conclude that Couch has failed to prove that WIS. STAT. § 287.81 is unconstitutionally vague as applied.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.
(2003-04).

