Wisconsin v. Mitchell

508 U.S. 476 (1993)
http://laws.findlaw.com/US/508/476.html
Oral arguments are available at http://www.oyez.org.
Vote: 9 (Blackmun, Kennedy, O'Connor, Rehnquist, Scalia, Souter, Stevens, Thomas, White)
0

OPINION OF THE COURT: *Rehnquist*

FACTS:

In October 1989 Todd Mitchell and several other young black men were discussing the scene in the film *Mississippi Burning* in which a white man beats a black boy. During the conversation, Mitchell asked his companions, "Do you all feel hyped up to move on some white people?"

A little later Mitchell and his friends spotted a young white boy across the street. As the boy neared, Mitchell said, "You all want to fuck somebody up? There goes a white boy; go get him." The group then attacked the boy, beating him and stealing his sneakers. They left him unconscious, a state in which he remained for four days.

A jury found Mitchell guilty of aggravated battery, an offense that usually carries a maximum sentence of two years in prison. But, under Wisconsin's penalty-enhancement law, that maximum could reach seven years should the jury find that the convicted person had intentionally selected his victim because of his race, religion, color, disability, sexual orientation, national origin, or ancestry. In other words, the state law enhanced the punishment for so-called hate crimes. The jury found that Mitchell had intentionally chosen his victim on the basis of race, and he was sentenced to four years in prison.

Mitchell asked the Wisconsin courts to overturn his conviction on the ground that the penalty-enhancement violated freedom of expression guarantees contained in the First Amendment. Based in some measure on *R. A. V.*, the Wisconsin Supreme Court ruled in favor of Mitchell, striking down the state law on constitutional grounds.

ARGUMENTS:

For the petitioner, State of Wisconsin:

- The enhancement provision does not target, punish, or suppress beliefs or expression; it punishes acts that are both crimes and acts of discrimination.
- Crimes fueled by discrimination are particularly heinous and deserve more severe penalties.
- The state has a legitimate interest in deterring hate crimes because they prompt retaliatory crimes, they undermine the targeted group's sense of security, and they inflict emotional harm on the victim.

For the respondent, Todd Mitchell:

- The law punishes a defendant's thoughts by singling out for extra punishment certain motives or beliefs on the basis of their content and viewpoint.
- Because the law discriminates on the basis of content and viewpoint, it must be narrowly tailored to serve a compelling state interest. The law fails this test.
- The law is impermissibly dependent on the defendant's First Amendment activity for proof of motive, and it chills First Amendment-protected expression.
- The law discriminates among similar offenders based solely on the exercise of their First Amendment rights.

CHIEF JUSTICE REHNQUIST DELIVERED THE OPINION OF THE COURT.

Respondent Todd Mitchell's sentence for aggravated battery was enhanced because he intentionally selected his victim on account of the victim's race. The question presented in this case is whether this penalty enhancement is prohibited by the First and Fourteenth Amendments. We hold that it is not. . . .

We granted certiorari because of the importance of the question presented and the existence of a conflict of authority among state high courts on the constitutionality of statutes similar to Wisconsin's penalty-enhancement provision.* We reverse. . . .

The State argues that the statute does not punish bigoted thought, as the Supreme Court of Wisconsin said, but instead punishes only conduct. While this argument is

---

* Several states have enacted penalty-enhancement provisions similar to the Wisconsin statute at issue in this case. Proposed federal legislation to the same effect passed the House of Representatives in 1992, but failed to pass the Senate. The state high courts are divided over the constitutionality of penalty-enhancing statutes and analogous statutes covering bias-motivated offenses. According to *amici*, bias-motivated violence is on the rise throughout the United States. . . . In 1990, Congress enacted the Hate Crimes Statistics Act, directing the Attorney General to compile data "about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity." Pursuant to the Act, the Federal Bureau of Investigation reported in January 1993 that 4,558 bias-motivated offenses were committed in 1991, including 1,614 incidents of intimidation, 1,301 incidents of vandalism, 796 simple assaults, 773 aggravated assaults, and 12 murders.

literally correct, it does not dispose of Mitchell's First Amendment challenge. To be sure, our cases reject the "view that apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." Thus, a physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment.

But the fact remains that under the Wisconsin statute the same criminal conduct may be more heavily punished if the victim is selected because of his race or other protected status than if no such motive obtained. Thus, although the statute punishes criminal conduct, it enhances the maximum penalty for conduct motivated by a discriminatory point of view more severely than the same conduct engaged in for some other reason or for no reason at all. Because the only reason for the enhancement is the defendant's discriminatory motive for selecting his victim, Mitchell argues (and the Wisconsin Supreme Court held) that the statute violates the First Amendment by punishing offenders' bigoted beliefs.

Traditionally, sentencing judges have considered a wide variety of factors in addition to evidence bearing on guilt in determining what sentence to impose on a convicted defendant. The defendant's motive for committing the offense is one important factor. Thus, in many States the commission of a murder, or other capital offense, for pecuniary gain is a separate aggravating circumstance under the capital-sentencing statute.

But it is equally true that a defendant's abstract beliefs, however obnoxious to most people, may not be taken into consideration by a sentencing judge. In *Dawson* [*v. Delaware*, 1992], the State introduced evidence at a capital sentencing hearing that the defendant was a member of a white supremacist prison gang. Because "the evidence proved nothing more than [the defendant's] abstract beliefs," we held that its admission violated the defendant's First Amendment rights. In so holding, however, we emphasized that "the Constitution does not erect a *per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the First Amendment." Thus, in *Barclay v. Florida* (1983) (plurality opinion), we allowed the sentencing judge to take into account the defendant's racial animus towards his victim. The evidence in that case showed that the defendant's membership in the Black Liberation Army and desire to provoke a "race war" were related to the murder of a white man for which he was convicted. Because "the elements of racial hatred in [the] murder" were relevant to several aggravating factors, we held that the trial judge permissibly took this evidence into account in sentencing the defendant to death.

Mitchell suggests that *Dawson* and *Barclay* are inapposite because they did not involve application of a penalty-enhancement provision. But in *Barclay* we held that it was permissible for the sentencing court to consider the defendant's racial animus in determining whether he should be sentenced to death, surely the most severe "enhancement" of all. And the fact that the Wisconsin Legislature has decided, as a general matter, that bias-motivated offenses warrant greater maximum penalties across the board does not alter the result here. For the primary responsibility for fixing criminal penalties lies with the legislature. . . .

Nothing in our decision last Term in *R. A. V.* compels a different result here. That case involved a First Amendment challenge to a municipal ordinance prohibiting the use of "'fighting words' that insult, or provoke violence, 'on the basis of race, color, creed, religion or gender.'" Because the ordinance only proscribed a class of "fighting words" deemed particularly offensive by the city—*i.e.*, those "that contain . . . messages of 'bias-motivated' hatred," we held that it violated the rule against content-based discrimination. But whereas the ordinance struck down in *R. A. V.* was explicitly directed at expression, *i.e.*, "speech" or "messages," the statute in this case is aimed at conduct unprotected by the First Amendment.

Moreover, the Wisconsin statute singles out for enhancement bias-inspired conduct because this conduct is thought to inflict greater individual and societal harm. For example, according to the State and its *amici*, bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest. The State's desire to redress these perceived harms provides an adequate explanation for its penalty-enhancement provision over and above mere disagreement with offenders' beliefs or biases. . . .

Finally, there remains to be considered Mitchell's argument that the Wisconsin statute is unconstitutionally overbroad because of its "chilling effect" on free speech. Mitchell argues (and the Wisconsin Supreme Court agreed) that the statute is "overbroad" because evidence of the defendant's prior speech or associations may be used to prove that the defendant intentionally selected his victim on account of the victim's protected status. Consequently, the argument goes, the statute impermissibly chills free expression with respect to such matters by those concerned about the possibility of enhanced sentences if they should in the future commit a criminal offense covered by the statute. We find no merit in this contention.

The sort of chill envisioned here is far more attenuated and unlikely than that contemplated in traditional "overbreadth" cases. We must conjure up a vision of a Wisconsin

citizen suppressing his unpopular bigoted opinions for fear that if he later commits an offense covered by the statute, these opinions will be offered at trial to establish that he selected his victim on account of the victim's protected status, thus qualifying him for penalty-enhancement. To stay within the realm of rationality, we must surely put to one side minor misdemeanor offenses covered by the statute, such as negligent operation of a motor vehicle; for it is difficult, if not impossible, to conceive of a situation where such offenses would be racially motivated. We are left, then, with the prospect of a citizen suppressing his bigoted beliefs for fear that evidence of such beliefs will be introduced against him at trial if he commits a more serious offense against person or property. This is simply too speculative a hypothesis to support Mitchell's overbreadth claim.

The First Amendment, moreover, does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent. Evidence of a defendant's previous declarations or statements is commonly admitted in criminal trials subject to evidentiary rules dealing with relevancy, reliability, and the like. Nearly half a century ago, in *Haupt v. United States* (1947), we rejected a contention similar to that advanced by Mitchell here. Haupt was tried for the offense of treason, which, as defined by the Constitution (Art. III, §3), may depend very much on proof of motive. To prove that the acts in question were committed out of "adherence to the enemy" rather than "parental solicitude," the Government introduced evidence of conversations that had taken place long prior to the indictment, some of which consisted of statements showing Haupt's sympathy with Germany and Hitler and hostility towards the United States. We rejected Haupt's argument that this evidence was improperly admitted. While "[s]uch testimony is to be scrutinized with care to be certain the statements are not expressions of mere lawful and permissible difference of opinion with our own government or quite proper appreciation of the land of birth," we held that "these statements . . . clearly were admissible on the question of intent and adherence to the enemy."

For the foregoing reasons, we hold that Mitchell's First Amendment rights were not violated by the application of the Wisconsin penalty-enhancement provision in sentencing him. The judgment of the Supreme Court of Wisconsin is therefore reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

R. A. V., *Black*, and *Mitchell* do not settle the hate speech issue. Supporters of broad First Amendment protection and those who favor restricting discriminatory expression both can find encouragement in the Court's opinions. As a result, the battle over hateful and harassing expression continues on college campuses, in the workplace, and in legislatures, and the Court certainly has not seen its last appeal in this area.

Student Speech

Freedom of speech issues are not confined to questions about the content of the expression. Also important is the context in which the words are uttered and who is doing the speaking. What may be said freely in one setting might be subject to regulation in another.

Considerable controversy has arisen over freedom of speech in the public schools. Do the schools constitute a special setting that permits an elevated degree of speech regulation? Do minors have the same expression rights as adults? The debate over these questions began with *Tinker v. Des Moines Independent Community School District* in 1969.

Tinker v. Des Moines Independent Community School District

393 U.S. 503 (1969)
http://laws.findlaw.com/US/393/503.html
Oral arguments are available at http://www.oyez.org.
Vote: 7 (Brennan, Douglas, Fortas, Marshall, Stewart, Warren, White)
2 (Black, Harlan)

OPINION OF THE COURT: ***Fortas***
CONCURRING OPINIONS: ***Stewart, White***
DISSENTING OPINIONS: ***Black, Harlan***

FACTS:

In December 1965 a group of adults and secondary school students in Des Moines, Iowa, devised two strategies to demonstrate their opposition to the Vietnam War: they would fast on December 16 and New Year's Day, and they would wear black armbands every day in between. Principals of the students' schools learned of the plan and feared the demonstration would be disruptive. As a consequence, they announced that students wearing the armbands to school would be suspended. Of the 18,000 children in the school district, all but five obeyed the policy. Among those five were John Tinker, Mary Beth Tinker, and Christopher Eckhardt, whose parents allowed them to wear black armbands to school. The three students had a history of participating in other civil rights and antiwar protests. All three were suspended. ACLU attorneys representing the students argued that the armbands constituted