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APPRENDI V. NEW JERSEY
120 S. CT. 2348 (2000)

FACTS

The police arrested Charles C. Apprendi, Jr. on December 22, 1994, for firing into the home of an African American family who had recently moved to a previously all-white community in Vineland, New Jersey.¹ Apprendi admitted to being the shooter and initially stated to the police that he shot into the home because did not want a black family living in his neighborhood.² However, Apprendi later retracted his statement explaining that his motive for the shooting was divorced from racial bias.³

A New Jersey grand jury indicted Apprendi on twenty-three counts, charging shootings on four different dates and unlawful possession of weapons.⁴ The indictment did not refer to the New Jersey hate crime statute⁵ and did not allege that Apprendi's crime had been racially motivated.⁶ Apprendi pleaded guilty to two counts (counts 3 and 18) charging second-degree possession of a firearm for an unlawful purpose and one count (count 22) charging a third-degree offense of unlawful possession of an antipersonal bomb.⁷ The plea agreement stipulated that the sentence for the third degree offense would run concurrently with the sentences for the second degree offenses.⁸ The prosecutor dismissed the other twenty counts, but reserved the right to request an enhanced sentence under New Jersey's hate crime provision.⁹ Apprendi reserved the right to challenge the constitutionality of the sentence enhancement.¹⁰

New Jersey's hate crime statute authorized the trial judge to impose an "extended term" of imprisonment if the judge finds by a preponderance of the evidence that the defendant acted with a "biased purpose."¹¹ A defendant is found to have had "biased purpose" if "in committing the crime [he] acted with a purpose to intimidate an individual or group of individuals because of race, color, gender, handicap, religion, sexual orientation or ethnicity."¹² If a

1. Apprendi v. New Jersey, 120 S. Ct. 2348, 2351 (2000).

2. *Id.* at 2351.

3. *Id.* at 2351-52. Apprendi claimed that "he shot into the house 'because the glass and the purple door' caught his eye and that at the time of the incident, he was under the influence of alcohol and drugs." State v. Apprendi, 698 A.2d 1265, 1267 (N.J. Super. Ct. App. Div. 1997).

4. Apprendi, 120 S. Ct. at 2352.

5. See N.J. STAT. ANN. § 2c:44-3(e) (West 1995 & Supp. 2000).

6. Apprendi, 120 S. Ct. at 2352.

7. *Id.* (citations omitted).

8. *Id.*

9. *Id.* See N.J. STAT. ANN. § 2c:44-3(e).

10. Apprendi, 120 S. Ct. at 2352.

11. *Id.*

12. *Id.*; (quoting N.J. STAT. ANN. § 2c:44-3(e)).

judge concludes by a preponderance of the evidence that the defendant had a biased purpose, the judge may "enhance" the defendant's sentence range to be equivalent to that of an offense that is one degree higher.¹³ In other words, if a judge finds that a defendant who is found guilty of a second degree offense with a sentence range of five to ten years had a biased purpose, the judge can sentence the defendant to ten and twenty years, the range for a first degree crime.¹⁴

The trial judge heard evidence sufficient to establish Apprendi's guilt at the plea hearing and confirmed that Apprendi understood the maximum potential sentence for his plea.¹⁵ The prosecutor then moved for an "enhanced" sentence for count 18 under the hate crime provision on grounds that it was racially motivated.¹⁶ Without the sentence enhancement, the maximum aggregate sentence for Apprendi would have been twenty years, a maximum of ten years for each of the second degree offenses, count 3 and 18.¹⁷ With the sentence enhancement, however, the maximum aggregate sentence would be thirty years, ten years maximum for count 3 and an enhanced maximum of twenty years for count 18.¹⁸

At the evidentiary hearing to determine whether Apprendi's purpose had been biased, the trial judge found by a preponderance of the evidence that Apprendi's actions were taken with the purpose to intimidate, thus satisfying the statutory requirement.¹⁹ The trial judge rejected Apprendi's constitutional challenge and applied the hate crime sentence enhancement.²⁰ Apprendi was sentenced to twelve years imprisonment for the enhanced count (count 18) and shorter concurrent terms for the other two counts (counts 3 and 22).²¹

On his appeal to the Appellate Division of the New Jersey Superior Court, Apprendi argued that the Due Process Clause of the United States Constitution required a jury to find beyond a reasonable doubt that his action had been motivated by racial bias.²² The appellate court held that the Constitution did not require the "beyond a reasonable doubt" standard to be applied to

13. *State v. Apprendi*, 698 A.2d 1265, 1267 (N.J. Super. Ct. App. Div. 1997).

14. *Id.* at 1267 (citations omitted).

15. *Apprendi*, 120 S. Ct. at 2352.

16. *Id.* See N.J. STAT. ANN. § 2c:44-3(e).

17. *Apprendi*, 120 S. Ct. at 2352.

18. *Id.*

19. *Id.*; See N.J. STAT. ANN. § 2c:44-3(e). The trial judge may impose an "extended" term of imprisonment if he finds by a preponderance of the evidence that "the defendant in committing the crime acted with a purpose to intimidate an individual or group of individuals based because of race, color, gender, handicap, religion, sexual orientation or ethnicity." *Id.*

20. *Apprendi*, 120 S. Ct. at 2352.

21. *Id.*

22. *Apprendi*, 698 A.2d at 1268. See U.S. CONST. amend. XIV, §1.

sentencing factors that were not elements of a crime.²³ The court rejected Apprendi's argument, reasoning that racial bias was not an element of the crime and found that it was merely a sentencing factor.²⁴ Apprendi reappealed the same issue to the New Jersey Supreme Court, which affirmed on similar grounds.²⁵

The United States Supreme Court granted certiorari on March 28, 2000 to decide whether Apprendi had a constitutional right to have a jury determine beyond a reasonable doubt whether the shooting had been motivated by racial bias.²⁶

HOLDING

The United States Supreme Court reversed the New Jersey Supreme Court decision and remanded the case for further proceedings.²⁷ The Court held, five to four, that due process requires that a jury must decide beyond a reasonable doubt any fact that increases "the penalty of a crime beyond the prescribed maximum," except the fact of a prior conviction.²⁸

ANALYSIS

Under the protections of the Fourteenth and Sixth Amendments to the U.S. Constitution, a jury must find a criminal defendant guilty beyond a reasonable for every element of a crime.²⁹ The Supreme Court stated that these constitutional protections were rooted in common law principles that protected criminal defendants from oppressive governments.³⁰ The common law understanding of trial by jury is that the prosecution must prove to a group of

23. *Apprendi*, 120 S. Ct. at 2352-53. The appellate court concluded that the state legislature decided to make the hate crime enhancement a sentencing factor as opposed to an element of the offense. *Id.* The finding of bias was characterized as a finding of motive. *Id.* at 2352. The court considered motive a traditional sentencing factor and opined that although the enhancement exposed defendants to greater punishment, "one factor standing alone" was insufficient to render the statute unconstitutional. *Id.* at 2353 (quoting *Apprendi*, 698 A.2d at 1269).

24. *Apprendi*, 698 A.2d at 1268.

25. *New Jersey v. Apprendi*, 731 A.2d 485, 496-97 (N.J. 1999). The New Jersey Supreme Court further elaborated that the sentence enhancement statute did not create an independent offense with a separate penalty, but instead merely gave weight to a factor which sentencing courts traditionally considered. *Id.* at 494-95.

26. *Apprendi*, 120 S. Ct. at 2351, *cert. granted*, 528 U.S. 1018 (Nov. 29, 1999) (No. 99-478).

27. *Id.* at 2366-67.

28. *Id.* at 2362-63.

29. *Id.* at 2355-56 (citing U.S. CONST. amend. XIV, § 1) ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law"); U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed").

30. *Apprendi*, 120 S. Ct. at 2356.

the criminal defendant's peers that every accusation is true.³¹ Common law also requires jury verdicts to be based on the "beyond a reasonable doubt" standard in criminal cases.³² The beyond a reasonable doubt standard requires the prosecution to meet the highest level of persuasion in order to convince the trier of fact that the criminal defendant is guilty of every element of a crime.³³

Common law, however, did not distinguish between elements of a crime and sentencing factors.³⁴ The Supreme Court first used the term "sentencing factor" in *McMillan v. Pennsylvania*.³⁵ Based on its opinion in *McMillan*, the Supreme Court in *Apprendi* described a sentencing factor as a "fact that was not found by a jury but that could affect the sentence imposed by the judge."³⁶ At common law, judges had very little discretion in determining a convicted criminal's sentence.³⁷ Historically, judges administratively imposed the sentence that was required by law because each criminal statute stated a specific punishment.³⁸ Judges in the United States, however, have traditionally exercised discretion in imposing criminal sentences by determining the specific sentence within a range set forth by criminal statute.³⁹ After a criminal defendant is found guilty, the judge may take into consideration various facts pertaining to the offense and the defendant and impose the appropriate punishment within the statutory range.⁴⁰

Statutory ranges limit judges' discretion in sentencing and protect the criminal defendant from receiving a punishment that exceeds the maximum punishment permitted by the facts determined by the jury.⁴¹ In *In Re Winship*,⁴² the Supreme Court held that due process requires a criminal defendant to be found guilty of every element of the crime beyond a reasonable doubt.⁴³ The Supreme Court noted that due process protections are needed because prosecution could potentially deprive the criminal defendant of his liberty and socially stigmatize him.⁴⁴ The Court pointed out that loss of liberty and social stigma are heightened when a defendant is subjected to punishment greater than that which is provided by statute based on certain

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 2356-57.

35. *Id.* at 2360. See *McMillan v. Pennsylvania*, 477 U.S. 79, 85-86 (1986).

36. *Apprendi*, 120 S. Ct. at 2360.

37. *Id.* at 2357.

38. *Id.*

39. *Id.* at 2358.

40. *Id.*

41. *Id.* at 2359.

42. *In Re Winship*, 397 U.S. 358 (1970).

43. *Apprendi*, 120 S. Ct. at 2359; See *Winship*, 397 U.S. 358, 363-64 (1970).

44. *Apprendi*, 120 S. Ct. at 2359 (citing *Winship*, 397 U.S. at 363).

circumstances and not on others.⁴⁵ Therefore, the defendant should not be deprived of due process protections when the extent of his punishment depends on specific factors.⁴⁶

In *Mullaney v. Wilbur*,⁴⁷ the Supreme Court noted that some aspects of due process and jury protections may apply to determinations that effect the length of a criminal defendant's sentence.⁴⁸ In *Mullaney*, the Supreme Court invalidated a Maine statute that required a defendant to rebut a statutory presumption that he acted with malice aforethought in order to reduce the offense from murder punishable by life imprisonment, to manslaughter punishable by twenty years imprisonment.⁴⁹ The State argued that the burden placed on the defendant was irrelevant because a conviction of either murder or manslaughter both resulted in loss of liberty and stigma.⁵⁰ The *Mullaney* Court rejected this argument, pointing out the substantial difference in punishment for a conviction of murder versus manslaughter.⁵¹ The Court held that states could not deny defendants due process protections by characterizing elements of different crimes as merely factors that increase punishment because the amount of liberty and social stigma at risk vary with the degree of punishment.⁵²

The Supreme Court in *Almendarez-Torres v. United States*,⁵³ however, held that due process and jury protections are not violated when a judge sentences the criminal defendant to a term higher than that attached to the offense alleged in the indictment based on the defendant's prior conviction.⁵⁴ In *Almendarez-Torres*, the Supreme Court rejected the defendant's objection to being subjected to a potential sentence of twenty years rather than the two years of imprisonment attached to the offense alleged in the indictment.⁵⁵ The Court stated that the use of prior convictions to increase a criminal defendant's sentence need not comply with due process and jury protection requirements because prior convictions were obtained through proceedings that provided those procedural safeguards.⁵⁶ The *Apprendi* Court emphasized that their holding in *Almendarez-Torres* is a narrow exception to the general rule

45. *Id.*

46. *Id.*

47. 421 U.S. 684 (1975).

48. *Apprendi*, 120 S. Ct. at 2359-60; see *Mullaney v. Wilbur*, 421 U.S. 684, 697-98 (1975).

49. *Apprendi*, 120 S. Ct. at 2359-60.

50. *Id.* at 2360.

51. *Id.*

52. *Id.*

53. 523 U.S.224 (1998).

54. *Apprendi*, 120 S. Ct. at 2361-62; see *Almendarez-Torres*, 523 U.S. at 239-247.

55. *Apprendi*, 120 S. Ct. at 2361.

56. *Id.* at 2361-62.

requiring due process protections.⁵⁷ The *Apprendi* Court also distinguished *Almendarez-Torres* from *Apprendi*, pointing out that due process and Sixth Amendment concerns in *Almendarez-Torres* were mitigated by the defendant's admission to the facts concerning his prior convictions that enhanced his sentence.⁵⁸

After exploring its prior decisions and the history on which those decisions relied, the Court reaffirmed its conclusion in *Jones v. United States*⁵⁹ and held that the Fourteenth Amendment Due Process Clause, like the Fifth Amendment Due Process Clause, in conjunction with the Sixth Amendment right to a jury trial requires that any fact that increases the maximum sentence must be charged in the indictment and proven to a jury according to the beyond a reasonable doubt standard, except facts regarding prior convictions.⁶⁰ The Fourteenth and Sixth Amendments require that a jury find a criminal defendant guilty beyond a reasonable doubt for every element of a crime.⁶¹ Under New Jersey's hate crime statute, however, a defendant's sentence enhancement is not based on a prior conviction, but rather a judge's determination by a preponderance of the evidence that the defendant had a biased purpose in committing the offense.⁶² According to the New Jersey hate crime statutory scheme, a jury could find a defendant guilty of a second-degree crime, but the judge could then impose a punishment equivalent to a sentence for a first-degree offense.⁶³ Furthermore, while a jury is required to find guilt beyond a reasonable doubt, the judge is only required to find that the defendant had a biased motive by a preponderance of the evidence in order to impose the punishment equivalent to an offense that is one degree higher.⁶⁴ Accordingly, the Court found New Jersey's procedure permitting this lower standard for the hate crime "sentence enhancement" unconstitutional.⁶⁵

New Jersey proffered three arguments in defense of the hate crime sentencing enhancement. The court rejected each in turn. First, New Jersey argued that the judge's finding of a "biased purpose" goes to the defendant's motive which is a traditional "sentencing factor, and not an 'element' of an offense."⁶⁶ The Court dismissed this argument as a simple disagreement with

57. *Id.* at 2362.

58. *Id.*

59. 526 U.S. 227 (1999).

60. *Apprendi*, 120 S. Ct. at 2362-63; see *Jones v. United States*, 526 U.S. 227, 243 n.6 (1999).

61. *Id.* at 2355-56 (citations omitted).

62. *Id.* at 2363; see N.J. STAT. ANN. § 2c:44-3(e) (West 1995 & Supp. 2000).

63. *Apprendi*, 120 S.Ct. at 2363.

64. *Id.*

65. *Id.* at 2363-64.

66. *Id.* at 2363. Motive is the reason for the act, such as jealousy or greed; whereas intent is the mental element required to perform an act to achieve a certain end. Motive, unlike intent, is not an element of a crime, unless it is made to be an element by statute. See John S. Baker, *United States v. Morrison and*

the rule it announced in the instant case.⁶⁷ The Court concluded that the hate crime enhancement required a judge to find that the defendant had the intent or mens rea to intimidate based on race before imposing the sentence enhancement.⁶⁸ Intent, stated the Court, is “as close as one might hope to come to a core criminal offense ‘element.’”⁶⁹ The Court found it irrelevant that the underlying offense for Apprendi’s sentence enhancement had its own mens rea requirement.⁷⁰ Without the finding of the required mens rea of biased purpose for the sentence enhancement, Apprendi would not have been put at risk of an increased statutory maximum.⁷¹

The Supreme Court in *Mullaney* noted that a state could not avoid constitutional due process requirements by characterizing elements of a criminal offense as factors that only effect punishment.⁷² The *McMillan* Court also stated that schemes that do not permit a jury to determine facts that could increase or add to a criminal defendant’s punishment were constitutionally questionable.⁷³ The *Apprendi* Court followed this substance over form approach and stated that the relevant inquiry is whether the “required finding exposed the defendant to greater punishment than sanctioned by the jury verdict.”⁷⁴ The *Apprendi* Court focused its analysis not on whether the legislature decided to call a fact an element of the crime or a sentencing factor, but rather on the effect that the determination of the fact had on the extent of punishment.⁷⁵ The Court rejected the idea that the finding of biased purpose was merely a traditional sentencing factor of motive because motive does not increase a defendant’s penal consequences.⁷⁶ The required finding of biased purpose is an element of the crime because it exposes the defendant to a greater punishment than that authorized by a jury’s guilty verdict.⁷⁷ New Jersey’s sentencing enhancement essentially turned Apprendi’s conviction of a second degree offense into a first degree offense by doubling the maximum

Other Arguments Against Federal “Hate Crime” Legislation, 80 B.U.L. REV. 1191, 1210 (2000); Daniel M. Levy, *Hate Crime Laws: Cure or Placebo*, 79 MICH. B.J. 674, 678 (2000). New Jersey defended its hate crime statutory scheme on grounds that the trial judge’s finding of Apprendi’s “biased purpose” was the judge’s determination of the traditional “sentencing factor” of motive for the underlying offense of possession of a firearm for an unlawful purpose and not an “element” of the separate offense under the hate crime statute. *Apprendi*, 120 S. Ct. at 2364.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Apprendi*, 120 S. Ct. at 2365.

72. *Id.* at 2360 (citing *Mullaney*, 421 U.S. at 698).

73. *Id.*; see *McMillan*, 477 U.S. at 85-88.

74. *Apprendi*, 120 S.Ct. at 2365.

75. *Id.*

76. *Id.*

77. *Id.*

penalty, therefore it squarely runs afoul of *Winship's* concern for the assessment of the degree of culpability.⁷⁸ The degree of culpability the legislature chooses for "particular, factually distinct conduct" directly impacts the defendant's liberty and stigmatization.⁷⁹ Consequently, due process protections are triggered.

Second, New Jersey argued that *McMillan* authorizes a trial judge to apply the sentence enhancement for a biased purpose based upon a preponderance of the evidence.⁸⁰ Because the New Jersey sentence enhancement is based on an element of the crime and not a sentencing factor, it is constitutionally impermissible for the legislature to authorize a judge to determine biased purpose based on a preponderance of the evidence.⁸¹ Thus, a jury must determine whether the defendant had a biased purpose when committing the crime based on the beyond a reasonable doubt standard. Further, the Court did not find the fact that the enhancement did not create a separate offense requiring separate punishment and disposition as dispositive.⁸² The Court pointed to the fact that many states, including New Jersey, have made hate crimes independent substantive offenses.⁸³ Thus, New Jersey's mere placement of the enhancement in a sentencing statute does not define its true character nor negate it as an essential element of the offense.⁸⁴

Third, New Jersey asserted that the legislature could authorize a judge to consider factors and impose sentences beyond the statutory maximum in light of *Almendarez-Torres v. United States* in which the Supreme Court held that due process was not violated when a judge sentenced a defendant to a term higher than that attached to the offenses alleged in the indictment based on the defendant's prior conviction.⁸⁵ The Court distinguished *Almendarez-Torres* and considered it not to be controlling because recidivism, at issue in *Almendarez-Torres*, does not go directly to the "commission of the offense."⁸⁶ However, the hate crime enhancement in *Apprendi* was based on a fact which directly related to what happened in the commission of the offense and a jury should find this fact beyond a reasonable doubt.⁸⁷ Additionally, in the circumstance of a prior conviction, the defendant already has enjoyed his right to a jury trial and his guilt previously has been proven

78. *Id.* at 2365.

79. *Id.*

80. *Id.* at 2363-64.

81. *Id.* at 2365-66.

82. *Id.*

83. *Id.* at 2366.

84. *Id.* at 2365.

85. *Id.* at 2364; see *Almendarez-Torres*, 523 U.S. at 239-47.

86. *Apprendi*, 120 S. Ct. at 2366.

87. *Id.* at 2365-66.

beyond a reasonable doubt to a jury.⁸⁸ Therefore, because the rights were properly protected, a trial judge could find the fact that a prior conviction existed under a lesser standard of proof than beyond a reasonable doubt.⁸⁹

CONCLUSION

The Supreme Court concluded in *Apprendi* that if a fact increases the potential maximum penalty for a crime, the defendant is exposed to a greater punishment than authorized by a jury's guilty verdict.⁹⁰ Because of this exposure to a greater loss of liberty, the Fourteenth Amendment Due Process Clause and Sixth Amendment right to a jury require that a jury determine that fact according to the beyond a reasonable doubt standard.⁹¹ Based on this reasoning, the Supreme Court reversed the decision of the New Jersey Supreme Court and remanded the case for further proceedings.⁹²

States have enacted hate crime statutes since the 1980s.⁹³ These statutes prescribe enhanced punishments for bias crimes based on the belief that a crime motivated by the victim's race, ethnicity, gender, handicap, or sexual orientation results in harm greater than that which would have otherwise resulted.⁹⁴ The purpose of hate crime statutes is to decrease, or at least suppress, prejudices and bigotry by punishing such expressions.⁹⁵

Although the Supreme Court did not rule on whether it is constitutional to punish bias in *Apprendi*, the Court's decision in *Apprendi* may result in the Court having to address this issue explicitly in the future. In *Apprendi*, the Supreme Court addressed the constitutionality of a state's procedure for imposing an enhanced sentence for a bias crime but did not address the substantive question of whether the imposition of an enhanced sentence based on bias is constitutional. Based on *Apprendi*, a state must prove bias beyond a reasonable doubt as it would any element of a crime. But this seems contrary to the fundamental principle of law that all defendants who are found guilty of committing a criminal act with the required criminal mens rea are subject to the same potential punishment regardless of their reasons for committing the crime (except insanity and self-defense).⁹⁶ A future case may require the Court to reconcile this conflict and raise the substantive question of whether it is

88. *Id.* at 2366.

89. *Id.*

90. *Id.* at 2363.

91. *Id.* at 2355-56, 2362-63.

92. *Id.* at 2366-67.

93. Baker, *supra* note 66, at 1208.

94. *See id.* at 1208-09.

95. *See Levy, supra* note 66, at 676.

96. *See Baker, supra* note 66, at 1210-11.

constitutional for bias to be an element of a crime, in effect, challenging the substantive constitutionality of hate crime laws themselves.

Summary and Analysis Prepared by:
Autumn J.S. Hwang