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WISCONSIN v. MITCHELL 113 S.Ct. 2194 (1993) United States Supreme Court

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FACTS

Todd Mitchell was convicted in Kenosha County, Wisconsin, of aggravated battery and theft, an offense which normally carries a maximum two year prison sentence in Wisconsin. However, because Mitchell selected his victim solely on account of the victim's race, Mitchell received four years.[1]

On the October 7, 1989, Mitchell was among a group of young black men and boys in an apartment in Kenosha, Wisconsin. The group discussed a scene from the motion picture Mississippi Burning, where a white man beat up a black boy who was praying. Shortly thereafter, several members of the group attacked fourteen year old Gregory Riddick. Riddick, a white boy, apparently did nothing to provoke the attack. The group beat and kicked Riddick so severely that he remained comatose for four days.

While Mitchell did not participate in the beating, he allegedly made two statements prior to the beating. First, Mitchell asked the group, "Do you all feel hyped up to move on some white people?"[2] Then, as Riddick walked by, Mitchell pointed at him and said, "You all want to [expletive] somebody up? There goes a white boy; go get him."[3]

Mitchell's sentence was affirmed by the Wisconsin Court of Appeals, but reversed by the Wisconsin Supreme Court on the basis that "the statute unconstitutionally infringes upon free speech."[4] The Wisconsin Supreme Court held that the statute punished bigoted thought, not conduct, in that it "punishes the 'because of' aspect of the defendant's selection, the *reason* the defendant selected the victim, the *motive* behind the selection."[5] The Wisconsin Supreme Court also held the statute to be "unconstitutionally overbroad because it sweeps protected First Amendment speech within its reach and thereby chills free speech."[6] It distinguished antidiscrimination statutes from hate crimes statutes; while it acknowledged the impact and harm of hate crimes, it declared the right to free speech more important than the deterrence of such crimes.[7]

The State appealed to the United States Supreme Court. The Supreme Court granted certiorari because of the importance of the question presented and conflicts among state high courts concerning the constitutionality of penalty enhancement statutes.[8]

HOLDING

The Supreme Court reversed the decision of the Wisconsin Supreme Court. The Court held that the State's enhanced-penalty statute did not violate the defendant's First Amendment right to free speech or beliefs.[9] The statute was not unconstitutionally overbroad and would not effect the right to free speech in Wisconsin.[10]

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[1] A penalty enhancement statute was part of the Wisconsin law when Mitchell committed the crime. At the time of Mitchell's trial Wisconsin statute § 939.645 (1989-1990) included the following provisions:

(1) If a person does all of the following, the penalties for the underlying crime are increased as provided in sub. (2):

(a) Commits a crime under chs. 939 to 948.

(b) Intentionally selects the person against whom the crime under par. (a) is committed or selects the property which is damaged or otherwise affected by the crime under par. (a) because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property.

(2)(c) If the crime committed under sub. (1) is a felony, maximum fine prescribed by law for the crime may be increased by not more than $5,000 and the maximum period of imprisonment prescribed by law for the crime may be increased by not more than 5 years.

(3) This section provides for the enhancement of the penalties applicable for the underlying crime. The court shall direct that the trier of fact find a special verdict as to all of the issues specified in sub. (1).

[2] *Wisconsin v. Mitchell*, 113 S.Ct. 2194, 2196 (1993) (citing Brief for Petitioner at 4).

[3] *Id.* at 2197 (citing Brief for Petitioner, at 4-5).

[4] *Wisconsin v. Mitchell*, 485 N.W.2d 807, 808 (Wis. 1992), *rev'd. & remanded*, 473 N.W.2d 1 (Wis. 1991).

[5] *State v. Mitchell*, 485 N.W.2d 807, 815 (Wis. 1992).

[6] *Id.* at 816.

[7] *Id.* at 817.

[8] *Mitchell*, 113 S.Ct. at 2198.

[9] *Id.* at 2199-2200.

[10] *Id.* at 2201.

ANALYSIS/ APPLICATION

In a unanimous decision written by Chief Justice Rehnquist, the Court declared that the Wisconsin penalty enhancement statute does not violate the defendant's right to freedom of speech or beliefs. The Court first clarified that the Wisconsin Supreme Court's characterization of the penalty enhancement statute was not binding on the Court.[11] The Court conceded that it is "bound by a state court's construction of a state statute."[12] The Court then qualified this concession with the declaration that a state court's construction is only binding with regard to the meaning of a particular word or phrase within a statute, not the practical effect of the statute.[13] Therefore, while the state court may construe the practical effect of the statute in one manner, the Court has the right to construe the practical effect of the statute in another, regardless of the state court's construction.[14]

The Court did not accept the State's claim that the statute only punished conduct, not bigoted thought.[15] The same assault, committed by two defendants, one of whom selected the victim because of race while the other did not, would result in the first defendant receiving a tougher sentence under the penalty-enhancement statute.[16] Thus, more than conduct is punished under the statute.[17] The Court pointed out that sentencing judges consider many factors other than conduct when setting a defendant's sentence.[18] For example, "it is not uncommon for a defendant to receive a minimum sentence because he was acting with good motives, or a rather high sentence because of his bad motives."[19]

Obviously, the Court did not imply that a sentencing judge is able to consider all factors in determining a sentence. In *Dawson v. Delaware*,[20] the Court held that "a defendant's abstract beliefs, however obnoxious to most people, may not be taken into consideration by a sentencing judge."[21] However, the *Dawson* Court also declared that the "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."[22] Thus, in *Barclay v. Florida*,[23] a black defendant's membership in the Black Liberation Army and the defendant's willingness to start a race war were factors a judge could consider in sentencing the defendant to death for the murder of a white man.[24] The *Mitchell* Court distinguished *Dawson*, a case where the defendant's beliefs were not related to the defendant's crime, and *Barclay*, a case where the defendant's beliefs were considered a motivating factor in the crime.[25] Mitchell argued that *Dawson* and *Barclay* did not apply to the case at bar because neither case involved a penalty enhancement statute.[26] The Court dismissed this claim by pointing out that *Barclay* involved a death sentence, which the Court characterized as "surely the most severe *enhancement* of all."[27]

Mitchell also argued for the invalidity of the statute based on the grounds that the statute "punishes the defendant's motive, or reason, for acting."[28] However, the Court was not convinced by this claim either. Rather, the Court noted that motive plays the same role as it does in federal and state antidiscrimination laws which bar intentional discrimination.[29]

R.A.V. v. St. Paul[30] does not mandate the Court to strike down the Wisconsin statute.[31] That case, at a first reading, appeared to advance Mitchell's constitutional claim. In *R.A.V.*, the Court struck down St. Paul's Bias-Motivated Crime Ordinance on the grounds that the ordinance was invalid under the First Amendment.[32] The *R.A.V.* defendant was charged under the St. Paul ordinance for burning a cross in a black family's yard.[33] The *Mitchell* Court distinguished the St. Paul ordinance from the Wisconsin statute on the grounds that the ordinance attempted to prohibit or proscribe "'fighting words'

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[11] *Id.* at 2198-99.

[12] *Id.* at 2198 (citing *R.A.V. v. St. Paul*, 112 S.Ct. 2538, 2541-2542 (1992)).

[13] *Id.*

[14] *Id.* at 2199.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.* (citing *Tison v. Arizona*, 481 U.S. 137, 156 (1987)).

[20] 112 S.Ct. 1093 (1992).

[21] *Id.* at 1098.

[22] *Id.* at 1094.

[23] 463 U.S. 939 (1983).

[24] *Id.* at 942-944.

[25] *Mitchell*, 113 S.Ct. at 2200.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] 112 S.Ct. 2538 (1992).

[31] *Id.*

[32] *Id.* at 2550.

[33] Minn. Stat. § 292.02 (1990) contains the following language:

Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, includ-

deemed particularly offensive by the city."[34] The St. Paul ordinance attempted to proscribe speech or expression, while the Wisconsin statute addressed conduct unprotected by the First Amendment.[35] Thus, the state is entitled to punish some forms of forbidden conduct more harshly than others if it determines such penalty enhancement is appropriate.

The Court noted that the Wisconsin legislature had commendable motives for constructing such a statute.[36] The Court recognized that hate crimes often provoke retaliation and stir up community unrest; also, such crimes are particularly hard on the victims.[37] The Court rejected Mitchell's claim that the statute is unconstitutionally overbroad because a potential defendant, fearing punishment for an uncommitted crime, may be chilled in the exercise of free expression. The Court characterized the claim as being "too speculative."[38] Moreover, the Court stated that previous declarations by a defendant may be introduced at a trial to show evidence of a defendant's motive or intent, so long as such statements comply with evidentiary rules.[39] The case was remanded for further proceedings.

CONCLUSION

In *Mitchell*, the Court has taken a stand in hopes of deterring hate crimes; needless to say the decision has drawn much criticism. Many experts criticize hate crime statutes on First Amendment grounds,[40] arguing that "these laws tread dangerously close to criminalization of speech and thought, that they impermissibly distinguish among people based on their beliefs, and that they are frequently too vaguely drafted to provide adequate notice of prohibited conduct."[41]

According to the Federal Bureau of Investigation, "[a] total of 4,558 hate crime indictments involving 4,755 offenses were reported in 1991."[42] The FBI further concluded that of all the hate crimes reported "60% were allegedly motivated by racial bias, 20% were motivated by religious bias, and ethnic bias and sexual orientation each motivated 10% of the hate crimes reported."[43] Gaumer points out that hate crimes have become more prevalent in the last few years.[44] Some experts believe hate crime figures underestimate the actual number of incidents because many incidents presumably do not get reported or police officers simply fail to recognize certain hate crimes as being such.[45]

Perhaps in this case, the Court sends a message to our citizens and courts that where hate crimes are concerned, enough is enough. Over the last few years state legislatures have recognized the extent and consequences of hate crimes, and in response many have drafted statutes similar to that of Wisconsin.[46] In *Mitchell*, the Court firmly endorses one such statute with a brief and unanimous opinion that makes a controversial constitutional topic seem clear and undisputed. In so doing, the Court recognizes that hate crimes are prevalent in our society and such crimes are damaging not only to the victims but also others who share their race, sex, color, religion, disability, sexual orientation, or national origin. *Mitchell* thus gives guidance to legislatures in drafting hate crime statutes that do not offend the Constitution. The existence of statutes will not stop all hate crimes, but all citizens should hope that such statutes will be a deterrence.

Summary and Analysis Prepared by:
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ing, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor.

[34] *Mitchell*, 113 S.Ct. at 2200.

[35] *Id.* at 2201.

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *See* Gellman, *Sticks and Stones Can Put You in Jail, but Can Words Increase Your Sentence?* Constitutional and Policy Dilemmas of Ethnic Intimidation Laws, 39 UCLA L.Rev. 333, 334 (1991).

[41] *Id.* at 334.

[42] *See* Gaumer, *Punishment for Prejudice: A Commentary on the Constitutionality and Utility of State Statutory Responses to the Problems of Hate Crimes*, 39 S.D. L. Rev. 1, 5 (1994) (citing the United States Department of Justice, FBI's 1991 Preliminary Report on Hate Crime 1 (1991)).

[43] *Id.*

[44] *Id.*

[45] *See* Ho, *Substantive Penal Hate Crime Legislation: Toward Defining Constitutional Guidelines Following the R.A.V. v. City of St. Paul and Wisconsin v. Mitchell Decisions*, 34 Santa Clara L. Rev. 711, 719-20 (1994) (citing U.S. Comm'n on Civil Rights, Civil Rights Issues Facing Asian Americans in the 1990's, at 48 (1992)).

[46] *Id.* at 713.