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Lucas Vs. Arkansas

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Court : US Supreme Court

Decided On : 1974

Appeal No. : 416 U.S. 919

Appellant : Lucas

Respondent : Arkansas

Judgement :

LUCAS v. ARKANSAS - 416 U.S. 919 (1974)
U.S. Supreme Court LUCAS v. ARKANSAS , 416 U.S. 919 (1974)

416 U.S. 919

Fred Carroll LUCAS and Ronnie Ray Lucas v. State of ARKANSAS.
No. 73-544.

Supreme Court of the United States

April 15, 1974

The judgment is vacated and the case is remanded to the Supreme Court of Arkansas for further consideration in light of Lewis v. City of New Orleans, 415 U.S. 130 (1974).

(See dissenting opinion of Mr. Justice DOUGLAS in this case and in Karlan v. City of Cincinnati, 73-537, 416 U.S. 924 d 280; Kelly v. Ohio, 72-1379, 416 U.S. 923, and Rosen v. California, 72-1738, 416 U.S. 924 , 40 L. Ed.2d 280.)

Mr. Justice BLACKMUN, with whom THE CHIEF JUSTICE and Mr. Justice REHNQUIST join, dissenting.

A North Little Rock policeman on routine patrol drove his car at midnight through a parking lot adjacent to a motel and restaurant. He heard loud language and thought a fight was in progress. He rolled the window down and heard one of the appellants say, 'Well, there goes the bid, bad mother fucking cops.' He ignored this and slowly drove on. The language grew louder. He pulled over behind a large parking sign. The appellants said, 'Look at the chicken shit mother fucker hide over there behind that sign.' He drove back. The appellants then said 'Now the sorry son-of-a-bitch is going to come back over here.' Petitioners were arrested and convicted of breaching the peace, in violation of Arkansas law. [Footnote 1] The Supreme Court of Arkansas affirmed the convictions. 254 Ark. 584, 494 S.W. 2d 705 (1973).

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The Court today grants certiorari, vacates the state court judgment and remands for consideration in light of Lewis v. City of New Orleans, 415 U.S. 130 (1974). I dissent. The Arkansas Court has already clearly construed 42-1412 to apply only to 'fighting words,' as defined in Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942), in Gooding v. Wilson, 405 U.S. 518 (1972), and in Lewis. That court, in Holmes v. State, 135 Ark. 187, 204 S.W. 846 (1918), held that the statute was narrow in its scope. 'It is not sufficient that the language used gives offense to the person to whom or about whom it is addressed, but it must be that which in its ordinary acceptation is calculated to give offense and to arouse to anger.' 135 Ark., at 189, 204 S.W., at 847 (1918). In its opinion in this case, the Arkansas Court reaffirmed its prior interpretation of the statute:

> 'As we construe 41-1412 it is narrowed to 'fighting words' addressed to, toward, or about another person in his presence or hearing, which language in its common acceptation is calculated to arouse to anger th person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault. We can conceive of no stronger 'fighting words' then those employed by the appellants in this case, and there is substantial evidence they were calculated to arouse to anger the officer to whom they were spoken or addressed. As a matter of fact that appellant, Fred Lucas, admits that if the mildest of the epithets employed by him, were directed to or about him, it would arouse him to anger.' 254 Ark. at 589-590, 494 S.W.2d at 708.

I am at a loss to understand what this Court further requires in a narrowing interpretation under its version of the Chaplinsky standard espoused in gooding. [Footnote 2] Apparently,

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not only must every statute regulating speech in the 50 States parrot the wording the Court desires, but a state court must play the role of a ventriloquist's dummy mouthing ceremonial phrases in order to obtain the seal of this Court's approval. There can be no question whatsoever that the Arkansas Court, in this case and in its earlier opinion in Holmes, narrowed the statute within the confines of the Court's Gooding doctrine,3 and there is therefore nothing more for that court

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to do. I disagree with this roughshod treatment of the opinions of the Supreme Court of the State of Arkansas. I would affirm, and not vacate, the court's judgment. Footnotes

Footnote 1 Ark.Stat.Ann. 41-1412 (Repl.1964) provides:

> 'If any person shall make use of any profane, violent, vulgar, abusive language toward or about any other person in his presence or hearing, which language in its common acception is calculated to arouse to anger the person

about or to whom it is spoken or addressed, or to cause a breach of the peace or assault, [he] shall be deemed guilty of a breach of the peace . . ..'

Footnote 2 The standard of responsibility is not left open as the Court said it was in Gooding v. Wilson, 404 U.S. 518 (1972), and in Ashton v. Kentucky, 384 U.S. 195 (1966). The statute punishes language which in its ordinary acceptation is calculated to cause a breach of the peace. The statute on its face does not permit or require an inquiry into the respective boiling points of the particular individuals or groups involved in each case, but restricts the fact finder to language that would, in its common or ordinary acceptation, be calculated to cause a breach of the peace. In Chaplinsky, the Court accepted a limiting construction which held that the statute was 'not to be defined in terms of what a particular addressee thinks . . .. The test is what men of common intelligence would understand would be words likely to cause an average addressee to fight.' 315 U.S., at 573. In its Holmes case, the Arkansas Supreme Court pronounced exactly the same standard: 'It is not sufficient that the language used gives offense to the person to whom or about whom it is addressed, but it must that which in its ordinary acceptation is calculated to give offense and to arouse to anger.' 135 Ark., at 189, 204 S.W., at 847.

Footnote 3 My Brother Douglas asserts that the principle enunciated in Gooding and Lewis is not 'new.' It hardly needs stating, however, that the speech at issue in Cantwell v. Connecticut, 310 U.S. 296 (1940), and in Terminiello v. Chicago, 337 U.S. 1 (1949), and the manner and place of delivery, are not at all similar to the speech at issue in Chaplinsky, Gooding, and Lewis.

Cantwell was a case where the State sought to punish Jehovah's Witnesses, who claimed to be ordained ministers, for a message which attacked the Catholic religion. This the State could not do. But we expressly noted that the case involved 'no assault or threatening of bodily harm, no truculent bearing, no intentional discourtesy, no personal abuse.' 310 U.S., at 310. In Terminiello the petitioner was arrested for an address made under the auspices of the Christian Veterans of

America. Our concern there was the protection of ideas, manifestly a part of an informed and free public discourse, and essential to the preservation of responsive government and peaceful, orderly change. We expressly did not reach the question 'whether the content of petitioner's speech was composed of derisive, fighting words which carried it outside the scope of the constitutional guarantees.' 337 U.S., at 3.

Before we rush headlong into scrapping legislative enactments that on their face, or as applied, appear to interfere with some form of speech, we should pause long enough to inquire into 'the nature of the speech in question, the probable effect the statute or ordinance has upon such speech, the importance of the speech in relation to the exposition of ideas, [and] the purported or asserted community interests in preventing that speech.' Lewis v. City of New Orleans, 415 U.S. 130 , at 136-137, 94 S. Ct. 970 (dissenting opinion).

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