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Supreme Court, Queens County, People v. Amadeo

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SUPREME COURT OF NEW YORK
QUEENS COUNTY

People v. Amadeo[1]
(decided August 1, 2001)

On June 8, 2001, Jeremias Amadeo moved, pursuant to New York Criminal Procedure Law sections 210.20(1)(c),[2] 210.35(5),[3] and 190.25(6),[4] to dismiss charges filed against him of attempted murder, assault in the first degree and assault in the second degree, on the ground that the "Hate Crimes Act"[5] is unconstitutional.[6] The defendant claimed the "Hate Crimes Act"

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[1] No. 00-3523, 2001 N.Y. Misc. LEXIS 406 (Sup. Ct. Queens County August 1, 2001).

[2] N.Y. CRIM. PROC. LAW § 210.20(1)(c) (McKinney 2002) provides that the superior court may dismiss an indictment on the grounds that "[t]he grand jury proceeding was defective, within the meaning of section 210.35 . . . ."

[3] N.Y. CRIM. PROC. LAW § 210.35(5) (McKinney 2002) provides that a grand jury proceeding is defective within 210.20 (1)(c) if "[t]he proceeding otherwise fails to conform to the requirements of article one hundred ninety to such degree that the integrity thereof is impaired and prejudice to the defendant may result."

[4] N.Y. CRIM. PROC. LAW § 190.25(6) (McKinney 2001) provides in pertinent part:

> The legal advisors of the grand jury are the court and the district attorney, and the grand jury may not seek or receive legal advice from any other source. Where necessary or appropriate, the court or the district attorney, or both, must instruct the grand jury concerning the law with respect to its duties or any matter before it . . . .

[5] N.Y. PENAL LAW § 485.05 (McKinney 2001). This section is also known as the "Hate Crimes Act", which states in pertinent part:

> A person commits a hate crime when he or she commits a specified offense and either:
> (a) intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, national origin . . . regardless of whether the belief or perception is correct, or
> (b) intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin . . . regardless of whether the belief or perception is correct.

[6] *Amadeo*, 2001 N.Y. Misc. LEXIS 406, at *1-2.

violated the New York Constitution,[7] which guarantees freedom of speech.[8] The defendant conceded that although the "Hate Crimes Act" did not violate the First Amendment of the United States Constitution,[9] in light of the Supreme Court's decision in *Wisconsin v. Mitchell,*[10] he argued that the New York Constitution has been "construed" to provide greater protections than that of the Federal Constitution.[11] The Supreme Court, Queens County, denied the defendant's motion to dismiss, stating: "the defendant has failed to demonstrate that New Yorkers enjoy any rights or protections under the State Constitution that they do not enjoy under the First Amendment."[12] Given that fact, the court held that they were required to follow the decision in *Mitchell.*[13]

Amadeo allegedly stabbed the complainant in the face with a knife, causing serious injury.[14] While standing on the A-train subway platform, Amadeo allegedly asked the complainant if he spoke Spanish, to which the complainant answered that he did not.[15] Next, Amadeo asked, "what the [-]uck language" was the complainant speaking, to which the complainant answered that he was speaking English.[16] After a brief dialogue, Amadeo said he was going to kill the complainant.[17] Amadeo proceeded to stab the complainant in the face.[18] As the complainant was being transferred to the hospital by ambulance, Amadeo allegedly stated that the complainant "was a dumb stupid Mexican" and that the

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[7] N.Y. CONST. art. I, § 8. The New York Constitution provides in pertinent part: "Every citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press."

[8] *Amadeo*, 2001 N.Y. Misc. LEXIS 406, at *2.

[9] U.S. CONST. amend. I. The First Amendment provides in pertinent part "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ."

[10] 508 U.S. 476 (1993).

[11] *Amadeo*, 2001 N.Y. Misc. LEXIS 406, at *3.

[12] *Id.* at *5.

[13] *Id.*

[14] *Id.* at *1.

[15] *Id.*

[16] *Amadeo,* 2001 N.Y. Misc. LEXIS 406, at *1.

[17] *Id.*

[18] *Id.*

defendant himself "was Puerto Rican and a United States Citizen who was from this country not like this mother[-]ucker. . ."[19]

The defendant was arrested and charged with an eight-count indictment, which included attempted murder in the second degree, assault in the second degree, and assault in the first degree, all of which were committed as "Hate Crimes" under New York Penal Law Article 485.[20] The defendant filed a motion to dismiss the three "Hate Crime" counts on the grounds that the "Hate Crimes Act" is unconstitutional, violating Article 1 Section 8 of the New York State Constitution.[21] The Attorney General for the State of New York intervened.[22]

The court began by stating that there is a presumption of constitutionality that favors legislative enactments, and that in order to invalidate these legislative enactments, the invalidity of the enactment must be established beyond a reasonable doubt.[23] Further, the court stated that Article I Section 8 "reads differently from its federal cousin", and it provides "different and greater protections" than the First Amendment of the United States Constitution.[24] The court added that the "burden is on the defendant, however, to establish the specific manner in which the State Constitution creates some independent New York right and to establish that the Hate Crimes Act violates that right."[25] Amadeo cited *People ex rel. Arcara v. Cloud Books*[26] in an attempt to prove beyond a reasonable doubt that the "Hate Crimes Act" should be held unconstitutional because it violates an individual's freedom of speech.[27] The trial court held that although the New

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[19] *Id.*

[20] *Id.*

[21] *Amadeo*, 2001 N.Y. Misc. LEXIS 406, at *2-3. The defendant further contended that the "Hate Crimes Act" violated his guarantee of due process contained in Article I Section 6 of the New York State Constitution.

[22] *Id.* at *2.

[23] *Id.* at *3.

[24] *Id.*

[25] *Id*

[26] 68 N.Y.2d 553, 503 N.E.2d 492, 510 N.Y.S.2d 844 (1986).

[27] *Amadeo*, 2001 N.Y. Misc. LEXIS 406, at *4-5. The defendant also cited People v. P.J. Video, 68 N.Y.2d 296, 501 N.E.2d 556, 508 N.Y.S.2d 907 (1986). The court rejected the *P.J. Video* argument stating that although the court of appeals deemed one section of the State Constitution as conferring more rights

York Court of Appeals broadened the rights of New York citizens, the defendant in this case had not established beyond a reasonable doubt that an independent New York right existed, nor that the Hate Crimes Act violated that right.[28]

In *People ex rel. Arcara*, the issue before the New York Court of Appeals was whether an order to close a bookstore, in which customers were using the store to conduct illegal sexual acts, affected the store owner's constitutional right to freedom of expression guaranteed under Article I section 8 of the New York State Constitution.[29] The owner of the bookstore was fully aware of the activities taking place in his store, but did nothing to prevent them from happening.[30] The prosecutor applied for an order closing the bookstore for one year, claiming the activity should be deemed a public nuisance.[31] The Court of Appeals held that bookselling is a constitutionally protected activity and that closing the store for a year would substantially impact this activity.[32] The Court of Appeals stated, "[t]he crucial factor in determining whether State action affects freedom of expression is the impact of the action on the protected activity and not the nature of the activity which prompted the government act."[33] Further the Court of Appeals remarked, "[t]he test, in traditional terms, is not who is aimed at but who is hit."[34] The Court of Appeals concluded that the action requested by the government infringed upon the New York State Constitutional right to freedom of expression because selling books is a constitutionally protected activity, and forcing the store to close for a year would violate this right.[35]

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than the U.S. Constitution, this does not necessarily mean that another article, namely Article I Section 8 of the New York Constitution is guaranteed to grant more rights than the First Amendment of the U.S. Constitution. The court went on to state, "P.J. Video has no relevance to the issues raised by the defendant."

[28] *Amadeo*, 2001 N.Y. Misc. LEXIS 406, at *5.

[29] *People ex rel. Arcara*, 68 N.Y.2d at 555-56, 503 N.E.2d at 493, 510 N.Y.S.2d at 845.

[30] *Id.* at 556, 503 N.E.2d at 494, 510 N.Y.S.2d at 846.

[31] *Id.*

[32] *Id.* at 558, 503 N.E.2d at 495, 510 N.Y.S.2d at 847.

[33] *Id.*

[34] *People ex rel. Arcara*, 68 N.Y.2d at 558, 503 N.E.2d at 495, 510 N.Y.S.2d at 847.

[35] *Id.*

Before the *Arcara* case was remanded to the New York Court of Appeals, the United States Supreme Court determined that the order sought by the prosecutor, deeming the bookstore a public nuisance and ordering it to be closed for one year, did not violate the First Amendment of the U.S. Constitution.[36] The Court stated that the "least restrictive means test"[37] does not apply to every criminal and civil case simply because each particular remedy will have some effect on the First Amendment activities of those subject to sanction and determined that the order sought by the prosecutor did not violate the First Amendment.[38] The Court reasoned that the illegal sexual activity, which occurred in this case "manifests absolutely no element of protected expression."[39] The Court further reasoned that bookselling in a building used for prostitution does not fall under the First Amendment right to freedom of expression.[40]

In *People v. Dietze*,[41] the New York Court of Appeals held that a statute that criminalizes abusive or obscene language violates both the State and Federal Constitutions.[42] The defendant in *Dietz* referred to the complainant as a "bitch," and to the complainant's retarded son as a "dog", and told the complainant that she would "beat the crap out of [the complainant] some day or night on the street."[43] The complainant went to the authorities and the defendant was arrested and charged with violating former

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[36] Arcara v. Cloud Books, 478 U.S. 697, 707 (1986).

[37] *Id.* at 702-703. The Court stated:

> [W]e think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.

Id. (quoting United States v. O'Brien, 391 U.S. 367, 376-377 (1968)).

[38] *Id.* at 706-707.

[39] *Id.* at 705-706.

[40] *Id.* The Court stated that allowing this claim would be similar to allowing an incarcerated individual to claim that his First Amendment right to speak in public areas is violated by his incarceration.

[41] 75 N.Y.2d 47, 549 N.E.2d 1166, 550 N.Y.S.2d 595 (1989).

[42] *Id.* at 51, 549 N.E.2d at 1168, 550 N.Y.S.2d at 597.

[43] *Id.* at 50, 549 N.E.2d at 1167, 550 N.Y.S.2d at 596.

Penal Law § 240.25.[44] The New York Court of Appeals first determined that the defendant's conduct satisfied the requisite elements under the statute.[45] Holding New York Penal Law § 240.25 (2) unconstitutional, the court reasoned that some speech might be prohibited, such as speech that by its utterance alone may "inflict injury or tend naturally to evoke immediate violence or other breach of the peace."[46] The Court of Appeals concluded that this statute was overbroad due to the general language of "abusive or obscene language."[47] The court further concluded that had the language in the statute been limited to statements made to induce violence, the statute would not have violated either the New York or Federal Constitution.[48] Since *Dietze,* the unconstitutional parts of former New York Penal Law §240.25 have been modified and replaced by New York Penal Law §240.26.[49]

In *Wisconsin v. Mitchell*, the U.S. Supreme Court upheld Wisconsin's "Hate Crime" Act which closely paralleled the act challenged in *Amadeo*.[50] The Supreme Court held that a sentence enhancing statute for "Hate Crimes" does not violate the First Amendment of the Federal Constitution.[51] In *Mitchell*, defendant and others stole a "young white boy's" tennis shoes and beat him severely, rendering him unconscious and in a coma for four days.[52] Just prior to the beating, the defendant made racial remarks

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[44] *Id.* Former N.Y. PENAL LAW § 240.25(2) stated that a person was guilty of harassment when, "[i]n a public place, he uses abusive or obscene language , or makes an obscene gesture."

[45] *Dietze*, 75 N.Y.2d at 51, 549 N.E.2d at 1168, 550 N.Y.S.2d at 597.

[46] *Id.* at 52, 549 N.E.2d at 1168, 550 N.Y.S.2d at 597.

[47] *Id.* at 52, 549 N.E.2d at 1169, 550 N.Y.S.2d at 598.

[48] *Id.* at 52-53, 549 N.E.2d at 1168-69, 550 N.Y.S.2d at 597-98.

[49] N.Y. PENAL LAW § 240.26 (McKinney 2001) states in pertinent part:

> A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:
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> 1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same . . . .

[50] *Mitchell*, 508 U.S. at 490.

[51] *Id.* .

[52] *Id.* at 480.

concerning the "young white boy" to the other participants.[53] The defendant was convicted of aggravated battery but because the jury found that the defendant had intentionally chosen the victim because of his race, the sentence could be increased by up to five additional years of incarceration.[54] Ultimately, the judge sentenced him to four years imprisonment for aggravated battery. Without the sentencing enhancement statute, the defendant could only have been sentenced to two years.[55] The defendant appealed his conviction challenging the constitutionality of the sentencing enhancement statute on the ground that it violated his First Amendment right to freedom of speech.[56] The Wisconsin Supreme Court deemed the statute unconstitutional, reasoning that "the Wisconsin legislature cannot criminalize bigoted thought with which it disagrees."[57]

The U.S. Supreme Court reversed the decision of the Wisconsin Supreme Court, stating that the First Amendment does not protect physical assault.[58] The Court reasoned that the "penalty-enhancement provision" upheld in *Barclay v. Florida,*[59] which allowed a trial judge to take into account the defendant's racial bias towards the victim during sentencing, was parallel to the sentencing enhancement statute involved in the defendant's case.[60] Furthermore, the Court concluded that the First Amendment does not prohibit the "evidentiary use of speech to establish the elements of a crime or to prove motive or intent."[61]

Moreover, in *Barclay*, the Supreme Court held that a trial judge may take into account the defendant's racial animus towards his victim.[62] The defendant and four others were members of a group called the "BLACK LIBERATION ARMY" whose purpose

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[53] *Id.* The defendant stated: "Do you all feel hyped up to move on some white people?" and "You all want to fuck somebody up? There goes a white boy; go get him."

[54] *Id.*

[55] *Mitchell,* 508 U.S. at 480-81.

[56] *Id.* at 481.

[57] *Id.* at 482 (quoting State v. Mitchell 485 N.W.2d 807, 815 (Wis. 1992)).

[58] *Id.* at 484.

[59] 463 U.S. 939 (1983).

[60] *Mitchell*, 508 U.S. at 445-46.

[61] *Id.* at 489.

[62] *Barclay*, 463 U.S. at 947-49.

was to start a racial war.[63] On the evening of June 17, 1974, the five men picked up a hitchhiker and killed him.[64] They attached a note to the victim, which contained racial epithets.[65] In addition, following the murder the defendant and the others made audiotapes stating that this was a racial murder.[66] The defendant was convicted of first-degree murder, and the jury recommended a sentence of life imprisonment.[67] The trial judge found several aggravating circumstances pursuant to Florida's Criminal Procedure and Corrections Statute 921.141,[68] and sentenced the defendant to death.[69] The defendant, among other claims, contended that his sentence must be vacated because the judge added a non-statutory aggravating circumstance, namely racial hatred, when he discussed the reasons for the defendant's sentence.[70]

The Supreme Court ultimately rejected the defendant's argument concluding that a trial judge may take into account "the elements of racial hatred" when determining sentencing.[71] The Court reasoned that nothing in the U.S. Constitution prohibits such an act by a judge so long as the judge's decision is not arbitrary.[72] Here, the Court deemed the judge's decision to be appropriate and not arbitrary.[73]

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[63] *Id.* at 942.

[64] *Id.*

[65] *Id.* at 942-43.

[66] *Id.* at 943-44.

[67] *Barclay*, 463 U.S. at 944. One of the other actors was sentenced to death, two others were convicted of second-degree murder and sentenced to 199 years in prison, while the other plead guilty to second-degree murder. *Id.*

[68] FLA. STAT. ANN. § 921.141 (West 2001).

[69] *Barclay*, 463 U.S. at 944-48 (noting the aggravating factors were that the defendant "knowingly created a great risk of death to many persons, § 921.141 (5)(c), had committed the murder while engaged in a kidnapping, § 921.141 (5)(d), had endeavored to disrupt governmental functions and law enforcement, § 921.141 (5)(g), and had been especially heinous, atrocious, or cruel, § 921.141 (5)(h)."). The judge further stated that the racial motive was an additional aggravating factor. *Id.*

[70] *Id.* at 948-49.

[71] *Id.* at 949.

[72] *Id.*

[73] *Id.*

In *R.A.V. v. St. Paul*[74] the Supreme Court invalidated a Minnesota "bias-motivated crime ordinance"[75] on the grounds that it violated the First Amendment of the U.S. Constitution.[76] The defendant and several other teenagers allegedly placed a cross on the yard of a black family and set it on fire.[77] The defendant was charged with violating the "St. Paul Bias-Motivated Crime Ordinance."[78] The defendant moved to dismiss the charges asserting that the ordinance was "substantially overbroad and impermissibly content based and therefore facially invalid under the First Amendment."[79] The Supreme Court found that the ordinance reached only "fighting words", but found it unconstitutional because it prohibited speech solely on the basis of the subjects the speech address.[80] The Court reasoned that since the ordinance only prohibited "fighting words" used against disfavored people and not everyone, it violated the First Amendment.[81] The Court further determined that the discrimination in the statute did not serve a legitimate compelling state interest because that same interest could be served by a non-discriminatory ordinance.[82]

Both the New York Constitution and the Federal Constitution are indistinguishable pertaining to freedom of speech/expression.[83] However, it seems that the New York Court

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[74] 505 U.S. 377 (1992).

[75] ST. PAUL, MINN., LEGIS. CODE § 292.02 (1990). The "St. Paul Bias-Motivated Crime Ordinance" states in pertinent part: "Whoever places on public or private property a symbol . . . but not limited to, a burning cross . . . which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race . . . commits disorderly conduct and shall be guilty of a misdemeanor."

[76] *R.A.V.*, 505 U.S. at 380-81.

[77] *Id.* at 379.

[78] *Id.* at 380.

[79] *Id.*

[80] *Id.* at 381 (reasoning that the words themselves in the statute pertaining to the illegal activities were not unconstitutional because they were "fighting words" which are not protected by the First Amendment).

[81] *R.A.V.*, 505 U.S. at 391 (stating that although racial "fighting words" were covered, the ordinance could not be applied equally since "fighting words" in connection with homosexuals, for example, were not covered by the ordinance).

[82] *Id.* at 395-96.

[83] *Compare* U.S. CONST. amend I *with* N.Y. CONST. art. I, § 8.

of Appeals has clearly expanded the rights of its citizens pertaining to this issue.[84] The New York Court of Appeals differs with the U.S. Supreme Court when confronted with closing a bookstore because of the illegal sexual activities occurring inside.[85] These two inconsistent opinions pertaining to the same constitutional right indicate that New York courts are willing to expand the freedom of speech provision in its constitution, while the Supreme Court has denied such rights when pertaining to the U.S. Constitution.[86]

Although the New York Court of Appeals was willing to expand Article I, Section 8 of the New York Constitution to include the prohibition of the closing of a bookstore which had illegal acts occurring within its premises, the Supreme Court, Criminal Term, Queens County was not willing to enlarge this freedom of expression to include individuals who intentionally choose their victims based on hatred.[87] It appears clear that the New York courts are not willing to declare that the "Hate Crimes Act" or other sentencing enhancement acts violate Article I § 8 of the New York State Constitution.[88] Although the New York Court of Appeals is willing to expand its citizens' right to freedom of expression in certain circumstances, it is not willing to expand this right when it involves "hate crimes."[89]

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[84] *See Arcara,* 68 N.Y.2d at 557-58, 503 N.E.2d at 496, 510 N.Y.S.2d at 847; *see also Arcara,* 478 U.S. at 707.

[85] *Id.*

[86] *Id.*

[87] *See Arcara,* 68 N.Y.2d at 557-58, 503 N.E.2d at 496, 510 N.Y.S.2d at 847; *see also Amadeo,* 2001 N.Y. Slip Op. at 3.

[88] *See Amadeo,* 2001 N.Y. Slip Op. at 3.

[89] *Id.*