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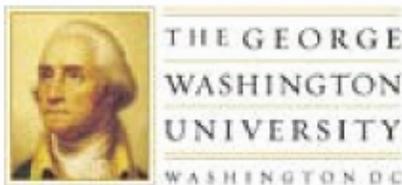
Lewis v. New Orleans

408 U.S. 913 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 3, 1972

*Yonke
on
Kendrick*

MEMORANDUM TO THE CONFERENCE

RE: No. 70-5323 - Lewis v. New Orleans

This case was held for Gooding v. Wilson and was listed for the March 31 conference. Appellant was convicted on a count of violating Ordinance 49-2, resisting arrest and Ordinance 49-7, reviling the police. She was sentenced "to pay a fine of \$10 or serve 10 days in jail on each charge." The case was relisted to have me determine whether these sentences were concurrent. After reading the entire record, I am satisfied that they were not, and therefore that the appeal may not be disposed of upon that ground.

I adhere to my recommendation that we vacate and remand for reconsideration in light of Gooding v. Wilson. It is true that Ordinance 49-7, in terms, punishes only words spoken to a police officer. It reads:

*Brennan
4/11/72*

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 19, 1972

Re: No. 70-5323 - Lewis v. City of New Orleans
No. 71-1044 - Rosenfeld v. New Jersey

Dear Chief:

Please join me in your dissent.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

June 14, 1972

MEMORANDUM TO THE CONFERENCE

Re: No. 70-5323 Lewis v. City of New Orleans

In view of the backlog in the print shop I am circulating
this in typed form.

L. F. P., Jr.

JUN 15 1972

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Burger
Mr. Justice Black

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

MALLIE LEWIS v. CITY OF NEW ORLEANS

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

No. 70-5323. Decided June —, 1972

Circulated: _____

Recirculated: JUN 15 1972 ✓

MR. JUSTICE POWELL, concurring in the result.

Under *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942), the issue in a case of this kind is whether "fighting words" were used. Here a police officer, while in the performance of his duty, was called "G-- D---- M----- F-----" police.

If these words had been addressed by one citizen to another, face to face and in a hostile manner, I would have no doubt that they would be "fighting words." But in this case the words were addressed to a police officer, who may be presumed to be disciplined and trained to exercise a higher degree of restraint than the average citizen. See Model Penal Code § 250.1, Comments, at p. 14 (Tent. Draft No. 13, 1961).

I see no genuine overbreadth problem in this case for the reasons stated in my dissenting opinion in *Rosenfeld v. New Jersey*, *post*, p. —.

I would remand for reconsideration only in light of *Chaplinsky*.