

The Burger Court Opinion Writing Database

Lewis v. New Orleans

415 U.S. 130 (1974)

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1st DRAFT

✓ To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

MALLIE LEWIS v. CITY OF NEW ORLEANS

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

No. 72-6156.—Decided —, 1973

From: Douglas, J.

Circulated: _____

Recirculated: 5-29

MR. JUSTICE DOUGLAS, dissenting.

This was the case we remanded on June 26, 1972, 408 U. S. 913, for reconsideration in light of *Gooding v. Wilson*, 405 U. S. 518. *Gooding* held a Georgia statute unconstitutionally vague and overbroad in light of First Amendment standards applicable to the States by reason of the Fourteenth.

A New Orleans ordinance states:

"It shall be unlawful and a breach of the peace for any person wantonly to curse or revile or to use obscene or opprobrious language toward or with reference to any member of the City police while in actual performance of his duty." Mun. Code § 49-7.

On our remand the Supreme Court of Louisiana again affirmed the judgment of conviction, this time by a 4-to-3 vote.¹ 269 So. 2d 450.

The only action of appellant that was punished was her statement to the police after they had arrested her son.² No public statement was involved, no showing that the words had a tendency to cause a fight, no evidence that they interfered with the police in performance of their duties.

¹ For the first application to the Louisiana Supreme Court see *New Orleans v. Lewis*, 257 La. 993, 244 So. 2d 993, one Justice dissenting from refusal of the writ of certiorari.

² The charge in the present case was that the mother called the officer a "Goddam mother fucking" police officer, as compared with "white son of a bitch, I'll kill you," and "You son of a bitch, I'll choke you to death," in *Gooding*, 405 U. S., at 520, n. 1.

May 31, 1973

No. 72-6156 LEWIS v. NEW ORLEANS

Dear Bill:

I can join your dissent (circulated 5-29) with one exception.

I would be willing to note (this purports to be an appeal) the case, and hear it argued for the reasons set forth in your opinion. The decision of the Louisiana Court below construes this ordinance as prohibiting "fighting words", and if this is indeed the consistent construction of the statute I agree with you that Chaplinsky controls.

Unless there are four votes to take the case and hear argument I would affirm rather than reverse summarily as you suggest at the end of your opinion. While I am inclined to doubt that the statute has been applied as a "fighting words" statute, the Louisiana Court in this case has so construed it even as applying to police officers. On the basis of what we now have before us, I see no justification for our failing to accept this construction and application of the Louisiana Court, despite such misgivings as I may have.

Sincerely,

Mr. Justice Douglas

cc: The Conference

lfp/gg