

DISTRICT OF COLUMBIA COURT OF APPEALS

Potts v. United States

919 A.2d 1127 (D.C. 2007) · Decided January 30, 2007

SUMMARY

The District of Columbia Court of Appeals affirmed the convictions of protestors who displayed expressive clothing and a sign on the Supreme Court grounds in violation of 40 U.S.C. § 6135. The court held that the Superior Court had jurisdiction and that the statute was not unconstitutional on grounds of nonpublic-forum restrictions, vagueness, or overbreadth. It also upheld the trial court’s findings that the appellants’ displays advocated a cause or movement within the meaning of the statute.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Glickman, Associate Judge; Blackburne; Glickman; Kramer; Rigsby
JURISDICTION	District of Columbia
DECIDED	January 30, 2007
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from convictions entered after a bench trial for violating 40 U.S.C. § 6135 by displaying a banner or device designed or adapted to bring a party, organization, or movement into public notice on the Supreme Court grounds.
STANDARD OF REVIEW	Constitutional and statutory challenges were reviewed de novo; factual findings were reviewed for clear error.
PRECEDENTIAL VALUE	precedential
PARTIES	Potts, Perry, Barrows v. United States

TOPICS

- first amendment
- free speech
- void for vagueness
- overbreadth doctrine
- statutory interpretation

PRACTICE AREAS

- constitutional law
- criminal law
- criminal procedure
- First Amendment litigation
- appellate jurisdiction

QUESTIONS PRESENTED

1. Whether the Superior Court had jurisdiction to prosecute violations of 40 U.S.C. § 6135.
2. Whether 40 U.S.C. § 6135 violated the First Amendment facially or as applied to appellants.
3. Whether the display clause of 40 U.S.C. § 6135 was unconstitutionally vague or overbroad.
4. Whether appellants' costumes and sign constituted displays or devices covered by § 6135.
5. Whether the trial court clearly erred in finding that appellants had sufficient time to comply with police directives before arrest.

HOLDINGS

1. The Superior Court has jurisdiction to prosecute violations of 40 U.S.C. § 6135 because 40 U.S.C. § 6137(b) expressly authorizes prosecution in Superior Court and § 6135 regulates conduct exclusively on the Supreme Court grounds.
2. Section 6135 does not violate the First Amendment on its face or as applied to appellants.
3. The display clause of 40 U.S.C. § 6135 is not unconstitutionally vague.
4. The trial court did not misconstrue § 6135 or clearly err in finding that appellants' orange jumpsuit and black hoods were devices designed or adapted to bring a movement into public notice.
5. The display clause is not unconstitutionally overbroad.

KEY QUOTATIONS

“As such, “the government can regulate speech [there] ‘as long as the restrictions are reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.’” (919 A.2d at 1129)

“In context, juxtaposed with the words “party” and “organization,” the term “movement” is not unduly vague; it encompasses any person or group seeking to advocate a cause or message.” (919 A.2d at 1130)

“Whether appellants’ display was expressive conduct to which the statute applied turned on whether an “intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it.”” (919 A.2d at 1131)

FACTUAL BACKGROUND

On February 9, 2005, appellants protested the treatment of prisoners at Abu Ghraib and Guantanamo Bay and the appointment of Alberto Gonzales as Attorney General on the grounds of the Supreme Court. Potts wore a black hood, Barrows wore an orange jumpsuit and black hood, and Perry held a sign stating “no taxes for war or torture.” After appellants ascended from the sidewalk to the plaza, Supreme Court Police repeatedly directed them to return to the sidewalk; they refused and were arrested.

PROCEDURAL HISTORY

Appellants were convicted in the Superior Court after refusing police requests to leave the Supreme Court plaza during a protest. They appealed, challenging the Superior Court's jurisdiction, the facial and as-applied constitutionality of 40 U.S.C. § 6135, the statute's vagueness and overbreadth, the sufficiency of police

warnings, and the trial court's factual findings. The District of Columbia Court of Appeals rejected the challenges and affirmed.

DISPOSITION

affirmed

CASES CITED

- Bonowitz v. United States, 741 A.2d 18 (D.C. 1999)
- Cornelius v. NAACP Legal Defense & Educational Fund, 473 U.S. 788 (1985)
- United States v. Wall, 521 A.2d 1140 (D.C. 1987)
- United States v. Grace, 461 U.S. 171 (1983)
- Ward v. Rock Against Racism, 491 U.S. 781 (1989)
- Texas v. Johnson, 491 U.S. 397 (1989)
- Pearson v. United States, 581 A.2d 347 (D.C. 1990)
- Board of Airport Commissioners of Los Angeles v. Jews for Jesus, 482 U.S. 569 (1987)