

SUPREME COURT OF IOWA

Iowa Beta Chapter of Phi Delta Theta Fraternity v. State of Iowa,
University of Iowa, and Phillip E. Jones

763 N.W.2d 250 (Iowa 2009) · No. No. 07-0330 · Decided February 20, 2009

SUMMARY

The Supreme Court of Iowa held that the Iowa Beta Chapter of Phi Delta Theta had standing and was the real party in interest in an action arising from the defendants’ use of an unlawfully intercepted recording. The court affirmed liability under Iowa Code chapter 808B, concluding that the recording was a protected oral communication and that the defendants’ use was willful. It remanded for reconsideration of actual and punitive damages and related attorney-fee issues.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Wiggins, Justice; Baker, Justice
JURISDICTION	Iowa
DECIDED	February 20, 2009
DOCKET	No. 07-0330
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State of Iowa, the University of Iowa, and Phillip E. Jones appealed after a bench trial in which the district court found them liable under Iowa Code chapter 808B for using an intercepted electronic communication and awarded liquidated damages, punitive damages, and attorney fees and costs.
STANDARD OF REVIEW	Because the case was tried at law, review was for correction of errors at law. Standing determinations were reviewed for errors at law; factual findings had the effect of a special verdict and were binding if supported by substantial evidence. Legal conclusions and their application were not binding on appeal.
PRECEDENTIAL VALUE	Published and precedential Iowa Supreme Court opinion
PARTIES	State of Iowa, University of Iowa, Phillip E. Jones v. Iowa Beta Chapter of Phi Delta Theta Fraternity

TOPICS

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PRACTICE AREAS

statutory interpretation

privacy and communications law

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damages and attorney fees

appellate procedure

QUESTIONS PRESENTED

1. Whether the fraternity had standing and was the real party in interest despite suspension of its charter and lack of student members at trial.
2. Whether the fraternity was a protected party with an identifiable injury under Iowa Code section 808B.8.
3. Whether substantial evidence supported the finding that the recording captured an oral communication protected by chapter 808B.
4. What conduct constitutes a willful interception or use under Iowa Code chapter 808B.
5. Whether substantial evidence supported the finding that the defendants actively used the intercepted communication in violation of chapter 808B.
6. Whether Phillip E. Jones could be held personally liable under the amended Iowa Code section 669.5.
7. Whether the fraternity was entitled to punitive damages against Jones.
8. Whether the district court properly calculated liquidated damages and attorney fees and costs.

HOLDINGS

1. The fraternity had standing and was the real party in interest because it retained an identifiable association, including alumni members and the potential to regain active status, during the litigation.
2. The fraternity was a protected party with an identifiable injury because the defendants treated the intercepted communication as belonging to or concerning the fraternity and disciplined the fraternity based on it.
3. The recording was a protected oral communication because the fraternity exhibited a subjective expectation of privacy and that expectation was objectively reasonable.
4. For civil liability under chapter 808B, willful conduct means purposeful conduct and does not require a bad motive or knowing unlawful component.
5. Mere listening is not a use under Iowa Code chapter 808B; civil liability requires active use of the intercepted communication.
6. The 2006 amendment to Iowa Code section 669.5 did not apply retrospectively to eliminate Jones's personal liability for conduct occurring before the amendment.
7. The punitive-damages award against Jones was improper because the evidence did not establish a voluntary, intentional, or reckless violation of a known legal duty.

8. Liquidated damages had to end when the defendants stopped using the tape, reducing the award to \$73,200 for 732 days; fees incurred in the administrative disciplinary proceeding were not recoverable under section 808B.8 and could not be awarded as actual damages in addition to liquidated damages, while fees incurred prosecuting the civil action remained recoverable.

KEY QUOTATIONS

“We believe mere listening to the intercepted communication is not a use under the Iowa statute. Rather, a person must actively use the intercepted communication for civil liability to attach.” (763 N.W.2d at 265)

“Therefore, we conclude, in the context of the statute as passed by the legislature, the word “willfully” in section 808B.2 only requires purposeful conduct without a bad motive or knowing, unlawful component.” (763 N.W.2d at 263-64)

“Consequently as a matter of law, the evidence was insufficient to award punitive damages and the judgment for punitive damages against Jones is reversed.” (763 N.W.2d at 268)

FACTUAL BACKGROUND

Elmer Vejar, a nonmember renter and former prospective pledge of the fraternity, secretly recorded a fraternity meeting in a private subbasement meeting room. University officials used the recording to investigate and initially discipline the fraternity for hazing, despite the fraternity's contention that the recording was unlawfully intercepted; the hazing charge was later dropped after the fraternity raised Iowa Code chapter 808B. The fraternity sued and obtained a district-court judgment imposing liquidated damages, punitive damages against Jones, and attorney fees and costs.

PROCEDURAL HISTORY

The fraternity sued the State, the University, and several university employees under Iowa Code section 808B.8. The claims against Baker, Lukas, and Bergeon were dismissed on summary judgment, and the district court dismissed the Phi Delta Theta House Association's claims after a bench trial but found for the fraternity against the State, the University, and Jones. The Iowa Supreme Court affirmed liability and some fee and damage components, reversed the punitive-damages and administrative-fee awards, reduced liquidated damages, and remanded for entry of a consistent judgment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the \$5,000 punitive-damages award against Jones and the \$24,444.18 award for administrative attorney fees and costs; reduce liquidated damages to \$73,200 based on 732 days of violation; otherwise affirm the district-court judgment and enter judgment consistent with the opinion.

CASES CITED

- Godfrey v. State, 752 N.W.2d 413, 417-19 (Iowa 2008)
- Pillsbury Co. v. Wells Dairy, Inc., 752 N.W.2d 430, 434-35 (Iowa 2008)
- In re Estate of Voss, 553 N.W.2d 878, 881-82 (Iowa 1996)
- Keller & Bennett v. Tracy, 11 Iowa 530, 531 (1861)
- Garofalo v. Lambda Chi Alpha Fraternity, 616 N.W.2d 647, 657-58 (Iowa 2000)
- Carson v. Pierce, 719 F.2d 931, 933 (8th Cir. 1983)
- Smoot v. United Transportation Union, 246 F.3d 633, 640 (6th Cir. 2001)
- Auen v. Alcoholic Beverages Div., 679 N.W.2d 586, 590 (Iowa 2004)
- State v. Wiederien, 709 N.W.2d 538, 541 (Iowa 2006)
- City of Des Moines v. Employment Appeal Board, 722 N.W.2d 183, 196 (Iowa 2006)
- Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 337 (Iowa 2008)
- Pecenka v. Fareway Stores, Inc., 672 N.W.2d 800, 803 (Iowa 2003)
- Katz v. United States, 389 U.S. 347, 361 (1967)
- Smith v. Maryland, 442 U.S. 735, 740-41 (1979)
- Rakas v. Illinois, 439 U.S. 128, 143 n.12 (1978)
- United States v. Bunkers, 521 F.2d 1217, 1219 (9th Cir. 1975), cert. denied, 423 U.S. 989 (1975)
- Mancusi v. DeForte, 392 U.S. 364, 368-69 (1968)
- State v. Azneer, 526 N.W.2d 298, 299 (Iowa 1995)
- United States v. Murdock, 290 U.S. 389, 394-95 (1933)
- Citron v. Citron, 722 F.2d 14, 16 (2d Cir. 1983)
- Malouche v. JH Management Co., 839 F.2d 1024, 1026 (4th Cir. 1988)
- Deibler v. State, 365 Md. 185, 776 A.2d 657, 665 (2001)
- State v. O'Brien, 774 A.2d 89, 104 (R.I. 2001)
- Williams v. Poulos, 11 F.3d 271, 284 (1st Cir. 1993)
- Thompson v. Dulaney, 970 F.2d 744, 749 (10th Cir. 1992)
- Diehl v. Diehl, 421 N.W.2d 884, 888 (Iowa 1988)
- Peavy v. WFAA-TV, Inc., 221 F.3d 158, 174-75 (5th Cir. 2000)
- Dorris v. Absher, 179 F.3d 420, 426 (6th Cir. 1999)
- Reynolds v. Spears, 93 F.3d 428, 432-33 (8th Cir. 1996)
- Leach v. Bryam, 68 F. Supp. 2d 1072, 1075 (D. Minn. 1999)
- Fields v. Atchison, Topeka & Santa Fe Railway, 985 F. Supp. 1308, 1313-14 (D. Kan. 1997), withdrawn in part by 5 F. Supp. 2d 1160 (D. Kan. 1998)
- Thompson v. Dulaney, 838 F. Supp. 1535, 1547-48 (D. Utah 1993)
- Emmet County State Bank v. Reutter, 439 N.W.2d 651, 653 (Iowa 1989)
- Baldwin v. City of Waterloo, 372 N.W.2d 486, 491 (Iowa 1985)
- Moose v. Rich, 253 N.W.2d 565, 571-72 (Iowa 1977)
- Groesbeck v. Napier, 275 N.W.2d 388, 390-91 (Iowa 1979)

- State v. Phillips, 226 N.W.2d 16, 19 (Iowa 1975)
- Suss v. Schammel, 375 N.W.2d 252, 256 (Iowa 1985)
- Harris v. Short, 253 Iowa 1206, 1208-10, 115 N.W.2d 865, 866-67 (1962)

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