

SUPREME COURT OF MONTANA

State v. Robinson, 319 Mont. 82

82 P.3d 27 (2003) · No. No. 02-585 · Decided December 18, 2003

SUMMARY

The Supreme Court of Montana affirmed the denial of Malachi Cody Robinson's motion to dismiss a disorderly conduct charge based on his profane remarks directed at a police officer. The court held that the remarks constituted unprotected "fighting words" under the First Amendment and Montana law, and declined to follow contrary Ninth Circuit precedent. Justice Cotter dissented, concluding that the officer's status and the circumstances did not establish fighting words.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	W. William Leaphart; Jim Regnier; John Warner; James C. Nelson; Jim Rice; Karla M. Gray; Patricia O. Cotter
JURISDICTION	Montana
DECIDED	December 18, 2003
DOCKET	No. 02-585
DISPOSITION	affirmed
PROCEDURAL POSTURE	Robinson appealed the denial of his motion to dismiss a disorderly-conduct charge, after entering a nolo contendere plea while reserving the right to appeal the motion's denial.
STANDARD OF REVIEW	The denial of a motion to dismiss is reviewed de novo as a question of law.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Montana; binding precedent in Montana.
PARTIES	Malachi Cody Robinson v. State of Montana

TOPICS

- free speech
- first amendment
- criminal procedure
- appellate procedure
- federalism

PRACTICE AREAS

- constitutional law
- criminal law
- criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether Robinson's profane remarks directed at a police officer constituted unprotected fighting words under the First Amendment.
2. Whether the Montana Supreme Court was required by the Supremacy Clause to follow the Ninth Circuit's interpretation of the fighting-words exception in *United States v. Poocha*.
3. Whether the District Court properly denied Robinson's motion to dismiss.

HOLDINGS

1. Robinson's unprovoked, profane remarks directed at the police officer constituted fighting words and were not protected by the First Amendment.
2. The Montana Supreme Court was not bound by the Ninth Circuit's interpretation of federal constitutional requirements in *United States v. Poocha*.
3. The District Court did not err in denying Robinson's motion to dismiss.

KEY QUOTATIONS

"In passing on federal constitutional questions, the state courts and the lower federal courts have the same responsibility and occupy the same position; there is a parallelism but not paramountcy for both sets of courts are governed by the same reviewing authority of the Supreme Court." (at 30)

"Accordingly, this Court is not bound to march \"lock-step\" with the Circuit court's reasoning in its decision in United States v. Poocha (9th Cir.2001), 259 F.3d 1077." (at 31)

"If we are to maintain a \"fighting words\" interpretation of § 45-8-101, MCA, per our decision in O'Shaughnessy, then we must conclude that, outside the confines of a sty, \"f * * * pig\" qualifies as sufficiently and inherently inflammatory, irrespective of the intended audience."* (at 32)

FACTUAL BACKGROUND

At approximately midnight on October 8, 2000, Malachi Cody Robinson crossed a crowded Missoula intersection and loudly called a police officer sitting in a marked patrol car a "fucking pig." After the officer approached him, Robinson replied, "Fuck off, asshole." Robinson was arrested for disorderly conduct based on the use of threatening, profane, or abusive language. The lower courts concluded that the statements constituted fighting words rather than protected speech.

PROCEDURAL HISTORY

Robinson was arrested and charged in Justice Court with disorderly conduct under § 45-8-101(1)(c), MCA, based on profane remarks directed at a police officer. The Justice Court denied his motion to dismiss, and Robinson entered a nolo contendere plea with a reserved appellate challenge. The District Court likewise denied the motion, concluding that the remarks were fighting words. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Murphy, 2003 MT 276, 317 Mont. 500, 78 P.3d 843
- City of Billings v. Batten, 218 Mont. 64, 705 P.2d 1120 (1985)
- City of Whitefish v. O'Shaughnessy, 216 Mont. 433, 704 P.2d 1021 (1985)
- Houston v. Hill, 482 U.S. 451, 461 (1987)
- United States v. Poocha, 259 F.3d 1077 (9th Cir. 2001)
- Freeman v. Lane, 962 F.2d 1252, 1258 (7th Cir. 1992)
- United States ex rel. Lawrence v. Woods, 432 F.2d 1072, 1075 (7th Cir. 1970)
- State v. Montano, 206 Ariz. 296, 77 P.3d 1246, 1247 n.1 (2003)
- People v. Dunlap, 975 P.2d 723, 748 (Colo. 1999)
- Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942)
- State v. Vandersloot, 2003 MT 179, 316 Mont. 405, 73 P.3d 174