

MICHIGAN SUPREME COURT

People v. Rapp

492 Mich. 67 (2012) · No. Nos. 143343; 143344 · Decided July 27, 2012

SUMMARY

The Michigan Supreme Court held that the phrase “disrupt the normal activity” in Michigan State University Ordinance § 15.05 is facially overbroad under the First Amendment because it criminalizes a substantial amount of protected speech and permits unfettered enforcement discretion. The Court reinstated the circuit court’s ruling on the ordinance’s facial unconstitutionality and affirmed that MCR 7.101(O) does not authorize taxation of costs in criminal appeals.

CASE DETAILS

COURT	Michigan Supreme Court
WRITING FOR THE COURT	Diane M. Hathaway; Robert P. Young, Jr.; Michael F. Cavanagh; Marilyn Kelly; Stephen J. Markman; Mary Beth Kelly; Brian K. Zahra
JURISDICTION	Michigan
DECIDED	July 27, 2012
DOCKET	Nos. 143343; 143344
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed his misdemeanor conviction for violating Michigan State University Ordinance § 15.05. The circuit court reversed the conviction as facially unconstitutional and awarded defendant costs; the Court of Appeals reversed, upheld the ordinance against the facial challenge, and held that costs could not be assessed in the criminal appeal. The Michigan Supreme Court granted leave to appeal.
STANDARD OF REVIEW	Constitutional questions are reviewed de novo. Ordinances are presumed constitutional, and the challenger bears the burden of proving a constitutional violation.
PRECEDENTIAL VALUE	Published Michigan Supreme Court opinion; precedential.
PARTIES	Jared Rapp v. People of the State of Michigan

TOPICS

overbreadth doctrine

free speech

first amendment

ordinances

appellate procedure

PRACTICE AREAS

constitutional law

criminal law

criminal procedure

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QUESTIONS PRESENTED

1. Whether the phrase "disrupt the normal activity" in MSU Ordinance § 15.05 is facially overbroad under the First Amendment.
2. Whether MCR 7.101(O) authorizes taxation of appellate costs against the prosecution in a criminal case.

HOLDINGS

1. The phrase "disrupt the normal activity" in MSU Ordinance § 15.05 is facially overbroad and unconstitutional under the First Amendment because it reaches a substantial amount of constitutionally protected speech and expressive conduct and gives enforcement officials excessive discretion.
2. MCR 7.101(O) does not authorize taxation of appellate costs in a criminal case.

KEY QUOTATIONS

"We agree with defendant and hold that the phrase "disrupt the normal activity" in the ordinance is facially overbroad." (492 Mich. at 76)

"Because this case is a criminal matter, MCR 7.101(O) does not provide grounds for awarding costs." (492 Mich. at 86)

"On the issue of costs, we agree with the Court of Appeals' conclusion that the circuit court erroneously assessed costs against the prosecution" (492 Mich. at 86)

FACTUAL BACKGROUND

Rapp received a parking citation after parking his car in an MSU parking structure. He confronted parking-enforcement employee Ricardo Rego, shouted, and photographed Rego while Rego waited in a service vehicle for campus police to arrive. Rapp was charged with violating MSU Ordinance § 15.05 and convicted by a district court jury.

PROCEDURAL HISTORY

A district court jury convicted Rapp of violating MSU Ordinance § 15.05 after an incident involving a parking-enforcement employee. The circuit court reversed on facial overbreadth grounds and awarded costs under MCR 7.101(O). The Court of Appeals reversed both rulings. The Michigan Supreme Court reversed the Court of Appeals in part as to the ordinance and reinstated the circuit court's facial-unconstitutionality ruling, but affirmed the Court of Appeals as to taxation of costs.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The circuit court's determination that the phrase "disrupt the normal activity" in MSU Ordinance § 15.05 is facially unconstitutional was reinstated. The remaining as-applied issue was to proceed in the circuit court; the Court of Appeals had remanded that issue for resolution.

CASES CITED

- City of Houston, Texas v. Hill, 482 U.S. 451 (1987)
- People v. Rapp, 293 Mich. App. 159, 809 N.W.2d 665 (2011)
- People v. Armstrong, 490 Mich. 281, 289, 806 N.W.2d 676 (2011)
- Broadrick v. Oklahoma, 413 U.S. 601 (1973)
- In re Chmura, 461 Mich. 517, 530, 608 N.W.2d 31 (2000)
- Thornhill v. Alabama, 310 U.S. 88, 97 (1940)
- Los Angeles City Council v. Taxpayers for Vincent, 466 U.S. 789, 801 (1984)
- Virginia v. Hicks, 539 U.S. 113, 119 (2003)
- Winters v. New York, 333 U.S. 507, 515 (1948)
- Kolender v. Lawson, 461 U.S. 352, 359 n. 8 (1983)
- United States v. Williams, 553 U.S. 285, 292-293 (2008)
- Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)
- Texas v. Johnson, 491 U.S. 397 (1989)
- Hill v. Colorado, 530 U.S. 703 (2000)
- Cohen v. California, 403 U.S. 15 (1971)
- People v. Armstrong, 490 Mich. 281, 289, 806 N.W.2d 676 (2011)