

SUPREME COURT OF CONNECTICUT

DiMartino v. Richens

263 Conn. 639 (2003) · Decided May 27, 2003

SUMMARY

The Connecticut Supreme Court affirmed a judgment for a former state airport employee who alleged that supervisors retaliated against him after he cooperated with a state police investigation into airport security breaches. The court addressed claims under 42 U.S.C. § 1983 and Connecticut General Statutes § 31-51q involving freedom of speech, equal protection, qualified immunity, and punitive damages.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Borden, J.
JURISDICTION	Connecticut
DECIDED	May 27, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendants appealed from a trial-court judgment entered after a jury verdict for the plaintiff on his 42 U.S.C. § 1983 claims and the court's findings for the plaintiff under Connecticut General Statutes § 31-51q. The appeal was transferred from the Appellate Court to the Supreme Court of Connecticut.
STANDARD OF REVIEW	Factual findings ordinarily are reviewed for clear error, but the protected status of government-employee speech under the First Amendment is reviewed de novo through independent appellate examination of the whole record. The denial of a directed verdict and sufficiency of the evidence claims were reviewed under the applicable jury-verdict standard.
PRECEDENTIAL VALUE	Published and precedential Connecticut Supreme Court decision
PARTIES	Mark Richens, Kenneth J. Robert, Robert Carterud, Department of Transportation of the State of Connecticut v. Francisco DiMartino

TOPICS

- free speech
- first amendment
- retaliation
- equal protection
- section 1983

PRACTICE AREAS

constitutional law

civil rights

employment law

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether DiMartino's reports and cooperation concerning breaches of airport security constituted speech on a matter of public concern protected by the First Amendment.
2. Whether the defendants' asserted interest in preventing workplace disruption outweighed DiMartino's First Amendment interest under the Pickering balancing test.
3. Whether sufficient evidence supported the jury's finding that the defendants violated DiMartino's Fourteenth Amendment equal-protection rights through selective and malicious treatment based on his exercise of constitutional rights.
4. Whether the defendants were entitled to qualified immunity.
5. Whether punitive damages against Robert were unsupported by evidence of personal involvement or inconsistent with the absence of compensatory damages.

HOLDINGS

1. Reports to the police concerning forced entry into an airport office, access to a high-security key bank, and potential access to the airport operations area constituted speech that fairly could be considered related to a matter of political and social concern to the community.
2. The defendants' asserted interest in preventing workplace disruption did not outweigh DiMartino's substantial First Amendment interest in reporting a critical airport-security breach because the asserted disruption concern was pretextual, unreasonable, and minimally supported by the defendants' conduct.
3. The evidence supported the jury's finding that the defendants selectively treated DiMartino differently from similarly situated employees based on his exercise of First Amendment rights and malicious or bad-faith intent to injure him.
4. The defendants were not entitled to qualified immunity because their conduct violated clearly established constitutional rights and their factual premises—that they acted solely to prevent workplace disruption and lacked knowledge of the airport-security concerns—were unsupported by the record.
5. The court declined to review the defendants' claims that punitive damages against Robert lacked evidentiary support and were inconsistent with the absence of compensatory damages because those claims were not raised before the trial court.

KEY QUOTATIONS

“Whether an employee’s speech addresses a matter of public concern must be determined by the content, form, and context of [the speech], as revealed by the whole record.” (667)

“For these reasons, we determine that the speech in question fairly can be considered as relating to a matter of public concern.” (669)

“The pretextual, unreasonable nature of the defendants’ concern for disruption or violence is underscored by the nature of the transfers themselves.” (672)

“It is well settled that “government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” (675)

FACTUAL BACKGROUND

DiMartino was a carpentry supervisor at Bradley International Airport whose office connected a public terminal area with a highly secured airport operations area and contained a bank of high-security keys. After discovering forced entries into his office and access to the key bank, he reported the incidents to airport administrator Kenneth J. Robert and cooperated with a state-police investigation, including hidden video surveillance. After fellow employees were identified in the investigation, the defendants stripped DiMartino of supervisory authority, transferred and demoted him, placed him in degrading and unsuitable assignments, and continued those actions despite union and labor-authority orders directing restoration of his supervisory duties. DiMartino claimed that the actions were retaliation for his speech about airport security and violated his equal-protection rights.

PROCEDURAL HISTORY

The plaintiff sued state employees and the Connecticut Department of Transportation for retaliating against him after he cooperated with a state-police investigation into security breaches at Bradley International Airport. The § 1983 claims were tried to a jury, while the § 31-51q claim was tried to the court. The jury awarded \$150,000 in compensatory damages and \$150,000 in punitive damages, and the trial court entered judgment consistent with the verdict and found for the plaintiff under § 31-51q. The defendants' motions for directed verdict, remittitur, and to set aside the verdict were denied.

DISPOSITION

affirmed

CASES CITED

- Connick v. Myers, 461 U.S. 138 (1983)
- Pickering v. Board of Education, 391 U.S. 563 (1968)
- Board of Education v. Doyle, 429 U.S. 274 (1977)
- Harlow v. Fitzgerald, 457 U.S. 800 (1982)
- Washington v. Davis, 426 U.S. 229 (1976)
- Wayte v. United States, 470 U.S. 598 (1985)
- Schnabel v. Tyler, 230 Conn. 735, 762, 646 A.2d 152 (1994)
- Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485 (1984)
- Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston, Inc., 515 U.S. 557 (1995)
- Brown v. K.N.D. Corp., 205 Conn. 8, 529 A.2d 1292 (1987)

- State v. Nardini, 187 Conn. 109, 111-12, 445 A.2d 304 (1982)
- Carrol v. Allstate Ins. Co., 262 Conn. 433, 450-51 n.13, 815 A.2d 119 (2003)
- State v. Bell, 188 Conn. 406, 413, 450 A.2d 356 (1982)
- Perry v. Sinderman, 408 U.S. 593, 597 (1972)
- Adler v. Board of Education, 342 U.S. 485, 492 (1952)
- McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 220, 29 N.E. 517 (1892)
- Ex parte Virginia, 100 U.S. 339, 347 (1879)
- State v. Maxwell, 29 Conn. App. 704, 710, 618 A.2d 43 (1992)
- State v. Zayas, 195 Conn. 611, 620, 490 A.2d 68 (1985)
- State v. Little, 194 Conn. 665, 674, 485 A.2d 913 (1984)
- State v. Brown, 199 Conn. 14, 22, 505 A.2d 690 (1986)
- Ferguson v. Skrupa, 372 U.S. 726, 732 (1963)
- Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 489 (1955)
- Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979)
- Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977)