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TABLE OF CASES

STATUTES

No. 735

In the Supreme Court of the United States

OCTOBER TERM, 1963

B. ELTON COX,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

On Appeal From The Supreme Court of Louisiana

MOTION TO AFFIRM AND/OR DISMISS ON BEHALF OF THE STATE OF LOUISIANA, APPELLEE

STATEMENT

The findings of fact in this case, as contained in the opinion of the Supreme Court of Louisiana, and set forth at pages 14A through 17 A of the Appendix to Jurisdictional Statement, is supported by the transcript and without reiteration herein, said findings of fact are urged by Appellee as being a correct statement of the record, and ask that this Honorable Court accept same as such.

The Questions Presented Are Not Substantial

I. The alleged unconstitutionality of statutes.

Appellant contends that the demonstration in

the case at bar is a classic example of a peaceful assembly for the redress of grievances and, as such, it is within the protected area of free trade in ideas under the First Amendment. *Edwards v. S. Carolina*, 372 U.S. 229 (1963).

In *Edwards*, there were 187 demonstrators all of whom were arrested and convicted by the State court; there was no obstruction of pedestrian or vehicular traffic within the State House grounds. Also, in *Edwards*, the Supreme Court of South Carolina said that under the law of that State, the offense of breach of the peace "is not succeptible of exact definition."

In the case at bar, there were between fifteen hundred and thirty-eight hundred persons in this demonstration. Of that number, only one, appellant, was arrested and convicted in the State Court of Louisiana. In the case at bar, the marchers occupied the sidewalk across the street from the Courthouse, occupied the entire sidewalk for the greater portion of a block, in such a manner that no passage was possible thereon. All of the entrances to many offices facing that sidewalk were blocked; the occupants were unable to enter or leave. These demonstrators were "tightly packed" along most of the sidewalk. Also, these activities resulted in an obstruction of the street, which separates the sidewalk occupied by the marchers and the courthouse. Because of this, it was necessary to re-route traffic away from that street. Included in appellant's speech was also a protest against the al-

legedly illegal arrest of some of their members on the previous day. During this demonstration, the prisoners in the Jail, in response thereto, evoked loud and frenzied outbursts. "Grumbling" was heard among the white people who had gathered there. A feeling of "impending excitement" was apparent to all and a fear arose among those present that they were "about to have a riot." "Tension was running high." Some of the witnesses felt the demonstrators were about to storm the courthouse to get the prisoners who had been arrested the day before. The prisoners in jail were "hollering," "screaming," "beating on bars," "beating on walls and so on" trying to attract the attention of the demonstrators across the street.

The sheriff, feeling that a riot was eminent, and fearing that the crowd would get out of hand, knowing that the street and sidewalk, were blocked completely to vehicular and pedestrian traffic, instructed appellant, by means of a loudspeaker, to move on and break it up; that he had had his allotted time, to which Cox instructed the demonstrators, "Don't move." At this point, the police disbursed the crowd and appellant was arrested the following day.

It is readily ascertainable from a factual basis that *Edwards v. S. Carolina* has no application herein. As a matter of fact, in *Edwards*, this Court specifically found, at page 231:

> "During this time a crowd of some 200 to 300 onlookers had collected in the horseshoe area and on the adjacent sidewalks. There was no evidence

> to suggest that these onlookers were anything but curious, and no evidence at all of any threatening remarks, hostile gestures, or offensive language on the part of any member of the crowd. The City Manager testified that he recognized some of the onlookers, whom he did not identify, as 'possible trouble makers,' but his subsequent testimony made clear that nobody among the crowd actually caused or threatened any trouble. There was no obstruction of pedestrian or vehicular traffic within the State House grounds. No vehicle was prevented from entering or leaving the horseshoe area. . . . There were a number of bystanders on the public sidewalks adjacent to the State House grounds, but they all moved on when asked to do so, and there was no impediment of pedestrian traffic."

This Court found that the arrest, conviction and punishment of petitioner in *Edwards*, under the circumstances disclosed by that record, infringed upon constitutionally-protected rights of free speech, free assembly, and freeded petitioner to apply for a rehearing of his grievances.

Appellee has no objection to the holding of *Edwards*, but contends that the circumstances in the case at bar do not lend itself to the applicability of the rule of law announced in *Edwards*. In *Edwards*, the Court found:

> ". . . They peaceably assembled at the site of the State government and there peaceably expressed their grievances 'to the citizens of South Carolina, along with the Legislative Bodies of South Carolina'."

In *Edwards*, this Court found that the circumstances were not that of one of pushing, shoving and milling around, where threatened violence if the police did not act was present, or that the speaker passed the bounds of argument or persuasion and undertook the incitement of riot, or that this record was one of "fighting words." *Edwards v. S. Carolina*, 372 U.S. 336.

Further, in *Edwards*, this Honorable Court said, at page 236:

> "We do not review in this case criminal convictions resulting from the evenhanded application of a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be limited or proscribed. If, for example, the petitioners had been convicted upon evidence that they had violated a law regulating traffic, or had disobeyed a law reasonably limiting the periods during which the State House grounds were open to the public, this would be a different case."

This Court further stated, at page 237:

> ". . . These petitioners were convicted of an offense so generalized as to be, in the words of the South Carolina Supreme Court, 'not susceptible of exact definition'."

In the case at bar, over fifteen hundred persons were demonstrating, and were lined along the sidewalks and streets along a one-block area directly adjacent to the Court House, where twenty-three demonstrators had been incarcerated in the Parish Jail, which is located on the top floor of the Court House.

Part of their demonstration was dedicated to the "illegal arrests" of these twenty-three demonstrators. During their demonstration, the street and sidewalk along the block were completely obstructed, preventing vehicular and pedestrian traffic. An emotional, loud response was also received by the demonstrators as a result of their actions from the twenty-three prisoners in the Parish Jail atop the Court House.

> "The priceless character of First Amendment freedoms can not be gainsaid, but it does not follow that they are absolutes, immune from necessary State action, reasonably designed for theprotection of society." *Edwards v. S. Carolina*, 372 U.S. 239.
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> "Where clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace or order, appears, the power of the State to prevent or punish is obvious." *Cantwell v. Connecticut*, 310 U.S. 308, 60 Sup. Ct. 905.
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> "Municipal authorities, as trustees of the public, have the duty to keep their community's streets open and available for movement of people and property, the primary purpose to which streets are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may be lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stop-

> page of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no predestrians to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature or broadcasts in the streets. Prohibition of such conduct would not abridge the constitutional liberty, since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion." *Schneider v. State*, 308 U.S. 147, 160, 60 Sup. Ct. 146, 84 L.Ed. 155 (1939).

Freedom of speech does not give one the right to talk in any manner at any time, at any place, that he may choose. *Kovacs v. Cooper*, 336 U.S. 77, 69 Sup. Ct. 448, 93 L.Ed. 513 (1949). *Schneider v. State*, 308 U.S. 147, 60 Sup. Ct. 146, 84 L.Ed. 155.

Freedom of speech does not give one the right to say whatever he wishes. *Feiner v. New York*, 340 U.S. 315, 71 Sup. Ct. 303, 95 L.Ed. 267; *Cantwell v. Connecticut*, 310 U.S. 308, 60 Sup. Ct. 905.

It is respectfully submitted that this Court should not utilize the First Amendment to sanction the conduct of appellant in making a speech to over fifteen hundred people upon the public sidewalk and street adjacent to the Court House building in the City of Baton Rouge, completely obstructing same, and refusing to move and disburse when asked to do so, after being given some opportunity to make his speech. It is likewise respectfully submitted that this Court

should not utilize the first amendment and give protection to what appellant said with reference to protest against the "illegal arrest" of some of their members which was said to a crowd in excess of 1500 people adjacent to the court house where these members were incarcerated, and where all the court officials have their offices, including the Sheriff, the District Attorney and the Judges, as well as the courtrooms. Even Congress has considered such activity to be dangerous and a threat to the administration of impartial justice, and, in an effort to remedy such a situation, has passed legislation providing:

> "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court official in the discharge of his duty, pickets or parades in or near a building or residence occupied by such judge, juror, witness, or court officer, or with such intent uses any sound truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than $5000.00 or imprisoned for not more than one year, or both." 18 U.S.C.A., Section 1507.

Petitioner contends that *Edwards*, *Cantwell*, *Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 Sup. Ct. 776, 86 L.Ed 1031; *Terminiello v. Chicago*, 337 U.S. 1, 69 Sup. Ct. 894, 93 L.Ed. 1131; *Schneider*, *Thornhill v. Alabama*, 310 U.S. 88, 60 Sup. Ct. 736, 84 L.Ed. 1093, all sustain the holding of the State Supreme Court in this matter.

A reading of L.S.A.—R.S. 14:103.1 and L.S.A. —R.S. 14:100.1 will readily reveal that the words utilized in these statutes have a fixed, definite and commonly-understood meaning, and that they are narrowly and precisely drawn, so that a person of average intelligence would know what conduct is proscribed against. These statutes defining these offenses are not so generalized as to be "not susceptible of an exact definition" as the South Carolina Supreme Court found in *Edwards*. Rather, the State Supreme Court, herein, in dealing with this contention, found the statutes to be sufficient under the Fourteenth Amendment and under Section 10, Article 1, of the Louisiana State Constitution, which provides in effect that an accused shall be informed of the nature and cause of the accusation against him.

II. The Questions on Which the Decision of this Case Depends Are so Unsubstantial as not to Need Further Argument

A. Segregated Courtroom.

Based on the case of *Johnson v. Virginia*, 373 U. S. 61 (1963), appellant urges that because of a segregated condition in the courtroom that an urgent federal question, affecting the administration of justice as to him, is presented. In effect, he urges that the segregated condition in the courtroom would probably influence the trial judge in his deliberations in the cause. Recently, this contention was made in a petition for writs of certiorari to this Honorable Court, which were denied. See *Ronnie M. Moore, petitioner, v. State of*

Louisiana, respondent, October Term, 1963, No._____ of this Court's Docket, unreported.

In the *Johnson* case, the objection to segregation was made by a Negro who had been arrested for contempt of court for sitting in seats assigned for white citizens, and the arrest and conviction was for that conduct. In the case at bar, there is no charge against this defendant for having violated any court-imposed seating arrangement and none of the parties upon whom the alleged segregation was imposed is before this Court in this case. Hence, the *Johnson* Case is no authority for the reversal of this conviction.

In LSA—R.S. 15:557, it is provided:

> "No judgment shall be set aside, or a new trial granted by any appellant court of this state, in any criminal case, on the grounds of misdirection of the jury or the improper admission or rejection of evidence, or as to error of any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire record, it appears that the error complained of has probably resulted in a miscarriage of justice, is prejudicial to the substantial rights of the accused, or constitutes a substantial violation of a constitutional or statutory right."

CONCLUSION

Appellee prays that the judgments of convictions of the Louisiana Supreme Court be affirmed and/or in the alternative that this appeal be dismissed for the reason that the circumstances of this case do not present an arrest, conviction and punishment which

infringes upon the freedoms of the First and Fourteenth Amendments and, secondly, that the segregated conditions of the court room, per se, do not deny appellant a fair and impartial trial.

Respectfully submitted,

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