

# SUPREME COURT OF THE UNITED STATES

No. 92-515

## WISCONSIN, PETITIONER v. TODD MITCHELL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[June 11, 1993]

**“The State argues that the statute does not punish bigoted thought, as the Supreme Court of Wisconsin said, but instead punishes only conduct.** While this argument is literally correct, it does not dispose of Mitchell's First Amendment challenge. To be sure, our cases reject the "view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." *United States v. O'Brien*, 391 U.S. 367, 376 (1968); accord, *R. A. V.*, 505 U. S., at ---- (slip op., at 7); *Spence v. Washington*, 418 U.S. 405, 409 (1974) (*per curiam*); *Cox v. Louisiana*, 379 U.S. 536, 555 (1965). **Thus, a physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment.** See *Roberts v. United States Jaycees*, 468 U.S. 609, 628 (1984) ("Violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact . . . are entitled to no constitutional protection"); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982) ("The First Amendment does not protect violence").”

“Traditionally, sentencing judges have considered a wide variety of factors in addition to evidence bearing on guilt in determining what sentence to impose on a convicted defendant.”

"Deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct, the more serious is the offense, and, therefore, the more severely it ought to be punished"

Chief Justice William H. Rehnquist (R)

Justice Anthony M. Kennedy (R)

Justice Harry A. Blackmun (R)

Justice David H. Souter (R)

Justice John Paul Stevens (R)

Justice Clarence Thomas (R)

Justice Byron R. White (D)

Justice Sandra Day O'Connor (R)

Justice Antonin Scalia (R)

**76-3-203.3. Penalty for hate crimes -- Civil rights violation**

(3) "Intimidate or terrorize" means an act which causes the person to fear for his physical safety or damages the property of that person or another. The act must be accompanied with the intent to cause or has the effect of causing a person to reasonably fear to freely exercise or enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

**JW vs BB**

¶ 15 After careful review of the record, we find no evidence to support the finding that J.W. assaulted B.B. with the intent to cause her to fear to freely exercise or enjoy her "right to be in [sic] the school grounds to pursue an education."

Although J.W.'s actions were reprehensible, we cannot presume that J.W. assaulted B.B. with the specific intent required for enhancement under section 76-3-203.3. Ironically, the evidence suggests J.W.'s actions were racially motivated rather than intended to cause B.B. "to fear to freely exercise or enjoy any right." Utah Code Ann. § 76-3-203.3(3) (1999).