

Harding Vs. U. S

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Court : US Supreme Court

Decided On : 1973

Appeal No. : 414 U.S. 964

Appellant : Harding

Respondent : U. S

Judgement :

HARDING v. U. S - 414 U.S. 964 (1973)

U.S. Supreme Court HARDING v. U. S , 414 U.S. 964 (1973)

414 U.S. 964

Alex HARDING, aka Mark Harding

v.

UNITED STATES.

No. 72-1646.

Supreme Court of the United States

October 23, 1973

On petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit.

Petition for writ of certiorari granted, judgment vacated, and case remanded to the United States Court of Appeals for the Tenth Circuit for further consideration in light of *Miller v. California*, [413 U.S. 15](#) , 93 S. Ct. 2607 (1973); *Paris Adult Theatre I v. Slaton*, [413 U.S. 49](#) (1973); *Kaplan v. California*, [413 U.S. 115](#) (1973); *United States v. 12 200-Ft. Reels of Super 8 mm. Film*, [413 U.S. 123](#) (1973); *United States v. Orito*, [413 U.S. 139](#) (1973); *Heller v. New York*, [413 U.S. 483](#) (1973); *Roaden v. Kentucky*, [413 U.S. 496](#) (1973); and *Alexander v. Virginia*, [413 U.S. 836](#) (1973).

Opinion on remand, 10 Cir., [491 F.2d 697](#) .

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Mr. Justice BRENNAN, with whom Mr. Justice STEWART and Mr. Justice MARSHALL concur, dissenting.

Petitioner was convicted in the United States District Court for the District of Colorado on charges of using an express company for carriage of allegedly obscene matter in violation of 18 U.S.C. 1462, which provides as follows:

'Whoever . . . knowingly uses any express company or other common carrier, for carriage in interstate or foreign commerce--

'(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matters of indecent character;

. . .

'Shall be fined not more than \$5,000 or imprisoned not more than five years, or both'

I adhere to my dissent in *United States v. Orito*, [413 U.S. 139, 147](#) (1973), in which, speaking of 18 U.S.C. 1462, I expressed the view that '[w]hatever the extent of the Federal Government's power to bar the distribution of allegedly obscene material to juveniles or the offensive exposure of such material to

unconsenting adults, the statute before us is clearly overbroad and unconstitutional on its face.' For the reasons stated in my dissent in *Miller v. California*, [413 U.S. 15, 47](#) (1973), I would therefore grant certiorari, vacate the judgment of the Court of Appeals for the Tenth Circuit and remand for further proceedings consistent with my dissent in *Paris Adult Theatre I v. Slaton*, [413 U.S. 49, 73](#) (1973). In that circumstance, I have no occasion to consider whether the other questions presented merit plenary review. See *Heller v. New York*, [413 U.S. 483, 494](#) (1973) (dissenting opinion of Brennan, J.).

Mr. Justice DOUGLAS, being of the view that federal obscenity regulation is prohibited by the First Amendment (see *United States v. 12 200-Ft. Reels of Film*, [413 U.S. 49, 70](#) (Douglas, J., dissenting)), would grant certiorari in this case and reverse the judgment of conviction.

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