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Price Vs. Virginia

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Court : US Supreme Court

Decided On : 1974

Appeal No. : 419 U.S. 902

Appellant : Price

Respondent : Virginia

Judgement :

PRICE v. VIRGINIA - 419 U.S. 902 (1974)
U.S. Supreme Court PRICE v. VIRGINIA , 419 U.S. 902 (1974)

419 U.S. 902

Bobby A. PRICE
v.
Commonwealth of VIRGINIA.
No. 73-1477.

Supreme Court of the United States

October 21, 1974

On petition for writ of certiorari to the Supreme Court of Virginia.

The petition for a writ of certiorari is denied.

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

Petitioner, the manager of a movie theater, was convicted in the Corporation Court of the city of Danville, Virginia, of exhibiting an allegedly obscene motion picture entitled 'Anomalies.' The statute under which he was convicted 18.1-230, Code of Virginia of 1950, as amended, provides in pertinent part:

> 'Every person who knowingly . . . [p]roduces, promotes, presents, manages, directs, carries on or participates in, any obscene exhibitions or performances, including the exhibition or performance of any obscene motion picture . . . shall be guilty of a misdemeanor.'

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As used in that section,

> 'The word 'obscene' . . . shall mean that which considered as a whole has as its dominant theme or purpose an appeal to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such maters.' 18.1-227.

The Virginia Supreme Court affirmed the conviction. This Court granted certiorari, vacated the judgment, and remanded the case to the Virginia Supreme Court for further consideration in light of Miller v. California, 413 U.S. 15 , 93-S.Ct. 2607 (1973), and companion cases. On remand, the Virginia Supreme Court again affirmed the conviction.

It is my view that 'at least in the absence of distribution to juveniles or obtrusive exposure to unconsenting adults, the First and Fourteenth Amendments prohibit the State and Federal Governments from attempting wholly to suppress sexually oriented materials on the basis of their allegedly 'obsence' contents'. Paris Adult Theatre I v. Slaton, 413 U.S. 49, 113 (1973) (Brennan, J., dissenting). It is clear

that, tested by that constitutional standard, 18.1-230, as it incorporates the definition of 'obscene' in 18.1-227, is constitutionally overbroad and therefore invalid on its face. For the reasons stated in my dissent in Miller v. California, 413 U.S. 15, 47 (1973), and because the judgment of the Virginia Supreme Court was rendered after Miller, I would reverse.*

Mr. Justice DOUGLAS, being of the view that any state or federal ban on, or regulation of, obscenity is prohibited by the Constitution, Miller v. California, 413 U.S. 15 , 43-48; Paris Adult Theatre v. Slaton, 413 U.S. 49 , 70-73, would grant certiorari in this case and summarily reverse.

In that circumstance, I have no occasion to consider whether the other questions presented merit plenary review. See

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Heller v. New York, 413 U.S. 483, 494 (1973) (Brennan, J., dissenting).

Finally, it does not appear from the petition and response that the obscenity of the disputed material was adjudged by applying local community standards. Based on my dissent in Hamling v. United States, 418 U.S. 87 (1974), I believe that, consistent with the Due Process Clause, petitioner must be given an opportunity to have his case decided on, and introduce evidence relevant to, the legal standard upon which his conviction has ultimately come to depend. Thus, even on its own terms, the Court should vacate the judgment below and remand for a determination whether petitioner should be afforded a new trial under local community standards. Footnotes

[Footnote *] Although four of us would grant and reverse, the Justices who join this opinion do not insist that the case be decided on the merits.

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