

Bryant Vs. North Carolina

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Decided On : 1974

Appeal No. : 419 U.S. 974

Appellant : Bryant

Respondent : North Carolina

Judgement :

BRYANT v. NORTH CAROLINA - 419 U.S. 974 (1974)

U.S. Supreme Court BRYANT v. NORTH CAROLINA , 419 U.S. 974 (1974)

419 U.S. 974

Joe BRYANT and Raymond Mitchell Floyd

v.

State of NORTH CAROLINA.

No. 73-1811.

Jake HORN

v.

State of NORTH CAROLINA.

No. 73-1818.

Supreme Court of the United States

October 29, 1974

On petitions for writs of certiorari to the Supreme Court of North Carolina.

The petitions for writs of certiorari are denied.

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

Petitioner Bryant and Floyd were convicted in the Superior Court of Mecklenburg County of exhibiting allegedly obscene motion pictures in violation of North

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Carolina General Statute 14-190.1 (Cum.Supp.1971). Petitioner Horn was convicted in the Superior Court of New Hanover County of selling allegedly obscene magazines in violation of the same statute. Section 14-190.1 provided in pertinent part at the times of the alleged offenses as follows:

'(a) It shall be unlawful for any person, firm, or corporation to intentionally disseminate obscenity in any public place. A person, firm, or corporation disseminates obscenity within the meaning of this article if he or it:

'(1) Sells . . . any obscene writing, picture, record, or other representation or embodiment of the obscene; or . . .

'(4) Exhibits . . . any obscene still or motion picture, film, filmstrip, or any matter or material which is a representation, embodiment, performance, or publication of the obscene.

'(b) For purposes of this Article any material is obscene if:

'(1) The dominant theme of the material taken as a whole appeals to the prurient interest in sex; and,

'(2) The material is patently offensive because it affronts contemporary national community standards relating to the description or representation of

sexual matters; and,

'(3) The material is utterly without redeeming social value.'

Petitioners Bryant and Floyd appealed their convictions to the Court of Appeals of North Carolina, which affirmed. The Supreme Court of North Carolina dismissed an appeal and denied a petition for writ of certiorari. This Court then granted certiorari, vacated the

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judgment of the Court of Appeals, and remanded for consideration in light of Miller v. California, [413 U.S. 15](#) (1953), and companion cases. On remand, the Court of Appeals and the Supreme Court of North Carolina both again affirmed the convictions.

Mr. Justice DOUGLAS, being of the view that any state or federal ban on or regulation of obscenity is prohibited by the Constitution, Roth v. United States, [354 U.S. 476, 508](#) ; Miller v. California, [413 U.S. 15](#) , 43-48; Paris Adult Theatre v. Slaton, [413 U.S. 49](#) , 70-73, would grant certiorari and summarily reverse.

Petitioner Horn's conviction was affirmed by the North Carolina Court of Appeals. The Supreme Court of North Carolina also affirmed, in an opinion rendered after Miller was decided.

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 'obscene' 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, 14-190.1 was 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), I would therefore grant certiorari and, since the judgments of the Supreme Court of North Carolina were rendered after Miller reverse.*

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, 495 (1973) (Brennan, J., dissenting).

Further, it does not appear from the petition and response that the obscenity of the disputed materials in these cases was adjudged by applying local community standards. Based on my dissent in *Hamling v. United States*, [418 U.S. 87, 141](#) , 2919 (1974), I believe that, consistent

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with the Due Process Clause, petitioner must be given an opportunity to have his case decided on, and introduced 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.