Marshall Vs. Ohio

Marshall Vs. Ohio

SooperKanoon Citation : sooperkanoon.com/103672

Court : US Supreme Court

Decided On : 1974

Appeal No. : 419 U.S. 1062

Appellant : Marshall

Respondent : Ohio

Judgement :

MARSHALL v. OHIO - 419 U.S. 1062 (1974)
U.S. Supreme Court MARSHALL v. OHIO , 419 U.S. 1062 (1974)

419 U.S. 1062

John MARSHALL and Queen City News, Inc.
v.
State of OHIO.
No. 74-225.

Michael KENSINGER
v.
State of OHIO.
No. 74-226.

Supreme Court of the United States

December 16, 1974

Rehearing Denied Feb. 18, 1975.

See 420 U.S. 939, 1151.

The stays (A-1282 and A-1283) heretofore granted on July 9, 1974, by Mr. Justice STEWART are hereby vacated.

The appeals are dismissed for want of a substantial federal question.

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

Appellants were convicted in the Court of Common Pleas of Hamilton County, Ohio, of possession of allegedly obscene materials with intent to distribute the materials in violation of Ohio Revised Code 2905.35, which provided in pertinent part at the time of the alleged offense as follows:

> 'No person with knowledge of the content and character of the obscene material or performance involved, shall make, manufacture, write, draw, print, reproduce, or publish any obscene material, knowing or having reasonable cause to know that such material will be sold, distributed, circulated, or disseminated; or sell, lend, give away, distribute, circulate, disseminate, exhibit, or advertise any obscene material; or write, direct, produce, present, advertise, or participate in an obscene performance;

Page 419 U.S. 1062 , 1063

or possess or have in his control any obscene material with intent to violate this section . . ..'

As used in 2905.35,

> '(A) Any material or performance is 'obscene' if, when considered as a whole and judged with reference to ordinary adults, any of the following apply:

'(1) Its dominant appeal is to prurient interest;

'(2) Its dominant tendency is to arouse lust by displaying or depicting nudity, sexual excitement, or sexual conduct in a way which tends to represent human beings as mere objects of sexual appetite;

'(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

'(4) It contains a series of displays or descriptions of nudity, sexual excitement, sexual conduct, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient interest, when the appeal to such interest is primarily for its own sake or for commercial exploitation, rather than for a genuine scientific, educational, sociological, moral or artistic purpose.' 2905.34.

On appeal, the Court of Appeals of Hamilton County affirmed the convictions. The Supreme Court of Ohio dismissed the appeals.

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.'

Page 419 U.S. 1062 , 1064

Paris Adult Theatre I v. Slaton, 413 U.S. 49, 113 d 446, (1973) (Brennan, J., dissenting). It is clear that, tested by that constitutional standard, 2905.35, as it incorporated the definition of 'obscene' of 2905.34, 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 note probable jurisdiction and, since the judgment of the Court of Appeals of Hamilton County was rendered after Miller, reverse.* In that circumstance, I have no occasion to consider whether the other questions presented in addition to those already treated merit plenary

review. See Heller v. New York, 413 U.S. 494, 495 (1974) (Brennan, J., dissenting).

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 , 508-514 (1957); Miller v. California, 413 U.S. 15 , 42-47 (1973); Paris Adult Theatre I v. Slaton, 413 U.S. 49 , 70-73 (1973), would note probable jurisdiction and summarily reverse.

Further, it does not appear from the petition and response that the obscenity of the disputed materials 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, appellant must be given an opportunity to have his case decided upon, 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 appellant should be afforded a new trial under local community standards. Footnotes

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