

Hill Vs. U.S.

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Court : US Supreme Court

Decided On : 1975

Appeal No. : 420 U.S. 952

Appellant : Hill

Respondent : U.S.

Judgement :

HILL v. U.S. - 420 U.S. 952 (1975)

U.S. Supreme Court HILL v. U.S. , 420 U.S. 952 (1975)

420 U.S. 952

James Norman HILL v. UNITED STATES.

No. 74-670.

Supreme Court of the United States

February 24, 1975

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

The petition for a writ of certiorari is denied.

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

Petitioner was convicted in the United States District Court for the Southern District of Florida of shipping obscene films by common carrier in interstate commerce in violation of 18 U.S.C. 1462 and of transporting the films in interstate commerce for the purpose of sale or distribution in violation of 18 U.S.C. 1465. 18 U.S.C. 1462 provides in pertinent part:

Mr. Justice DOUGLAS took no part in the consideration or decision of this case.

'Whoever brings into the United States, or any place subject to the jurisdiction thereof, or 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 matter of indecent character; . . . * * * * 'Shall be fined not more than \$5,000 or imprisoned not more than five years, or both, for the first such offense and shall be fined not more than \$10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.'

The Court of Appeals for the Fifth Circuit affirmed the convictions, [500 F.2d 733](#) (1974).

I adhere to my dissent in United States v. Orito, [413 U.S. 139, 147](#) , in which, speaking of 18 U.S.C.

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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.' Id., at 147-148. For the reasons stated in my dissent in Miller v. California, [413 U.S. 15, 47](#) d 419 (1973), I would therefore grant certiorari, and since the judgment of the Court of Appeals for the Fifth Circuit was rendered after Orito, 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](#) (1973) (Brennan, J., dissenting).

Finally, 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, 141](#) (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 convictions have 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.

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