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In the Supreme Court of the United States

OCTOBER TERM, 1960.

No. _____.

STATE OF OHIO,
Plaintiff-Appellee,

vs.

DOLLREE MAPP, a.k.a. DOLLY MAPP,
Defendant-Appellant.

APPEAL FROM SUPREME COURT OF OHIO.

JURISDICTIONAL STATEMENT.

REPORT OF OPINION.

The Supreme Court of Ohio, on March 23rd, 1960, rendered an Opinion which is reported in Volume 170 Ohio State Reports at page 427, wherein four (4) of the seven (7) judges of the Supreme Court of Ohio held that the judgment of the Court of Appeals should be reversed, because the statute under which the defendant-appellant was convicted was unconstitutional. However, Section 2 of Article IV of the Constitution of Ohio reads in part:

“No law shall be held unconstitutional and void by the Supreme Court without the concurrence of at least all but one of the judges, except in the affirmance of the judgment of the Court of Appeals declaring a law unconstitutional and void.”

Since more than one of the judges of the Supreme Court of Ohio were of the opinion that no portion of the Statute upon which defendant’s conviction was based was

unconstitutional and void, the judgment of the Court of Appeals affirming the judgment of the Common Pleas Court had to be affirmed. This Opinion is marked Appendix "A," and is attached hereto and made a part hereof.

JURISDICTIONAL GROUNDS.

The Appellant was convicted of the crime that she "unlawfully and knowingly had in her possession and under her control, certain lewd and lascivious books, pictures and photographs, being so indecent and immoral in their nature that the same would be offensive to the Court and improper to be placed on the records thereof" in violation of Section 2905.34, Ohio Revised Code (Appendix "B"), and was sentenced from one (1) to seven (7) years confinement in the Ohio State Womens Reformatory and is presently at large on bail in the sum of Two Thousand Five Hundred Dollars (\$2,500.00). The judgment and sentence was appealed to the Court of Appeals, which on the 31st day of March, 1959, affirmed the judgment and sentence of the Common Pleas Court. This ruling was appealed to the Supreme Court of Ohio, which Supreme Court affirmed the decision of the Court of Appeals on March 23rd, 1960, the Opinion being attached to this Brief and made a part hereof and marked Appendix "A." This appeal is taken pursuant to 28 U. S. C. Section 1257 (2).

Final judgment was rendered in the Ohio State Supreme Court affirming the decision of the lower Court on March 23rd, 1960. An Application for Re-Hearing was denied on April 13th, 1960. The Notice of Appeal to this Court was filed in the Supreme Court of Ohio on June 15th, 1960.

Jurisdiction in matters of this kind is conferred upon this Court by 28 U. S. C. Section 1257 (2).

The following cases sustain the position of the defendant-appellant that this Court has jurisdiction to hear this appeal:

Smith v. California (1959), _____ U. S. _____, 4 L. Ed. (2d) 205; 80 S. Ct. 215;
Winters v. New York, 333 U. S. 507;
Roth v. United States, 354 U. S. 476, 1 L. Ed. (2d) 1498; 77 S. Ct. 1304;
Weems v. United States, 217 U. S. 349;
Butler v. Michigan, 352 U. S. 380; 77 S. Ct. 524 (1957);
Frank v. Maryland, 79 S. Ct. 804 (1959);
Roof v. Colorado, 338 U. S. 25; 69 S. Ct. 1359;
Presont v. United States, 281 Fed. 131;
Marisette v. United States, 342 U. S. 246;
State v. Kimbro, 46 S. E. (2d) 273, Syl. 3;
Southwestern Bell Telephone Co. v. Oklahoma, 58 S. Ct. 528;
Demorest v. City Bank Farmers Trust Co., 64 S. Ct. 384;
Hague v. Committee For Industrial Organization, 59 S. Ct. 954.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

We question the validity and constitutionality of Section 2905.34 Ohio Revised Code, which has been printed in Page's Ohio Revised Code, Annotated, Title 29 (1959 Supplement) and which is fully set forth in Appendix "B" attached hereto and made a part hereof, together with the other pertinent portions of the Federal Constitution, the Ohio Constitution and other Ohio Statutes.

QUESTIONS PRESENTED BY THIS APPEAL.

The questions presented by this Appeal are as follows:

(a) Is Section 2905.34 Ohio Revised Code unconstitutional, and particularly, is it unconstitutional when applied to the facts and circumstances of the case at bar under Amendment IV, Amendment V, Amendment XIV Section 1, of the United States Constitution; and Article I Section 1, Article I Section 2, Article I Section 16, Article I Section 19, Article II Section 1, Article II Section 26 of the Ohio Constitution?

(b) Does a sentence of seven (7) years for violation of Section 2905.34 Ohio Revised Code violate Amendment VIII of the United States Constitution and Article I Section 9 of the Ohio Constitution; and is this particularly so under the facts and circumstances of the case at bar?

(c) Did the conduct of the police in procuring the books, papers and pictures placed in evidence by the prosecution violate Amendment IV, Amendment V, and Amendment XIV Section 1, of the United States Constitution; and Article I Section 1, and Article I Section 14, of the Ohio Constitution?

(d) Did the Court of Appeals of Ohio violate Article IV Section 6 of the Ohio Constitution holding that it could not review the sentence of the trial court?

(e) Is a charge by a Court to a jury on presumption, thereby effectively depriving defendant of a trial by a jury and did other charges by the Court to the jury violate Amendment V, Amendment VI, and Amendment XIV Section 1, of the United States Constitution; and Article I Section 5, and Article I Section 10, of the Ohio Constitution?

STATEMENT OF THE CASE.

On the 23rd day of May, 1957, police officers, without the benefit of a search warrant, ostensibly looking for an individual who was wanted in connection with an extortion bombing, forced their way into defendant's private residence, which was the upper portion of a two-family house. Twelve (12) police officers had surrounded the private residence of the defendant where she lived with her 13-year old daughter and forced their way into it. Upon demand of a search warrant, a piece of paper was held before the defendant without giving her an opportunity to view or read same. She was then handcuffed to the banister of the stairway while the search of her private residence was made. This alleged search warrant was never proved or even tendered in the trial court upon request of the defendant. Nor was there any evidence introduced that any search warrant was ever issued.

Thereafter, the police officers, frustrated in their attempt to find any individual involved in an extortion bombing, illegally and in violation of defendant's constitutional rights, searched her private dwelling, and found lewd and lascivious documents belonging to a former roomer. The evidence showed that these documents were found by the defendant while she was cleaning a room which had been vacated by the former roomer. She stored these documents until such a time as the roomer would have returned to claim his property. It was for possession of the *roomer's* documents that the defendant was convicted of violation of Section 2905.34 Ohio Revised Code, and sentenced to from one (1) to seven (7) years in the Ohio State Womens Reformatory. Perversely, under Section 2909.01 Ohio Revised Code, had the defendant de-

stroyed the documents instead of storing them, she would have been liable to a sentence from one (1) to seven (7) years imprisonment. That Section reads in part as follows:

“No person shall maliciously destroy or injure property not his own.

Whoever violates this section shall be imprisoned not less than one (1) or more than seven (7) years if the value of the property destroyed or the injury done, is One Hundred Dollars (\$100.00) or more * * *.”

The question of the constitutionality of Section 2905.34 was raised in the Court of Appeals in the “Argument” of the Brief of Defendant-Appellant, and then again in the Supreme Court of Ohio in the “Assignments of Error” and “Questions of Law.” The question of the constitutionality of the sentence of seven (7) years for violation of Section 2905.34 was raised in the “Motion For New Trial” in the trial Court and in the Court of Appeals in the “Discussion” and then again in the Supreme Court of Ohio under “Assignments of Error” and “Questions of Law.” The matter of the conduct of the police in procuring the evidence was first raised in the trial court on a “Motion To Suppress” filed September 3rd, 1958, then again in the Court of Appeals in the “Statement of Facts,” and then again in the Supreme Court of Ohio in the “Assignments of Error” and “Questions of Law.” The question of whether or not the Court of Appeals of Ohio violated the Ohio Constitution was raised in the Supreme Court in the “Assignments of Error” and “Questions of Law.” The matter of the Court’s charge to the jury was raised in the Court of Appeals in the “Discussion” of defendant-appellant’s Brief, and again in the Supreme Court in the “Assignments of Error” and “Questions of Law.”

The Court of Appeals wrote a brief Journal Entry affirming the lower Court's judgment, which Journal Entry is marked Appendix "C," attached hereto and made a part hereof as if fully rewritten herein. This Journal Entry did not dispose of the individual items with particularity. The Supreme Court of Ohio wrote an Opinion which affirmed the two (2) lower court rulings, but clearly indicated that a majority of the Supreme Court felt that the judgments of the lower courts should be reversed. This Opinion is marked Appendix "A" and attached hereto and made a part hereof as if fully rewritten herein. In the Opinion of the Supreme Court of Ohio, four (4) of the seven (7) judges held that the Statute was unconstitutional, but that by virtue of Section 2 Article IV of the Ohio Constitution, four (4) of the seven (7) judges of the Supreme Court of Ohio were insufficient in number to reverse the judgment on that basis. In a further dissenting opinion written by Justice Herbert, and concurred in by Justice Bell, they indicated that in addition to a reversal on the unconstitutionality of the Statute, the judgment should be reversed by virtue of the unconstitutional and unlawful action of the police officers in obtaining the evidence upon which a conviction was obtained.

The Federal questions raised by this appeal are substantial for the following reasons:

The Ohio Statute under which the defendant was convicted violates one's sacred right to own and hold property, which has been held inviolate by the Federal Constitution. The right of the individual "to read, to believe or disbelieve, and to think without governmental supervision is one of our basic liberties, but to dictate to the mature adult what books he may have in his own private library seems to be a clear infringement of the constitutional

rights of the individual” (Justice Herbert’s dissenting Opinion, Appendix “A”). Many convictions have followed that of the defendant in the State Courts of Ohio based upon this very same statute. Unless this Honorable Court hears this matter and determines once and for all that the Statute is unconstitutional as defendant contends, there will be many such appeals. When Sections 2905.34, 2905.37 and 3767.01 of the Ohio Revised Code are read together, which Statutes are set forth in Appendix “B”, they obviously contravene the Federal and State constitutional provisions; by being convicted under the Statute involved herein, and in the manner in which she was convicted, Defendant-Appellant has been denied due process of law; a sentence of from one (1) to seven (7) years in a penal institution for alleged violation of this unconstitutional section of the Ohio Revised Code deprives the defendant of her right to liberty and the pursuit of happiness, contrary to the Federal and State constitutional provisions, for circumstances which she herself did not put in motion, and is a cruel and unusual punishment inflicted upon her contrary to the State and Federal Constitutions.

Respectfully submitted,

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