

Dollree Mapp, etc.,	)	
	)	
Appellant	)	
	)	On Appeal from the Supreme
v.	)	Court of Ohio.
	)	
Ohio.	)	

[April \_\_, 1961.]

MR. JUSTICE CLARK delivered the opinion of the Court.

Appellant stands convicted of knowingly having in

LASCIVIOUS

her possession certain lewd and lieivious books, pictures,

and photographs in violation of § 2905.34 of Ohio's Revised

1 *The Supreme Court of Ohio has found that her conviction*  
 Code. At all stages of the proceedings, included within her  
*was "based primarily upon the introduction in evidence of lewd*  
 defense has been an attack on this section under the due process  
*and lascivious books and pictures unlawfully seized during an*  
 clause of the Fourteenth Amendment and the claim that, under  
*unlawful search of defendant's home." Among other defenses\**  
 the Fourth Amendment, certain books and pictures seized  
*asserts that the use of such evidence violated her rights under*  
 without warrant should not have been admitted into evidence.

*the 4th Amendment, enforceable against the States through the Due Process*  
*clause of the 14th Amendment. On this issue Ohio has not adopted*  
 Ohio has elected not to follow the exclusion rule announced in

*ITS HIGHEST*  
 Weeks v. United States, 232 U.S. 383 (1914) and the admission  
 court therefore sustained the use of the illegally seized books  
 and pictures on the authority of *State v. Lindway, 131 Ohio St. 166,*  
 of the books and pictures was therefore sustained on the  
*which course of actions has received the approval*

authority of Wolf v. Colorado, 338 U.S. 25 (1949). On the

\* These included attacks on ~~the § 2905.34~~ *into* the constitutionality  
 of § 2905.34 under the ~~Fourth Amendment and § 1 of the Fourteenth~~  
 Due Process clause of the 14th Amendment and the 5th Amendment; a claim  
 that the statute was invalid under the 8th Amendment (cruel and unusual pen-  
 ishment) and that the charge was violative of the Fifth, Sixth and 14th  
 Amendment.

constitutional validity of the section  
due process question it appears that five of the seven

judges of the Supreme Court of Ohio declared <sup>it</sup> the section

violative of due process but were nevertheless required to

uphold its constitutionality because the Ohio constitution

provides that "no law shall be held unconstitutional and

void by the supreme court without the concurrence of at

3

least all but one of the judges." 170 Ohio St. 427. On

appeal here we noted probable jurisdiction. 346 U.S. 868.

We have concluded that for Ohio "affirmatively to sanction such

~~On the Fourth Amendment question the Court adheres to its~~  
police incursion into privacy... "as <sup>RUINS</sup> ~~at p. 27~~ "counter to the  
guaranty of the Fourteenth Amendment." <sup>at p. 27</sup> that <sup>the</sup> recognition of due  
rule announced in Wolf v. Colorado, supra, and hence this

Such a basic right requires the suppression of the evidence <sup>found before him</sup> ~~illegally seized.~~

~~contention of appellant is denied. However, we have~~

~~We, therefore, reverse the conviction.~~

~~concluded that the conviction of the appellant is violative~~

~~of the due process clause of the Fourteenth Amendment to the~~

~~Constitution of the United States which results in a reversal~~

~~of the judgment. In view of this disposition we do not pass upon other~~

~~issues raised by appellant.~~

On May 23, 1957, three Cleveland police officers

arrived at appellant's residence in that city pursuant to

information that

"a person [was] hiding out in the home who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home."

Miss Mapp and her daughter lived on the top floor of the

two family dwelling, with basement. The officers knocked on

the door and demanded entrance but appellant, after telephoning <sup>street floor</sup> her attorney, refused to admit them without a search warrant. <sup>To the building</sup>

They continued their surveillance of the house, advised <sup>them</sup> their

headquarters and some three hours later additional officers

arrived with a police Lieutenant White, ~~who the evidence~~

~~indicates, had a search warrant.~~ The officers again attempted

entrance <sup>at the same door</sup> and when Miss Mapp did not come down immediately

to open <sup>it</sup> the door an officer tried to kick it in, failing which

he broke the glass <sup>in the door</sup> and admitted the group. Meanwhile Miss Mapp's

attorney arrived but the officers would not permit him to enter.

~~and he was not to even see the chief warrant officer and sergeant of the property was completed and she was brought down for~~

It seems that Miss Mapp was half way down the stairs when <sup>from</sup>

<sup>quarters</sup> <sup>applies</sup> her ~~position of home~~ on the second floor where <sup>asked if they had a</sup> the officers broke into the ~~hall~~ <sup>entrance hall to the building.</sup>. She demanded ~~the~~ search

warrant, ~~be served.~~ A paper, <sup>if it were a legal search</sup> claimed to be the warrant, was

apparently exhibited as



held ~~up~~ up in the hand of  
shown by one of the officers. She grabbed the "warrant,"

and placed it in her bosom. A struggle ensued in which the

officers took the <sup>paper</sup> warrant, handcuffed Miss Mapp, and took forced

to the second floor and into

her ~~up to~~ her bedroom. ~~Both the second floor and a basement~~  
Keeping her under handcuffs and in custody, the officers proceeded to  
rummage through the bedrooms, searching the drawers, closets and other private  
~~were searched.~~ It is undisputed that policy paraphernalia

places, including a  
suitcase. In fact  
the entire floor  
was ransacked  
as was the  
basement.

was found in the basement and an obscene drawing was found

in <sup>Mrs Mapp's</sup> her suitcase under the bed in her room. There is, however,

a conflict as to where the other other obscene material was

found. Appellant claimed that it ~~had~~ belonged to a former

tenant and that she had packed it away with the rest of his

belongings in a box in the basement. The officers testified

that the material had been found in her bedroom.

~~At trial no search warrant was produced nor one~~

~~demanded and its existence appears under question.~~ Appellant

in a timely motion <sup>very</sup> ~~had~~ sought to suppress the evidence as to

the obscene material seized. <sup>and prevent its use against her,</sup> ~~The state admits that a proper~~  
~~although no search warrant was shown to have been issued, none was~~  
one produced, the state admitting that a  
search warrant was not secured ~~setting forth~~ <sup>covering</sup> the confiscated

evidence on which the charge was based. It appears, as Ohio's

court has observed, if a search warrant was issued it

would have authorized search only for "policy paraphernalia" --

The court ~~the~~ therefore concluded that the search not obscene material. In any event, under Wolf, supra, even and seizure was entirely unlawful. ~~at~~ <sup>Before and at</sup> all stages of the its invalidity would not affect the use of the obscene material

proceedings ~~the~~ appeal out, ~~to be~~, insisted that the <sup>material</sup> evidence seized in evidence. <sup>be sup-</sup> <sup>pressed.</sup> The case was tried on the theory that if Miss ~~However~~ the state was permitted to introduce the ~~seized material~~ <sup>is</sup> into evidence. The case was tried on the theory that if Miss Mapp "had some degree of possession or control" over the seized material and that it was of an obscene character

~~obscene material~~ she would violate § 2905.34. The jury was

so instructed and found her guilty. She was sentenced to a

term of one to seven years in the penitentiary. The Court of

Appeals of Cuyahoga County affirmed the conviction by

Journal Entry. As we have said, the Supreme Court of Ohio

~~It was obliged to uphold the constitutionality of the section affirmed, assuming the constitutionality of § 2905.34 because~~

less than six of its members were of the opinion, <sup>that</sup> it was invalid.

It held in syllabus <sup>1</sup> of its opinion that the section prohibited

"any person from knowingly having in his possession or under

his control lewd and lascivious books and pictures" and that therefore

~~admitted the illegality~~  
upheld the admission of the illegally seized ~~obscene~~ material into evidence and affirmed the conviction.

"a defendant may be convicted thereunder where the evidence discloses that, in packing up the belongings of a former roomer in such defendant's home, such defendant found lewd and lascivious books and pictures and packed them with such former roomer's other belongings for the purpose of storing them for him until he came for them."

The only ~~evidence introduced~~ proof at the trial that the appellant had obscene material in her possession was the unlawfully seized books and pictures <sup>themselves which were</sup> taken from her by the police. <sup>Without that material her conviction would have failed.</sup> ~~We are, therefore, again confronted with the problem of whether the use of the unlawfully seized~~ ~~Admittedly the officers~~ <sup>in breaking, entering and forcibly seizing</sup> ~~Miss Mapp's papers, violated her basic right of privacy secured by the 4th Amendment~~ <sup>which</sup> ~~is enforceable against state action by the Fourteenth Amendment to our Constitution.~~ ~~Ohio admits this~~ ~~Ohio contends, however, that unlawful though it was that the state has the right despite the unlawful action of its officers that the <sup>seized</sup> papers are competent and, therefore, admissible under Wolf v Colorado, supra.~~ ~~This Court so held in that case~~ <sup>this Court</sup> ~~as was said in Wolf v Colorado, supra,~~ <sup>is held to be</sup> ~~implicit in 'the concept of ordered liberty' and as such enforceable against the states through the Due Process clause.~~ ~~Ohio, however, contends that its adoption of the non-exclusionary rule of evidence permits the use of this unlawfully seized material and that its action in so doing has the sanction of Wolf as well as the later case of Irvine v People of California, 347 US 128 (1954)~~ ~~This is true~~ ~~though neither of these opinions indicate whether material, as here, was made~~ <sup>appropriate</sup> ~~trial for the suppression of the~~ ~~seized material.~~