

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

[April __, 1961.]

MR. JUSTICE CLARK delivered the opinion of the Court.

Appellant stands convicted of knowingly [having] in

and under her control

her possession certain lewd and ^{has} obscene books, pictures,

and photographs in violation of § 2905.34 of ^{the} Ohio Revised

Code. ^{1/} At all stages of the proceedings, included within her

defense has been an attack ^{upon the validity of this} on this section under the Due Process

clause of the Fourteenth Amendment, and the claim that, under

~~the Fourth Amendment~~, ^{the} certain books and pictures ^{were} seized

a search

without warrant ^{and, under the Fourth Amendment} should not ~~have been~~ ^{be} admitted into evidence.

However Ohio has elected not to follow the exclusion rule announced in ^{2/}

Weeks v. United States, 232 U.S. 383 (1914), and the admission

of the books and pictures was therefore sustained on the ^{below}

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

12/ Weeks v. United States, 232 U.S. 383 (1914)

due process question, ^{four} it appears that ~~five~~ of the seven
 judges of the Supreme Court of Ohio ^{found} declared the section
 constitutionally ^{invalid} violative of due process but were nevertheless required to
~~forego~~ ^{strike it down} 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

least all but one of the judges." ³ 170 Ohio St. 427, On ^{1166 N.E. 2d} 387.

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

^{As to} ~~On~~ the Fourth Amendment question, the Court adheres to ^{the} ~~its~~

rule announced in Wolf v. Colorado, supra, and hence this ^{that}

contention of appellant is denied. ⁴ However, we have

concluded that ^{§ 2905.34} ~~the conviction of the appellant~~ is violative

of the due process clause of the Fourteenth Amendment to the

Constitution of the United States ^{which therefore necessitates} ~~which results in~~ a reversal

of the ^{conviction below.} ~~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, ^{by a former marriage,} lived on the top floor of the two family dwelling, ^{On their arrival at that house,} with ~~basement~~. The officers knocked on the door and demanded entrance but appellant, after telephoning her attorney, refused to admit them without a search warrant.

They continued their surveillance of the house, advised headquarters ^{of the situation} and ⁼⁼⁼ some three hours later additional officers arrived with a police Lieutenant White, ^{Cop.} who the evidence indicates, had a search warrant. The officers again ^{sought} attempted

entrance, ~~and~~ when Miss Mapp did not come ^{to the door} ~~down~~ immediately ^{one of the} to ~~open the door,~~ an officer, tried to kick it in, failing which he broke the glass and admitted the group. ^{He} Meanwhile, Miss Mapp's attorney arrived but the officers would not ^{he has secured their own entry,} permit him to enter. ^{Admit him into the house.}

It seems that Miss Mapp was half way down the stairs when the officers broke into the hall. She demanded ^{to see} the search warrant, ~~be shown~~. A paper, claimed to be the warrant, was

*appellant's
belligerence
in reacting*

shown by one of the officers. She grabbed the "warrant,"

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

*because of the ~~which followed~~
official seizure of the warrant from her
bosom.*

officers took the warrant, handcuffed Miss Mapp, and took

her up to her bedroom. Both the second floor and ^{the} basement

were searched. It is undisputed that policy paraphernalia

was found in the basement and an obscene drawing was found

in her suitcase under the bed in her room. There is, however,

a conflict as to where the other ~~other~~ obscene material was

*factually at
and a friend supported her in that claim,*

found. Appellant claimed that it had belonged to a former

the material

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

possessions

belongings in a box in the basement. The officers testified

that the material had been found in her bedroom.

*by the
prosecution*

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

was produced

demanded, and its existence appears ~~under question~~ ^{questionable.} Appellant,

*by the
prosecution,*

~~in~~ a timely motion, had sought to suppress the evidence as to

to suppress

prevent the

use of the seized obscene

material as evidence. ~~the obscene material seized.~~

The state admits that a proper

search warrant was not secured setting forth the confiscated

evidence on which the charge was based. It appears, as ^{the} Ohio

J [Handwritten box containing the text: search warrant was not secured setting forth the confiscated evidence on which the charge was based. It appears, as Ohio] *the*

for

This motion was denied on [unclear] grounds.

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for

court has observed, ^{that} if a search warrant was issued it
would have authorized search only for "policy paraphernalia" --
not obscene material. In any event, under Wolf, supra, even ^{the}
~~the~~ ^{warrants} invalidity would not affect the use of the obscene material

in evidence. ^{then} The case was tried on the theory that if Miss

Mapp "had some degree of possession ^{and} control" over the

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

affirmed, assuming the constitutionality of § 2905.34 because

less than six of its members were of the opinion ^{that} it was invalid,

It held ^{the} in ^{6/} syllabus 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

Under Ohio Const. Art. 1, Sec. 10, no law shall be passed which shall deprive any person of life, liberty or property without due process of law.

"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 lews 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."