U.S. Supreme Court

Maryland v. Macon, 472 U.S. 463 (1985)

Maryland v. Macon

No. 84-778

Argued April 17, 1985

Decided June 17, 1985

472 U.S. 463

Syllabus

A county detective, who was not in uniform, entered an adult bookstore, browsed for several minutes, and purchased two magazines from respondent salesclerk with a marked $50 bill. The detective then left the store and showed the magazines to fellow officers who were waiting nearby. Upon concluding that the magazines were obscene, the detectives returned to the store, arrested respondent, and retrieved the marked $50 bill from the cash register, neglecting to return the change received at the time of the purchase. Prior to trial on a charge of distributing obscene materials in violation of a Maryland statute, the trial court denied respondent's motion to suppress the magazines and the $50 bill, holding that the purchase was not a seizure within the meaning of the Fourth Amendment and that the warrantless arrest was lawful. The magazines, but not the $50 bill, were introduced in evidence, and the jury found respondent guilty. The Maryland Court of Special Appeals reversed, holding that a warrant was required both to seize allegedly obscene materials and to arrest the distributor in order to provide a procedural safeguard for the First Amendment freedom of expression.

Held:

The detectives did not obtain possession of the allegedly obscene magazines by means of an unreasonable search or seizure, and the magazines were not the fruit of an arrest, lawful or otherwise. Thus the magazines were properly admitted in evidence. Pp. 472 U. S. 467-471.

(a) Absent some action taken by government agents that can properly be classified as a "search" or a "seizure," the Fourth Amendment rules designed to safeguard First Amendment freedoms do not apply. The officer's action in entering the bookstore and examining the wares that were intentionally exposed to all who frequented the place of business did not infringe a legitimate expectation of privacy, and hence did not constitute a search within the meaning of the Fourth Amendment. And the subsequent purchase was not a Fourth Amendment seizure, since a seizure occurs when there is some meaningful interference with an individual's possessory interests in the property seized, and here respondent voluntarily transferred any possessory interest he may have had in the magazines to the purchaser upon the receipt of the funds. The risk of prior restraint, which is the underlying basis for the special Fourth Amendment protections accorded

searches for and seizures of First Amendment materials, does not come into play in cases where an under-cover

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officer, by purchasing a few magazines, merely accepts an offer to do business that is freely made to the public. Nor was the bona fide nature of the purchase changed, so as to become tantamount to a warrantless seizure, when the officers later seized the marked $50 bill and failed to return the change. Objectively viewed, the transaction was a sale in the ordinary course of business, and the sale was not retrospectively transformed into a warrantless seizure by virtue of the officers' subjective intent to retrieve the purchase money to use as evidence. Pp. 472 U. S. 468-471.

(b) Even assuming, *arguendo,* that respondent's warrantless arrest after the purchase of the magazines was an unreasonable seizure, it would not require exclusion of the magazines at trial. The exclusionary rule does not reach backward to taint information that was in official hands prior to any illegality. Here, the magazines were in police possession before the arrest, and the $50 bill, the only fruit of the arrest, was not introduced in evidence. P. 472 U. S. 471.

57 Md.App. 705, 471 A.2d 1090, *reversed.*

O'Connor, J., delivered the opinion of the court, in which Burger, C.J., and White, Blackmun, Powell, Rehnquist, and Stevens, JJ., joined. Brennan, JJ., filed a dissenting opinion, in which Marshall, J., joined, *post,* p. 472 U. S. 472.