

The Burger Court Opinion Writing Database

Alexander v. Virginia

413 U.S. 836 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice White
Mr. Justice Powell
Mr. Justice Stewart
Mr. Justice Rehnquist

F—April 7, 1973

1st DRAFT

From: [unclear] Conference

SUPREME COURT OF THE UNITED STATES

APR 9 1973

Recirculated:

No. 71-1315

Howard Alexander et al.,
Petitioners,
v.
Commonwealth of Virginia. } On Writ of Certiorari to
the Supreme Court of
Virginia.

[March —, 1973]

PER CURIAM.

The judgment of the Supreme Court of Virginia is vacated and the case is remanded for further proceedings consistent with *Miller v. California, infra* (No. 70-73), and *Paris Adult Theatre I, infra* (No. 71-1051), decided today. See *United States v. 12 200-Ft. Reels, infra*, at — (opinion of BURGER, C. J.) (p. 6, n. 4) (No. 70-2).

Vacated and remanded.

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

F—May 7, 1973

2nd DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

No. 71-1315

Recirculated: MAY 8 1973

Howard Alexander et al.,
Petitioners,
v.
Commonwealth of Virginia. } On Writ of Certiorari to
the Supreme Court of
Virginia.

[May —, 1973]

PER CURIAM.

The judgment of the Supreme Court of Virginia is vacated and the case is remanded for further proceedings consistent with *Miller v. California*, — U. S. — (opinion of BURGER, C. J.) (No. 70-73) and *Paris Adult Theatre I v. Slaton*, — U. S. — (opinion of BURGER, C. J., p. 7, n. 5) (No. 71-1051). See *United States v. 12 200-Ft. Reels, infra*, at — (opinion of BURGER, C. J.) (p. 6, n. 4) (No. 70-2). We note that a trial by jury is not constitutionally required in a civil proceeding, such as this one, where no such right existed at common law when the Seventh Amendment was adopted. See *Ross v. Bernhard*, 396 U. S. 531, 533-534 (1969); *id.*, 543-544 (STEWART, J., dissenting) (1969); *Beacon Theatres v. Westover*, 359 U. S. 500, 518 (STEWART, J., dissenting) (1958); *Luria v. United States*, 231 U. S. 9, 27-28 (1913); *Whitehead v. Shattuck*, 138 U. S. 146, 151 (1890).

Vacated and remanded.

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

F—June 14, 1973

3rd DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

No. 71-1315

Recirculated: JUN 19 1973

Howard Alexander et al.,
Petitioners,
v.
Commonwealth of Virginia. } On Writ of Certiorari to
the Supreme Court of
Virginia.

[June —, 1973]

PER CURIAM.

The judgment of the Supreme Court of Virginia is vacated and the case is remanded for further proceedings consistent with *Miller v. California*, — U. S. — (pp. 9-11) (1973), *Paris Adult Theatre I v. Slaton*, — U. S. — (pp. 8-9, n. 6) (1973), and *Heller v. New York*, — U. S. — (pp. 8-10) (1973). See *United States v. 12 200-Ft. Reels*, — U. S. — (p. 7, n. 7) (1973). We note that a trial by jury is not constitutionally required in a civil proceeding, such as this one, where no such right existed at common law when the Seventh Amendment was adopted. See *Ross v. Bernhard*, 396 U. S. 531, 533-534 (1970); *id.*, 543-544 (STEWART, J., dissenting) (1969); *Beacon Theatres v. Westover*, 359 U. S. 500, 518 (STEWART, J., dissenting) (1959); *Luria v. United States*, 231 U. S. 9, 27-28 (1913); *Whitehead v. Shattuck*, 138 U. S. 146, 151 (1891). Cf. *Kingsley Books, Inc. v. Brown*, 354 U. S. 436, 443-444 (1957).

Vacated and remanded for further proceedings.

MR. JUSTICE DOUGLAS would reverse the judgment of the Supreme Court of Virginia. See *Miller v. California*, — U. S. —, — (DOUGLAS, J., dissenting).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1973

File
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Re: No. 71-1315 - Alexander v. Virginia - per curiam

MEMORANDUM TO THE CONFERENCE:

A final (hopefully) check flushes out what may be an overly broad statement concerning a jury trial in this case. The scope of the supporting citations leads me to narrow one sentence so that it is clearly a statement of the Virginia law applicable to this case rather than a general statement.

The altered sentence is marginally marked.

Regards,

WSB

F—June 21, 1973

4th DRAFT

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

No. 71-1315

Circulated: _____
Recirculated: JUN 21 1973

Howard Alexander et al.,
Petitioners,
v.
Commonwealth of Virginia. } On Writ of Certiorari to
the Supreme Court of
Virginia.

[June 25, 1973]

PER CURIAM.

The judgment of the Supreme Court of Virginia is vacated and the case is remanded for further proceedings consistent with *Miller v. California*, — U. S. — (pp. 9-11) (1973), *Paris Adult Theatre I v. Slaton*, — U. S. — (pp. 8-9, n.⁷⁶) (1973), and *Heller v. New York*, — U. S. — (pp. 8-10) (1973). See *United States v. 12 200-Ft. Reels*, — U. S. — (p. 7, n. 7) (1973). A trial by jury is not constitutionally required in this statutory civil proceeding pursuant to § 18.1-236.3 of the Code of Virginia, 1950, as amended. See *Ross v. Bernhard*, 396 U. S. 531, 533-534 (1970); *id.*, 396 U. S., at 543 (STEWART, J., dissenting); *Beacon Theatres v. Westover*, 359 U. S. 500, 518 (STEWART, J., dissenting) (1959); *Luria v. United States*, 231 U. S. 9, 27-28 (1913); *Whitehead v. Shattuck*, 138 U. S. 146, 151 (1891). Cf. *Kingsley Books, Inc. v. Brown*, 354 U. S. 436, 443-444 (1957).

Vacated and remanded for further proceedings.

MR. JUSTICE DOUGLAS would reverse the judgment of the Supreme Court of Virginia. See *Miller v. California*, — U. S. —, — (DOUGLAS, J., dissenting).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 7, 1973

Dear Chief:

Would you add at the end of your
per curiam in 71-1315, Alexander v. Virginia:

"Mr. Justice Douglas would reverse
the judgment of the Supreme Court of Virginia.

See Miller v. California, ___ U.S. ___,
(Douglas, J., dissenting)."

William O. Douglas

The Chief Justice

cc: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
✓Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Filed: 3/16/73

No. 71-1315

Recirculated: _____

Howard Alexander et al.,
Petitioners, } On Writ of Certiorari to
v. } the Supreme Court of
Commonwealth of Virginia. } Virginia.

[March —, 1973]

Memorandum of MR. JUSTICE BRENNAN.

The judgment of the Supreme Court of Virginia is vacated and the case is remanded for further proceeding. See *Miller v. California*, — U. S. — (1973).

Vacated and remanded.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

No. 71-1315

Circulated: _____

Howard Alexander et al.,
Petitioners, } On Writ of Certiorari to
v. } the Supreme Court of
Commonwealth of Virginia. } Virginia.

Recirculated: 6/6/73

[June —, 1973]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART and MR. JUSTICE MARSHALL join, dissenting.

I would vacate the judgment of the Supreme Court of Virginia and remand the case for further proceedings not inconsistent with my dissenting opinion in *Paris Adult Theatre v. Slaton* — U. S. — (1973). See my dissent in *Miller v. California*, — U. S. — (1973).

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2nd DRAFT

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

From: BRENNAN, J.

No. 71-1315

Circulated

Reproduced

6/21/73

Howard Alexander et al.,
Petitioners,
v.
Commonwealth of Virginia.

On Writ of Certiorari to
the Supreme Court of
Virginia.

[June 25 1973]

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MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART and MR. JUSTICE MARSHALL join, dissenting.

I would ~~vacate~~ the judgment of the Supreme Court of Virginia and remand the case for further proceedings not inconsistent with my dissenting opinion in *Paris Adult Theatre v. Slaton* — U.S. — (1973). See my dissent in *Miller v. California*, — U.S. — (1973).

reverse

↗ ante.

ante.