

2 LIVE CREW CASE (1990)

Obscenity, Mapplethorpe And 2 Live Crew

Since 1973, the Supreme Court has upheld obscenity laws which comply with a three-part test adopted in *Miller v. California*. The prosecution must prove, beyond a reasonable doubt, that “the average person, applying contemporary standards” would find that the work, taken as a whole, appeals to the “prurient interest” It must also prove that the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable law. Finally, the prosecution must prove that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

For the first time in American history, on April 7, 1990, an art museum was indicted for obscenity. The Cincinnati Contemporary Arts Center had just opened “The Perfect Moment,” an exhibit of 175 photographs by the late Robert Mapplethorpe, a fellowship. In 1988, the NEA paid to help mount the show. The trial began on September 24, 1990. At stake were seven of the 175 Mapplethorpe photographs. All were part of a special portion of the exhibit from which children had been excluded. Five were graphic depictions of homoeroticism and the other two were photographs of young children in various states of nudity.

The prosecutor’s entire case in chief was to present the photographs to the jury. He asked: “You have the chance to decide on your own--where do you draw the line? Are these the kinds of pictures that should be permitted in the museum?” By contrast, the defense put on an elaborate series of expert witnesses testifying to the artistic merit of the Mapplethorpe exhibit. The defense urged the jurors “to show the country that this is a community of tolerant and sensitive people.” The prosecutor appealed to a different sense of civic pride. He urged them to let the world know that Cincinnati was different from other cities. On October 5, 1990, the eight-person jury, after only three hours of deliberation, found the Arts Center not guilty on all charges. “The prosecution basically decided to show us the pictures so that we’d say they weren’t art when everybody else was telling us they were,” said one juror. “The defendants were innocent until proven guilty, and they didn’t prove them guilty.”

Meanwhile, across the country in Fort Lauderdale, Florida, other First Amendment decisions were being made. On October 2, 1990, Charles Freedman, a record store owner, was convicted of selling the notorious 2 Live Crew albums *As Nasty As They Wanna Be*. On October 20, 1990, in a separate prosecution, the group itself was acquitted for performing several songs from the same album at a nightclub. 2 Live Crew’s lyrics contain explicit references and portray women as objects to be sexually dominated. Yet, one of the defendant’s expert witnesses, Henry L. Gates, then a professor of literature at Duke University, called the music “astonishing and refreshing.”

The prosecutor of the case and his witnesses saw things differently. His argument held that the lyrics were not only legally obscene, but potentially dangerous. That is, they would prompt sex crimes against women or children.

In the trial against 2 Live Crew, the jury disagreed with the prosecutor. One juror put it this way: "You take away one freedom, and pretty soon they're all gone."

The conviction against the record store owner is being appealed. Both cases stand for the principle that decisions about obscenity and the First Amendment will always be a matter of heated debate.