PEOPLE v. HILDABRIDLE.
SAME v. WEISSENBORN.
SAME v. CARTER.

DETHMERS, C. J. *(dissenting).* Defendants were convicted by jury in circuit court of the crime of knowingly making open and indecent exposure of their persons in violation of CLS 1956, § 750.335a (Stat Ann 1954 Rev § 28.567[1]). The court placed them on probation for 2 years, making it a condition thereof that each serve 30 days in the county jail and pay a $250 fine and $100 costs. They appeal.

Two State police officers had gone on business to "Sunshine Gardens," a nudist camp operated on private property in a secluded area. While there they had seen certain nude persons, secured their names and obtained warrants for their arrest. Thereafter, 1 of those 2 officers, in company with another officer, went to the camp with the warrants to arrest the persons therein named. While there, they saw other naked men, women, boys, and girls, out of doors, some standing, some sitting, some walking around, several in the vicinity of a pool, all exposed to the view of each other. Included were the defendants, adults, and also 4 girls then 8, 10, 11 and 12 years of age, respectively, and a 17-year-old boy, before whom the 4 defendants stood nude with private parts exposed. The officers then and there arrested defendants. Their prosecutions ensued.

We decline to take the excursion into the field of the definitions, desirability, and delights of nudism, psychiatric considerations or purportedly applicable quotations from the Scriptures suggested in the briefs, or the flights of fantasy to which the subject may beckon. Consideration will be limited to questions of law raised by appellants, of which most are scarcely novel and none deserving of extended discussion.

It is urged that there was illegal search and arrest on private property; that the statute is vague, indefinite, fails to define "open" or "indecent" exposure, is not sufficiently explicit to inform persons as to what conduct will render them liable to its penalties, and that it is, for these reasons, repugnant to the due process clause of the 14th Amendment and void; that it does not, by its terms, apply to the organized practice of nudism; that it is not violated by nakedness on private property; that nudity, per se, is not obscene and every exposure of the person not indecent, particularly when the exposure does not offend the morals or sense of decency of those present and there are no other overt acts of indecency or obscenity aside from the bare fact of nudity. These points have been considered and answered in *People v. Ring,* 267 Mich 657 (93 ALR 993), and the cases therein discussed. The distinguishing feature in that case that there was testimony that one couple was engaged in what appeared to be improper conduct was not treated as of such controlling importance or so vital to the reasoning and holdings in this Court's opinion in *Ring* as to render them inapplicable here. Nor are they any less so because the statute then in effect prohibited designedly making an open or indecent or obscene exposure, while, by reason of subsequent amendment, it now is directed to knowingly making an open or indecent exposure. The comments on the *Ring Case,* commencing at 33 Michigan L Rev 936, do not persuade us that it ought now to be overruled. They do clearly indicate that *Ring* governs and applies to the factual situation presented here.

Though the term "exposure," qualified by such adjectives as "open," "indecent," "obscene," "immodest," or others of like import, be difficult of definition, the practice need not for that reason be permitted to run rife in Michigan. As indicated in *Ring* and cases therein considered, the average jury, composed of members of the community, can be expected to represent and embrace a cross section of the community thinking and moral standards which are first reflected in the legislative enactment by the people's chosen representatives and, once again, in the statute's application to the facts of the case by the jury in arriving at its finding and verdict that certain conduct is violative thereof. That a jury found it to have been violated by defendants' exposure of their persons to the young children in this case and the exposure of the children themselves should be surprising to neither the pure in heart nor the lewd.

In *Roth v. United States,* 354 US 476 (77 S Ct 1304, 1 L ed2d 1498), the court considered statutes couched in the same general terms as those of the statute before us, the words "obscene" and "indecent" having been employed there, as here, without further definition. The court held that the statutes, applied according to the proper standard for judging obscenity, do not violate constitutional requirements of due process by failing to provide reasonably ascertainable standards of guilt. The court further held that obscenity

is not, as defendants here claim for nudism, within the area of constitutionally protected freedom of speech and, finally, that the proper standard for judging obscenity, adequate to withstand the charge of constitutional infirmity, is whether, to the average person, applying contemporary community standards, the conduct in question has a tendency to excite lustful thoughts. The Michigan statute depends, for its force in proscribing indecent exposure, upon employing that precise standard which inheres, as we have seen above, in jury application of the statute to the facts at bar under court instructions entirely consistent therewith, as they were in this case. The logic of *Roth* with respect to inapplicability of the guarantee of freedom of speech is as persuasive in a consideration of the applicability of the right to peaceably assemble,[1] which defendants contend is violated by their convictions in this case. Nakedness has not, until now, been held an essential element of that right, and obscenity should prove as severe a limitation on that right as it was held, *in Roth*, to be on the right of free speech.

The claim of prejudicial remarks by the prosecuting attorney, entitling defendants to a new trial, is without merit, it neither appearing that the jury comprehended them nor that they were prejudicial in character.

The convictions should be affirmed.

CARR and KELLY, JJ., concurred with DETHMERS, C. J.