The Burger Court Opinion Writing Database

Nelson v. O'Neil

402 U.S. 622 (1971)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

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

CHAMBERS OF
THE CHIEF JUSTICE

May 26, 1971

Re: No. 336 - Nelson v. O'Neil

Dear Potter:

Please join me.

Regards,

Mr. Justice Stewart

cc: The Conference

Voted to deny & affirm

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

May 13, 1971

HLB joins PS

Dear Potter,

Re: No. 336 - Nelson v. O'Neil

After careful consideration I have decided I cannot join your opinion in this case and will probably join a dissent if one is written.

Sincerely,

Hugo

Hugo

Mr. Justice Stewart

cc: Members of the Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

May 24, 1971

Dear Bill,

Re: No. 336- Nelson v. O'Neil

I would like to join your opinion but not in the implications that might arise from use of note No. 2, quoting from an extract from Brother Stewart's concurring opinion in Bruton.

Sincerely,

Hugo

Hugo

Mr. Justice Brennan

WB

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

May 27, 1971

Dear Bill and Potter:-

Re: No. 336 - Nelson v. O'Neil

After a full consideration of the law on the subject in Justice Stewart's Court opinion and Justice Brennan's dissenting opinion, I have concluded to join Justice Stewart's opinion.

This, of course, causes me to ask Potter to consider me as supporting his opinion and to ask Bill to please take my name off of his printed dissent.

Sincerely,

Hugo

Mr. Justice Brennan

Mr. Justice Stewart

WB

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1970 From: Harlan, J.

Circulated: MAY 19 1971

Louis S. Nelson, Warden, Petitioner, *v.* Joe J. B. O'Neil. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Recirculated: _____

[May —, 1971]

Mr. Justice Harlan, concurring.

I join in the opinion and judgment of the Court. I would, however, go further and hold that, because respondent's conviction became final before this Court decided *Bruton* v. *United States,* 391 U. S. 123 (1968), he cannot avail himself of that new rule in subsequent federal habeas corpus proceedings. See *Mackey* v. *United States,* — U. S. —, — (1971) (separate opinion of this writer).

It is difficult to fathom what public policy is served by opening the already overcrowded federal courts to claims such as these. Respondent's trial and appeals were, at the time they occurred, conducted in a manner perfectly consistent with then prevailing constitutional norms. A reversal of the conviction now would either compel the State to place an already once-tried case again on its criminal docket, to be retried on substantially the same (but now more stale) evidence or else force the State to forgo its interest in enforcing in this instance its criminal laws relating to kidnaping, robbery, and car theft because of the disappearance of evidence. Conversely, if federal habeas relief is denied on the merits, as it now is by this Court, the energies of the federal courts have been expended to no good purpose.

To justify such a serious interference with the State's powers to enforce its criminal law and the ability of

B

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: Brennan, J.

Circulated: 5-19-71

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1970

Louis S. Nelson, Warden, Petitioner, *v.* Joe J. B. O'Neil

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1971]

Mr. Justice Brennan, dissenting.

With all deference, I think the Court asks and answers the wrong question in this case. Under California law, admissions to a police officer by a criminal defendant after his arrest may not be used as substantive evidence against other defendants.[1] The question with which we are faced is not, therefore, whether the Sixth Amendment would forbid California from using Runnels' statement as substantive evidence against respondent O'Neil if it chose to do so. California has rejected that choice: the jury in the present case was explicitly instructed that Runnels' statement could not be considered as evidence against O'Neil. The question, therefore, is whether California, having determined for whatever reason that the statement involved in this case was inadmissible against respondent, may nevertheless present the statement to the jury that was to decide respondent's guilt, and instruct that jury that it should not be considered against respondent. I think our cases compel the conclusion that it may not.

In *Bruton* v. *United States,* 391 U. S. 123 (1968), we reviewed a federal trial in which the extrajudicial

[1] See Cal. Evid. Code §§ 1200, 1223 (1966); *People* v. *Aranda,* 63 Cal. 2d 518, 407 P. 2d 265 (1965); *People* v. *Roberts,* 40 Cal. 2d 483, 254 P. 2d 501 (1953).

(W1)

Dec 1, 3 No action

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1970

From: Brennan, J.

Circulated: _____

Louis S. Nelson, Warden, Petitioner, *v.* Joe J. B. O'Neil

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Recirculated: 5/21/71

[May —, 1971]

Mr. Justice Brennan, dissenting.

With all deference, I think the Court asks and answers the wrong question in this case. Under the law of California at the time of respondent's trial, admissions to a police officer by a criminal defendant after his arrest could not be used as substantive evidence against other defendants, whether or not the declarant testified at trial.[1] The question with which we are faced is not, therefore, whether the Sixth Amendment would forbid California from using Runnels' statement as substantive evidence against respondent O'Neil if it chose to do so. California rejected that choice: the jury in the present case was explicitly instructed that Runnels' statement could not be considered as evidence against O'Neil. The question, therefore, is whether California, having determined for whatever reason that the statement involved in this case was inadmissible against respondent, may nevertheless present the statement to the jury that was to decide respondent's guilt, and instruct that jury that it should not be considered against respondent. I think our cases compel the conclusion that it may not.

[1] See *People* v. *Aranda*, 63 Cal. 2d 518, 407 P. 2d 265 (1965); *People* v. *Roberts*, 40 Cal. 2d 483, 254 P. 2d 501 (1953). The California Evidence Code, presently in effect, did not become operative until January 1, 1967.

Pages 1 x 2

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

3rd DRAFT

From: Brennan, J.

Circulated:

Recirculated: 5-26-71

SUPREME COURT OF THE UNITED STATES

No. 336.—OCTOBER TERM, 1970

Louis S. Nelson, Warden, Petitioner, *v.* Joe J. B. O'Neil — On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1971]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE BLACK joins, dissenting.

With all deference, I think the Court asks and answers the wrong question in this case. Under the law of California at the time of respondent's trial, admissions to a police officer by a criminal defendant after his arrest could not be used as substantive evidence against other defendants, whether or not the declarant testified at trial.[1] The question with which we are faced is not, therefore, whether the Sixth Amendment would forbid California from using Runnels' statement as substantive evidence against respondent O'Neil if it chose to do so. California rejected that choice: the jury in the present case was explicitly instructed that Runnels' statement could not be considered as evidence against O'Neil. The question, therefore, is whether California, having determined for whatever reason that the statement involved in this case was inadmissible against respondent, may nevertheless present the statement to the jury that was to decide respondent's guilt, and instruct that jury that it should not be considered against respondent. I think our cases compel the conclusion that it may not.

[1] See *People* v. *Aranda*, 63 Cal. 2d 518, 407 P. 2d 265 (1965); *People* v. *Roberts*, 40 Cal. 2d 483, 254 P. 2d 501 (1953). The California Evidence Code, presently in effect, did not become operative until January 1, 1967.

Page 1.

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
✓ Mr. Justice Marshall
Mr. Justice Blackmun

4th DRAFT

From: Brennan, J.

Circulated: 5-26-71

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1970

Louis S. Nelson, Warden, Petitioner, *v.* Joe J. B. O'Neil | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1971]

Mr. Justice Brennan, with whom Mr. Justice Black and Mr. Justice Douglas join, dissenting.

With all deference, I think the Court asks and answers the wrong question in this case. Under the law of California at the time of respondent's trial, admissions to a police officer by a criminal defendant after his arrest could not be used as substantive evidence against other defendants, whether or not the declarant testified at trial.[1] The question with which we are faced is not, therefore, whether the Sixth Amendment would forbid California from using Runnels' statement as substantive evidence against respondent O'Neil if it chose to do so. California rejected that choice: the jury in the present case was explicitly instructed that Runnels' statement could not be considered as evidence against O'Neil. The question, therefore, is whether California, having determined for whatever reason that the statement involved in this case was inadmissible against respondent, may nevertheless present the statement to the jury that was to decide respondent's guilt, and instruct that jury that it should not be considered against respondent. I think our cases compel the conclusion that it may not.

[1] See *People* v. *Aranda*, 63 Cal. 2d 518, 407 P. 2d 265 (1965); *People* v. *Roberts*, 40 Cal. 2d 483, 254 P. 2d 501 (1953). The California Evidence Code, presently in effect, did not become operative until January 1, 1967.

Pages 1 & 2

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
✓ Mr. Justice Marshall
Mr. Justice Blackmun

5th DRAFT

From: Brennan, J.

Circulated: _____

Recirculated: 5-28-71

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1970

Louis S. Nelson, Warden, Petitioner, *v.* Joe J. B. O'Neil.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1971]

Mr. Justice Brennan, with whom Mr. Justice Douglas and Mr. Justice Marshall join, dissenting.

With all deference, I think the Court asks and answers the wrong question in this case. Under the law of California at the time of respondent's trial, admissions to a police officer by a criminal defendant after his arrest could not be used as substantive evidence against other defendants, whether or not the declarant testified at trial.[1] The question with which we are faced is not, therefore, whether the Sixth Amendment would forbid California from using Runnels' statement as substantive evidence against respondent O'Neil if it chose to do so. California rejected that choice: the jury in the present case was explicitly instructed that Runnels' statement could not be considered as evidence against O'Neil. The question, therefore, is whether California, having determined for whatever reason that the statement involved in this case was inadmissible against respondent, may nevertheless present the statement to the jury that was to decide respondent's guilt, and instruct that jury that it should not be considered against respondent. I think our cases compel the conclusion that it may not.

[1] See *People* v. *Aranda*, 63 Cal. 2d 518, 407 P. 2d 265 (1965); *People* v. *Roberts*, 40 Cal. 2d 483, 254 P. 2d 501 (1953). The California Evidence Code, presently in effect, did not become operative until January 1, 1967.

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: Stewart, J.

1st DRAFT

Circulated: MAY 12 1971

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1970

Louis S. Nelson, Warden, Petitioner, *v.* Joe J. B. O'Neil. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1971]

Mr. Justice Stewart delivered the opinion of the Court.

The respondent, Joe O'Neil, was arrested along with a man named Runnels when the police of Culver City, California, answered a midnight call from a liquor store reporting that two men in a white Cadillac were suspiciously cruising about in the neighborhood. The police responded to the call, spotted the Cadillac, and followed it into an alley where a gun was thrown from one of its windows. They then stopped the car and apprehended the respondent and Runnels. Further investigation revealed that the car had been stolen about 10:30 that night in Los Angeles by two men who had forced its owner at gunpoint to drive them a distance of a few blocks and then had robbed him of $8 and driven off. The victim subsequently picked Runnels and the respondent from a lineup, positively identifying them as the men who had kidnaped and robbed him.

Arraigned on charges of kidnaping, robbery, and vehicle theft, both the respondent and Runnels pleaded not guilty, and at their joint trial they offered an alibi defense. Each told the same story: they had spent the evening at the respondent's home until about 11 p. m., when they had left together. While waiting at a bus

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

From: Stewart, J.

2nd DRAFT

Circulated: _____

Recirculated: MAY 19 1971

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1970

Louis S. Nelson, Warden, Petitioner, *v.* Joe J. B. O'Neil.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1971]

Mr. Justice Stewart delivered the opinion of the Court.

The respondent, Joe O'Neil, was arrested along with a man named Runnels when the police of Culver City, California, answered a midnight call from a liquor store reporting that two men in a white Cadillac were suspiciously cruising about in the neighborhood. The police responded to the call, spotted the Cadillac, and followed it into an alley where a gun was thrown from one of its windows. They then stopped the car and apprehended the respondent and Runnels. Further investigation revealed that the car had been stolen about 10:30 that night in Los Angeles by two men who had forced its owner at gunpoint to drive them a distance of a few blocks and then had robbed him of $8 and driven off. The victim subsequently picked Runnels and the respondent from a lineup, positively identifying them as the men who had kidnaped and robbed him.

Arraigned on charges of kidnaping, robbery, and vehicle theft, both the respondent and Runnels pleaded not guilty, and at their joint trial they offered an alibi defense. Each told the same story: they had spent the evening at the respondent's home until about 11 p. m., when they had left together. While waiting at a bus

May 19, 1971

Re: No. 336 - Nelson v. O'Neil

Dear Potter:

Please join me.

Sincerely,

B.R.W.

Mr. Justice Stewart

cc: Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 336.—October Term, 1970

Louis S. Nelson, Warden, Petitioner, *v.* Joe J. B. O'Neil. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1971]

Mr. Justice Marshall, dissenting.

This case dramatically illustrates the need for the adoption of new rules regulating the use of joint trials. Here there is no question that Runnels' alleged statement to the police was not admissible under state law against O'Neil. But as my Brother Brennan points out and as this Court recognized in *Bruton* v. *United States*, 391 U. S. 123 (1968), there is a very real danger that the statement was in fact used against O'Neil.

Those that argue for the use of joint trials contend that joint trials, although often resulting in prejudice to recognized rights of one or more of the codefendants, are justified because of the savings of time, money, and energy that result. But as this case shows much of the supposed savings is lost through protracted litigation that results from the impingement or near impingement on a codefendant's rights of confrontation and equal protection.

The American Bar Association's Project on Minimum Standards for Criminal Justice, Advisory Committee on the Criminal Trial, suggested that if a defendant in a joint trial moves for a severance because the prosecutor intends to introduce an out-of-court statement by his codefendant that is inadmissible against the moving defendant then the trial court should require the prosecutor to election between a joint trial in which the statement

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 27, 1971

Re: No. 336 - Nelson v. O'Neil

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

May 17, 1971

Re: No. 336 - Nelson v. O'Neil

Dear Potter:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Stewart

cc: The Conference