

The Burger Court Opinion Writing Database

United States v. Bass

404 U.S. 336 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

December 16, 1971

Re: No. 70-71 - U. S. v. Bass

Dear Harry:

Please join me in your dissent.

Regards,

W.S.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 3, 1971

Dear Thurgood:

Re: No. 70-71 - U. S. v. Bass

I want to join your opinion.

But would you mind striking the last two lines on page 12 that run over to note 16 on page 13? Also Bickel & Wellington in the footnote? Those guys are still after our Lincoln Mills case and I do not like to give comfort to the enemy.

William O. Douglas

Mr. Justice Marshall

CC: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 6, 1971

Dear Thurgood:

Please join me in your
recirculation of December sixth in
No. 70-71 - United States v. Bass.

W. O. Douglas
William O. Douglas

Mr. Justice Marshall

CC: The Conference

Thurgood Marshall
cc: The Conference
6 Dec 1971

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-71

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
Denneth Bass. } peals for the Second Circuit.

[December —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The defendant was convicted in the Southern District of New York of possessing firearms in violation of Title VII of the Omnibus Crime Control and Safe Streets Act, 18 U. S. C. App. (Supp. V) § 1202 (a). In pertinent part, that statute reads:

"Any person who—(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony . . . and who receives, possesses, or transports in interstate commerce or affecting commerce . . . any firearm shall be fined not more than \$10,000 or imprisoned for not more than two years, or both."¹

¹ Section 1202 (a) reads in full:

"Any person who—

"(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

"(2) has been discharged from the Armed Forces under dishonorable conditions, or

"(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

"(4) having been a citizen of the United States has renounced his citizenship, or

"(5) being an alien is illegally or unlawfully in the United States, and who receives, possesses, or transports in commerce or affecting

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 10, 1971

RE: No. 70-71 - United States v. Bass

Dear Thurgood:

Would you please note the following
at the foot of your opinion:

"Mr. Justice Brennan joins the judgment of the Court and the opinion except for Part III. No question of the quantum of evidence necessary to establish the Government's prima facie case is before us and I would await a case properly presenting that question before deciding it."

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 6, 1971

70-71 - United States v. Bass

Dear Thurgood,

I am glad to join your opinion for the
Court in this case.

Sincerely yours,

PS.
J

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 6, 1971

Re: No. 70-71 - United States v.
Bass

Dear Thurgood:

Please join me.

Sincerely,

Byr

Mr. Justice Marshall

Copies to Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-71

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
Denneth Bass. } peals for the Second Circuit.

[December —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The defendant was convicted in the Southern District of New York of possessing firearms in violation of Title VII of the Omnibus Crime Control and Safe Streets Act, 18 U. S. C. App. (Supp. V) § 1202 (a)(1). In pertinent part, that statute reads:

“Any person who—(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony . . . and who receives, possesses, or transports in interstate commerce or affecting commerce . . . any firearm shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.”¹

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“(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

“(4) having been a citizen of the United States has renounced his citizenship, or

“(5) being an alien is illegally or unlawfully in the United States, and who receives, possesses, or transports in commerce or affecting

Part 2-5

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-71

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
Denneth Bass. } peals for the Second Circuit.

[December —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The defendant was convicted in the Southern District of New York of possessing firearms in violation of Title VII of the Omnibus Crime Control and Safe Streets Act, 18 U. S. C. App. (Supp. V) § 1202 (a). In pertinent part, that statute reads:

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"(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

"(4) having been a citizen of the United States has renounced his citizenship, or

"(5) being an alien is illegally or unlawfully in the United States, and who receives, possesses, or transports in commerce or affecting

Reversed on all

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 29, 1971

MEMORANDUM TO THE CONFERENCE

The following cases were held for No. 70-71,
United States v. Bass:

70-5047 - Mullins v. United States

70-5073) - Wiley v. United States

70-5074) - Taylor v. United States

70-5095 - Synnes v. United States

70-5267 - Crow v. United States

71-5335 - Madril v. United States

I would reverse all of these cases because the government failed to allege and prove that the individual possession or receipt was "in commerce or affecting commerce."

In 70-5047, Mullins v. United States, petitioner raises only constitutional claims, under Tot v. United States, 319 U.S. 463, and the Second Amendment. But the Solicitor General, apparently conceding "the government's failure to prove that (petitioner's) possession affected commerce," suggested that the case be held for Bass, and, in any event, the statutory disposition is in my view appropriate.

T.M.

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-71

Blackmun, J. Circulated: 12/15/71

Recirculated: _____

United States, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
Denneth Bass. } peals for the Second Circuit.

[December —, 1971]

MR. JUSTICE BLACKMUN, dissenting.

I cannot join the Court's opinion and judgment. Four of the five United States courts of appeals that have passed upon the issue presented by this case have decided it adversely to the position urged by the respondents here. *United States v. Cabbler*, 429 F. 2d 577 (CA4 1970), cert. denied. 400 U. S. 901; *United States v. Mullins*, 432 F. 2d 1003 (CA4 1970); *Stevens v. United States*, 440 F. 2d 145 (CA6 1971) (one judge dissenting); *United States v. Synnes*, 438 F. 2d 764 (CA8 1971); *United States v. Wiley*, 438 F. 2d 773 (CA8 1971); *United States v. Taylor*, 438 F. 2d 774 (CA8 1971); *United States v. Daniels*, 431 F. 2d 697 (CA9 1970); *United States v. Crow*, 439 F. 2d 1193 (CA9 1971). Only the Second Circuit stands opposed.¹

1. The statute, 18 U. S. C. App. § 1202 (a)(1), when it speaks of one "who receives, possesses, or transports

¹ Unappealed district court decisions are in conflict. Those upholding the Government's position include *United States v. Davis*, 314 F. Supp. 1161 (ND Miss. 1970); *United States v. Vicary* (No. 44-207) (ED Mich., June 29, 1970) (*en banc*); *United States v. Childress* (No. 8039-R) (ED Va., January 6, 1969); *United States v. Boggs* (No. 8138) (Wyo., June 17, 1970). Those opposed include *United States v. Harbin*, 313 F. Supp. 50 (ND Ind. 1970); *United States v. Steed* (No. Cr. 70-57) (WD Tenn., May 11, 1970); *United States v. Phelps* (No. 14,465) (MD Tenn., February 10, 1970); *United States v. Francis* (No. 12,684) (ED Tenn., December 12, 1969).