

The Burger Court Opinion Writing Database

Keeble v. United States

412 U.S. 205 (1973)

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 8, 1973

Re: No. 72-5323 - Francis A. Keeble vs. United States

Dear Bill:

Please join me.

Regards,



Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 9, 1972

Dear Chief Justice:

No. 72-5323 - Keeble v. United States on the November 10th list contains only one issue on which I think a grant should be made and that is the failure to instruct on the lesser included offense of simple assault.

Judge Stephenson dissented on that ground. The majority relied on its prior decision in Kills Crow v. United States, 451 F.2d 323. In that case Judge Stephenson likewise dissented on the same point.

I think we should give a limited grant on that one question.

If the Court thinks otherwise, I would like to have the case go over a week so that I can write out my views in a dissent.

W. O. D.

The Chief Justice

cc: Conference

WD

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11-27
civ.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

FRANCIS A. KEEBLE *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 72-5323. Decided December —, 1972

MR. JUSTICE DOUGLAS, dissenting.

Petitioner, an Indian, was convicted after a jury trial in a Federal District Court of having committed an assault with intent to commit serious bodily injury within Indian country in violation of 18 U. S. C. § 1153, known as the Major Crime Act. That Act provides in relevant part as follows:

“Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to kill, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses within the exclusive jurisdiction of the United States.”

The person whom petitioner was charged with assaulting was also an Indian, the place of assault being on an Indian Reservation in South Dakota. The evidence is clear that defendant, intoxicated, had a fight with the deceased, that his knife was involved, but that the deceased died of exposure to the elements, having lain on the ground outside the house all night.

At the trial petitioner requested an instruction on the lesser included offense of simple assault. The District

WJ

File
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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

FRANCIS A. KEEBLE *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 72-5323. Decided December —, 1972

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

Petitioner, an Indian, was convicted after a jury trial in a Federal District Court of having committed an assault with intent to commit serious bodily injury within Indian country in violation of 18 U. S. C. § 1153, known as the Major Crime Act. That Act provides in relevant part as follows:

“Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to kill, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses within the exclusive jurisdiction of the United States.”

The person whom petitioner was charged with assaulting was also an Indian, the place of assault being on an Indian Reservation in South Dakota. The assault took place on an Indian Reservation in South Dakota in petitioner's home. The evidence is clear that petitioner and the deceased, while intoxicated, had a fight in which petitioner's knife was involved. After the fight, the deceased was conscious and remained in the

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

FRANCIS A. KEEBLE *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 72-5323. Decided December —, 1972

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN concur, dissenting.

Petitioner, an Indian, was convicted after a jury trial in a Federal District Court of having committed an assault with intent to commit serious bodily injury within Indian country in violation of 18 U. S. C. § 1153, known as the Major Crime Act. That Act provides in relevant part as follows:

“Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to kill, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses within the exclusive jurisdiction of the United States.”

The person whom petitioner was charged with assaulting was also an Indian, the place of assault being on an Indian Reservation in South Dakota. The assault took place on an Indian Reservation in South Dakota in petitioner’s home. The evidence is clear that petitioner and the deceased, while intoxicated, had a fight in which petitioner’s knife was involved. After the fight, the deceased was conscious and remained in the

WD

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 3, 1973

Dear Bill:

In 72-5323, Keeble v. U.S.
please join me in your opinion.

W
William O. Douglas

Mr. Justice Brennan

cc: The Conference

3
Supreme Court of the United States
Washington, D. C. 20543
CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 27, 1972

RE: No. 72-5323 - Keeble v. United States

Dear Bill:

Please join me in your dissent in the
above.

Sincerely,

Brennan

Mr. Justice Douglas

cc: The Conference

WJ

WJB
Placing in line

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

Recirculated: 5/2/73

No. 72-5323

Recirculated: _____

Francis A. Keeble, Petitioner, } On Writ of Certiorari to
v. } the United States Court
United States. } of Appeals for the
Eighth Circuit.

[May —, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The Major Crimes Act of 1885¹ authorizes the prosecution in federal court of an Indian charged with the commission on an Indian reservation of certain specifically enumerated offenses.² This case requires us to decide

¹ Act of March 3, 1885, c. 341, § 9, 23 Stat. 385, 18 U. S. C. §§ 1153, 3242.

² As originally enacted, the statute provided that

"That immediately upon and after the date of the passage of this act all Indians, committing against the person or property of another Indian or other person any of the following crimes, namely, murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases; and all such Indians committing any of the above crimes against the person or property of another Indian or other person within the boundaries of any State of the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner, and subject to the same penalties as are all other

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

CHAMBERS OF
JUSTICE POTTER STEWART

115-6

May 2, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 72-5323, Keeble v. United States

In due course I shall circulate a dissenting opinion in this case.

P.S.
1

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1st DRAFT

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

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 72-5323

Circulated: MAY 23 1973

Francis A. Keeble, Petitioner, } On Writ of Certiorari to
v. } the United States Court
United States. } of Appeals for the
Eighth Circuit.

Recirculated:

[May —, 1973]

MR. JUSTICE STEWART, dissenting.

As the opinion of the Court demonstrates, the Major Crimes Act, 18 U. S. C. §§ 1153, 3242, was enacted in response to this Court's decision in *Ex parte Crow Dog*, 109 U. S. 556. The Act conferred jurisdiction upon federal district courts over certain *enumerated* crimes committed by Indians on an Indian reservation, leaving tribal jurisdiction intact as to all other crimes. An Indian tried in a federal court under the Act is guaranteed equal procedural rights, 18 U. S. C. § 3242, including the benefits and burdens of Rule 31 (c) of the Federal Rules of Criminal Procedure, dealing with the lesser-included offense jury instruction.

In these respects, I agree with the Court. But the Court goes on to hold "that where an Indian is prosecuted in federal court under the provisions of the Act, the Act does not require that he be deprived of the protection afforded by an instruction on a lesser included offense. . . ." *Ante*, at —. I think this holding would be correct only if the lesser-included offense were one over which the federal court had jurisdiction. Because the trial court did not have jurisdiction over the "lesser included offense" in the present case, I must respectfully dissent.¹

¹ The Court does not reach any other possible ground for reversing this conviction, and, accordingly, neither do I.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 7, 1973

Re: No. 72-5323 - Keeble v. United States

Dear Bill:

Please join me in your opinion in this case.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 27, 1972

Re: No. 72-5323 - Keeble v. U. S.

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Mr. Justice Douglas

cc: Conference

WD

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 3, 1973

Re: No. 72-5323 - Keeble v. U. S.

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

S

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 27, 1972

Re: No. 72-5323 - Keeble v. United States

Dear Bill:

I was with you in dissenting from the denial of certiorari on March 20 in Kills Crow v. U.S., 405 U.S. 999.

In your note of November 9 to the Chief Justice, you indicated that you would give only a limited grant in the present case. This would be confined to the lesser included offense instruction. If your dissenting opinion is to be read as confined to that issue, please join me.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Conference

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 2, 1973

Re: No. 72-5323 - Keeble v. U. S.

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 2, 1973

No. 72-5323 Keeble v. United States

Dear Bill:

As my vote at the Conference was to affirm, I will await
Potter's dissenting opinion before making a final decision.

Sincerely,

Lewis

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 24, 1973

June 5?

No. 72-5323 Keeble v. United States

Dear Potter:

Please join me in your dissent.

Sincerely,

Lewis

Mr. Justice Stewart

cc: The Conference

lfp/gg

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 24, 1973

Re: No. 72-5323 - Keeble v. United States

Dear Potter:

Please join me.

Sincerely,

WR

Mr. Justice Stewart

Copies to the Conference