The Burger Court Opinion Writing Database

Barnes v. United States

412 U.S. 837 (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

June 13, 1973

Re: No. 72-5443 - James Edward Barnes v. United States

Dear Lewis:

Please join me.

Regards,

Mr. Justice Powell

Copies to the Conference

3/

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

From: Douglas, J.

Circulated: 6-1-73

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-5443

James Edward Barnes, Petitioner
v.
United States

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

[June —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

Possession of stolen property is traditionally under our federal system a local law question. It becomes a federal concern in the present case only if the "mail" was implicated. The indictment, insofar as the unlawful possession counts are concerned, charges that the items had been "stolen from the mail." While there was evidence that these items had gone through the mail, petitioner did not take the stand, nor was there any evidence that petitioner knew that the items had been "stolen from the mail." As to the possession counts in the indictment the District Court charged the jury that "three essential elements" were required to prove the possession offenses.

> "FIRST: The act or acts of unlawfully having in one's possession the contents of a letter, namely, the United States Treasury checks as alleged;
>
> "SECOND: That the contents of the letter, namely, the United States Treasury checks as alleged, were stolen from the mail; and
>
> "THIRD: That the defendant James Edward Barnes knew the contents had been stolen."

The District Court also charged the jury:

> "If you should find beyond a reasonable doubt from the evidence in the case that the mail described in the indictment was stolen, and that while

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

From: Douglas, J.

Circulated: _____

Recirculated: 6-6-73

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72–5443

James Edward Barnes, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

Possession of stolen property is traditionally under our federal system a local law question. It becomes a federal concern in the present case only if the "mail" was implicated. The indictment, insofar as the unlawful possession counts are concerned, charges that the items had been *"stolen from the mail."* While there was evidence that these items had gone through the mail, petitioner did not take the stand, nor was there any evidence that petitioner knew that the items had been "stolen from the mail." As to the possession counts in the indictment the District Court charged the jury that "three essential elements" were required to prove the possession offenses:

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 30, 1973

Re: Barnes v. United States, No. 72-5443

Dear Bill:

The approach that you have taken in your proposed dissent in this case is one that I had not previously considered, and I must admit that at first glance I thought it was one with which I could agree. After further reflection, however, I realized that your approach would entail far-reaching implications for numerous other types of federal offenses. For example, if we say here that the petitioner cannot constitutionally be convicted of the federal crime of possession of property stolen from the mails unless the Government proves that petitioner knew the property was stolen from the mails, does it not also hold true that as to such federal crimes as bank robbery, assault on federal land, receiving stolen property moving in interstate commerce, assaulting a federal officer, and the like, the Government must prove that the defendant knew that the bank was federally insured, that the land was federal land, that the property had moved in interstate commerce, that the person assaulted was a federal officer, and so on? Admittedly, there are no decisions of this Court--or at least none that I have found--that address this question, but the Courts of Appeals' decisions on the point are both numerous and uniform in holding that knowledge by the defendant of the federal jurisdictional element of a crime is not a necessary element of the offense. See pp. 46-49 of the Government's Brief.

Moreover, I doubt that we could rely on Tot v. United States, which you cite, to support the approach that you have taken. Tot concerned a federal statute that made it a crime for a convicted felon to possess a firearm that had been shipped in interstate commerce, and we held invalid a statutory presumption that a felon's mere possession of the weapon demonstrates that it had

WB

travelled in interstate commerce. We held, in other words, that the Government could not shirk the burden of proving the federal jurisdictional element (i.e., movement in interstate commerce), but we did not suggest that the Government must also prove that the defendant knew the weapon had moved in interstate commerce. In short, a dissent along the lines you suggest would forge important new ground in this Court, and, since I think there is a narrower basis for dissent, I am reluctant to take this step. The statute presumes knowledge that goods had been stolen from the mere fact of possession. My view is that this presumption satisfies neither the "rational connection" nor the "reasonable doubt" standards and that it is therefore unconstitutional. More specifically, I would dissent along the following lines:

Petitioner was charged in two counts of a six-count indictment with possession of United States Treasury checks stolen from the mails, knowing them to be stolen. The essential elements of such an offense are (1) that the defendant was in possession of the checks, (2) that the checks were stolen from the mails, and (3) that the defendant knew that the checks were stolen. The proved that this petitioner had been in possession of the checks and that the checks had been stolen from the mails, and the jury was then instructed that they could infer from the petitioner's unexplained possession of the checks the third essential element of the offense--namely, knowledge that the checks were stolen.

That instruction violated the Due Process Clause of the Fifth Amendment by permitting the jury to convict on evidence that may have been insufficient to establish guilt beyond a reasonable doubt. See In re Winship. The instruction enabled the prosecution to "pyramid the requisite element 'knowledge' on top of the requisite element of 'possession' without the necessity of the prosecution's coming forward with a single additional evidentiary fact bearing on the appellant's knowledge of the stolen character of the [checks]." United States v. Cameron, 460 F.2d 1394, 1399 (CA5 1972).

Plainly, the case is not controlled by our prior decisions concerning criminal presumptions. Leary v. United States leaves open the question whether a criminal presumption must satisfy the reasonable doubt standard for proof of

thereof depends upon its use." See note 64. I would hold that since knowledge is an essential element of the offense charged in this case, the Government must bear the burden of proving knowledge beyond a reasonable doubt.

This statement is, of course, no more than a rough outline of my position. I would be happy to elaborate if that would be helpful.

Sincerely,

Bill

Mr. Justice Douglas

WJR

WJB
Please join me in your dissenting opinion
TM

1st DRAFT

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

From: Brennan, J.

Circulated: 6-7-73

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 72-5443

James Edward Barnes, Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1973]

MR. JUSTICE BRENNAN, dissenting.

Petitioner was charged in two counts of a six-count indictment with possession of United States Treasury checks stolen from the mails, knowing them to be stolen. The essential elements of such an offense are (1) that the defendant was in possession of the checks, (2) that the cheks were stolen from the mails, and (3) that the defendant knew that the checks were stolen. The Government proved that petitioner had been in possession of the checks and that the checks had been stolen from the mails; and, in addition, the Government introduced some evidence intended to show that petitioner knew or should have known that the checks were stolen. But rather than leaving the jury to determine the element of "knowledge" on the basis of that evidence, the trial court instructed them that they were free to infer the essential element of "knowledge" from petitioner's unexplained possession of the checks. In my view, that instruction violated the Due Process Clause of the Fifth Amendment because it permitted the jury to convict even though the actual evidence bearing on "knowledge" may have been insufficient to establish guilt beyond a reasonable doubt. I therefore dissent.

We held in *In re Winship*, 397 U. S. 358, 364 (1970), that the Due Process Clause requires "proof beyond a reasonable doubt of every fact necessary to constitute

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

2nd DRAFT From: Brennan, J.

Circulated:

SUPREME COURT OF THE UNITED STATES

No. 72-5443 Recirculated: 6-14-73

James Edward Barnes, Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June 18, 1973]

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

Petitioner was charged in two counts of a six-count indictment with possession of United States Treasury checks stolen from the mails, knowing them to be stolen. The essential elements of such an offense are (1) that the defendant was in possession of the checks, (2) that the cheks were stolen from the mails, and (3) that the defendant knew that the checks were stolen. The Government proved that petitioner had been in possession of the checks and that the checks had been stolen from the mails; and, in addition, the Government introduced some evidence intended to show that petitioner knew or should have known that the checks were stolen. But rather than leaving the jury to determine the element of "knowledge" on the basis of that evidence, the trial court instructed them that they were free to infer the essential element of "knowledge" from petitioner's unexplained possession of the checks. In my view, that instruction violated the Due Process Clause of the Fifth Amendment because it permitted the jury to convict even though the actual evidence bearing on "knowledge" may have been insufficient to establish guilt beyond a reasonable doubt. I therefore dissent.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 5, 1973

Re: No. 72-5443, Barnes v. United States

Dear Lewis,

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

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 29, 1973

Re: No. 72-5443 - Barnes v. U.S.

Dear Lewis:

Join me, please.

Sincerely,

Byron

Mr. Justice Powell

Copies to Conference

No. 72-5443

Barnes v. United States

Mr. Justice Marshall, concurring.

Although I agree that the judgment of the Court of Appeals should be affirmed, I would do so in a manner somewhat different from that of the Court, though my analysis is not, I think, inconsistent with the Court's.

The jury in this case was instructed that "possession of recently stolen property, if not satisfactorily explained, is ordinarily a circumstance from which you may . . . find . . . that the person in possession knew the property had been stolen." This instruction thus authorized the jury to find the defendant guilty even if it believed only the evidence of possession and of the absence of a satisfactory explanation for that possession, and

WB

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 12, 1973

Re: No. 72-5443 - Barnes v. U. S.

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,

T.M.

Mr. Justice Brennan

cc: Conference

CM

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 9, 1973

Re: No. 72-5443 - Barnes v. U. S.

Dear Lewis:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Powell

cc: The Conference

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

1st DRAFT

From: Powell, J.

SUPREME COURT OF THE UNITED STATES

Circulated: MAY 25 1973

No. 72-5443

Recirculated: _____

James Edward Barnes, Petitioner
v.
United States.

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

[May —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

Petitioner Barnes was convicted in United States District Court on two counts of possessing United States Treasury checks stolen from the mails, knowing them to be stolen, two counts of forging the checks, and two counts of uttering the checks, knowing the endorsements to be forged. The trial court instructed the jury that ordinarily it would be justified in inferring from unexplained possession of recently stolen mail that the defendant possessed the mail with knowledge that it was stolen. We granted certiorari to consider whether this instruction comports with due process. 409 U. S. 1037.

The evidence at petitioner's trial established that on June 29, 1971, he opened a checking account in the pseudonym "Clarence Smith." On July 1, and July 3, 1971, the United States Disbursing Office at San Francisco mailed four Government checks in the amounts of $269.02, $154.70, $184.00, and $268.80 to Nettie Lewis, Albert Young, Arthur Salazar, and Mary Hernandez, respectively. On July 8, 1971, petitioner deposited these four checks into the "Smith" account. Each check bore the apparent endorsement of the payee and a second endorsement by "Clarence Smith."

pp. 6-9

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

2nd DRAFT

From: Powell, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 72-5443

Recirculated: JUN 4 1973

James Edward Barnes, Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

Petitioner Barnes was convicted in United States District Court on two counts of possessing United States Treasury checks stolen from the mails, knowing them to be stolen, two counts of forging the checks, and two counts of uttering the checks, knowing the endorsements to be forged. The trial court instructed the jury that ordinarily it would be justified in inferring from unexplained possession of recently stolen mail that the defendant possessed the mail with knowledge that it was stolen. We granted certiorari to consider whether this instruction comports with due process. 409 U. S. 1037 (1972).

The evidence at petitioner's trial established that on June 2, 1971, he opened a checking account in the pseudonym "Clarence Smith." On July 1, and July 3, 1971, the United States Disbursing Office at San Francisco mailed four Government checks in the amounts of $269.02, $154.70, $184.00, and $268.80 to Nettie Lewis, Albert Young, Arthur Salazar, and Mary Hernandez, respectively. On July 8, 1971, petitioner deposited these four checks into the "Smith" account. Each check bore the apparent endorsement of the payee and a second endorsement by "Clarence Smith."

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 18, 1973

Cases Held for No. 72-5443 Barnes v. U. S.

MEMORANDUM TO THE CONFERENCE:

The cases set forth below were held for Barnes. I send to each of you herewith brief summary memoranda by my Law Clerk which may be helpful in refreshing you as to the exact issue in each case.

The following, in my opinion, are clear "denies":

No. 72-5375 MARQUEZ v. UNITED STATES

No. 72-6099 SINGLETON v. KANSAS

No. 72-6057 R. GREELEY v. UNITED STATES

No. 72-6299 J. GREELEY v. UNITED STATES

The two remaining cases held for Barnes are not quite as clear, but I believe the summary memoranda which I enclose support the dispositions suggested below:

No. 72-1223 DESKINS v. KENTUCKY - dismiss the appeal for want of a substantial federal question.

No. 72-6265 CLAYTON v. UNITED STATES - although the inference involved related to the offense of burglary itself (rather than the offense of possession of stolen goods), in view of the remainder of the instruction and the facts in the case, I would deny the petition.

L. F. P., Jr.

L.F.P.

ss

WR

circulated?

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 31, 1973

Re: No. 72-5443 - Barnes v. United States

Dear Lewis:

Please join me.

Sincerely,

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1973

Re: No. 72-5443 - Barnes v. United States

Dear Lewis:

Please join me.

Sincerely,

WHR

Mr. Justice Powell

Copies to the Conference