The Burger Court Opinion Writing Database

Cool v. United States

409 U.S. 100 (1972)

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

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

CHAMBERS OF
THE CHIEF JUSTICE

December 1, 1972

Re: 72-72 - Cool v. U. S.

Dear Bill:

Please join me in your dissent.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 15, 1972

Dear Thurgood:

I am with you and your Per Curiam in No. 72-72 - Cool v. United States.

W. O. D.

Mr. Justice Marshall

cc: Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 16, 1972

RE: No. 72-72 Cool v. United States

Dear Thurgood:

I agree with the Per Curiam you have prepared in the above case.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 15, 1972

72-72 - Cool v. United States

Dear Thurgood,

I am glad to join the Per Curiam you have circulated in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 13, 1972

Re: No. 72-72 - Cool v. United States

Dear Thurgood:

The regular instruction to view accomplice testimony with care and caution would be acceptable, I think, with respect to exculpatory testimony. Neither could I hold the jury constitutionally forbidden to disbelieve uncontradicted testimony. But you have surfaced an aspect of this instruction which had not come through to me and which is plainly unacceptable insofar as it conditioned the use of accomplice testimony to acquit upon the jury believing it beyond a reasonable doubt. Although it does not appear that the particular point is much relied on by Cool, I would join in summary action reversing the judgment. Query, whether it need be pitched on constitutional grounds. In any event, I wonder if you would consider the change indicated on page 4 of the attached.

Sincerely,

Mr. Justice Marshall

Copies to Conference

noted
file

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 16, 1972

Re: No. 72-72 - Cool v. U. S.

Dear Thurgood:

Please join me in your per curiam.

Sincerely,

Mr. Justice Marshall

Copies to Conference

— 10 HR
no file

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

From: Marshall, J.

Circulated: _____

Recirculated: NOV 7

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

MARILYN COOL *v.* UNITED STATES

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

No. 72-72. Decided November —, 1972

The petition for writ of certiorari is denied.

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

The Court today refuses to review a decision holding in effect that in a criminal case, the jury may be instructed to ignore defense testimony unless it believes beyond a reasonable doubt that the testimony is true. In my judgment, that holding is fundamentally inconsistent with our prior decisions in *In re Winship*, 397 U. S. 358 (1970), and *Washington* v. *Texas*, 388 U. S. 14 (1967). I must, therefore, respectfully dissent.

After a jury trial, petitioner was found guilty of possessing and concealing, with intent to defraud, counterfeit obligations of the United States. The evidence showed that on June 2, 1970, petitioner, her husband, and one Robert E. Voyles were traveling together by car between St. Louis, Missouri, and Brazil, Indiana. Upon reaching Brazil, Voyles left petitioner and her husband and passed two counterfeit bills at a local store. He was then arrested shortly after he entered the car in which petitioner and her husband were waiting.

After his arrest, Voyles was placed in the police car and taken to the stationhouse. Petitioner and her husband were told to follow in their own car. A Mr. Baumunk testified that he saw petitioner throw a paper sack out of the car window as petitioner was following the police car. The bag was subsequently found to contain counterfeit bills. Police also found three counterfeit bills crumpled up under the right seat of petitioner's car.

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

3rd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: NOV 15 19

MARILYN COOL *v.* UNITED STATES

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

No. 72-72. Decided November —, 1972

PER CURIAM.

In this case, the court below held in effect that in a criminal trial, the jury may be instructed to ignore defense testimony unless it believes beyond a reasonable doubt that the testimony is true. That holding is fundamentally inconsistent with our prior decisions in *In re Winship*, 397 U. S. 358 (1970), and *Washington* v. *Texas*, 388 U. S. 14 (1967), and must therefore be reversed.

After a jury trial, petitioner was found guilty of possessing and concealing, with intent to defraud, counterfeit obligations of the United States. The evidence showed that on June 2, 1970, petitioner, her husband, and one Robert E. Voyles were traveling together by car between St. Louis, Missouri, and Brazil, Indiana. Upon reaching Brazil, Voyles left petitioner and her husband and passed two counterfeit bills at a local store. He was then arrested shortly after he entered the car in which petitioner and her husband were waiting.

After his arrest, Voyles was placed in the police car and taken to the stationhouse. Petitioner and her husband were told to follow in their own car. A Mr. Baumunk testified that he saw petitioner throw a paper sack out of the car window as petitioner was following the police car. The bag was subsequently found to contain counterfeit bills. Police also found three counterfeit bills crumpled up under the right seat of petitioner's car.

Although petitioner testified in her own defense, she relied primarily on the testimony of Voyles. Voyles

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 27, 1972

Noted
WJR
Clerk
file

Re: No. 72-72 - Cool v. United States

Dear Bill:

Please join me in your dissent.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 28, 1972

Re: No. 72-72 - Cool v. United States

Dear Bill:

It strikes me as a little strange that petitioner's husband, Michael, was convicted at the same trial, that both husband and wife appealed to the Seventh Circuit where their convictions were affirmed, and that only the wife comes here. I wonder, therefore, whether it would be worth working into your dissent the facts (1) that the husband was also convicted, appealed and has not petitioned for certiorari and (2) that Voyles on the stand stated that he was a three-time felon (Transcript p. 253).

Sincerely,

Harry

Mr. Justice Rehnquist

461 F. 2d 521

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 14, 1972

Re: No. 72-72 Cool v. United States

Dear Thurgood:

This will confirm my previous advice that I join you in the above case.

Sincerely,

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 13, 1972

Re: 72-72 Cool v. United States

Dear Thurgood:

I will probably write a dissent from your draft memorandum in the above-entitled case, which commanded the votes of five of the Brethren at Conference Friday. In order to do this, I have asked the Clerk to send for the record, which is not here, and I will not be able to proceed further until it arrives.

Sincerely,

Bill

Mr. Justice Marshall

Copies to 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 Powell

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 11/24/72

Recirculated: _____

MARILYN COOL *v.* UNITED STATES

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

No. 72-72. Decided December —, 1972

MR. JUSTICE REHNQUIST, dissenting.

I believe that the Court's fine-spun parsing of the trial judge's charge to the jury turns the appellate review of this case into the sort of "quest for error" which was said in *Bihn* v. *United States,* 328 U. S. 633, 638 (1946), to be forbidden by Rule 52 (a) of the Federal Rules of Criminal Procedure,[1] and by 28 U. S. C. § 2111.[2]

The testimony of the witness Voyles, called by petitioner as a witness in her behalf, presented the trial court with something of a dilemma in determining how he should charge the jury. Much of Voyles' testimony tended to exculpate petitioner, but there were significant aspects of it that did not. He substantiated the fact that the petitioner and her husband had traveled with him from St. Louis to Brazil, Indiana. He corroborated prosecution evidence that both petitioner and her husband gave the same false last name of Gibbs when booked at the police station in Brazil. He also suggested a closeness to petitioner's husband which was scarcely helpful to their defense when he testified that "I was a little sore at Mike [petitioner's husband] because I thought Mike should help me [get on bond]."

The trial judge made clear in his colloquy with counsel while dealing with their objections to the charge that he

[1] "Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Fed. Rule Crim. Proc. 52 (a).

[2] "On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties." 28 U. S. C. § 2111 (1970).

p. 1

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

2nd DRAFT

From: Rehnquist, J.

Circulated: _____

Recirculated: 11/28/72

SUPREME COURT OF THE UNITED STATES

MARILYN COOL *v.* UNITED STATES

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

No. 72-72. Decided December —, 1972

MR. JUSTICE REHNQUIST, dissenting.

I believe that the Court's fine-spun parsing of the trial judge's charge to the jury turns the appellate review of this case into the sort of "quest for error" which was said in *Bihn* v. *United States,* 328 U. S. 633, 638 (1946), to be forbidden by Rule 52 (a) of the Federal Rules of Criminal Procedure,[1] and by 28 U. S. C. § 2111.[2]

The testimony of the witness Voyles, called by petitioner as a witness in her behalf, presented the trial court with something of a dilemma in determining how he should charge the jury. Much of Voyles' testimony tended to exculpate petitioner, but there were significant aspects of it that did not. He substantiated the fact that the petitioner and her husband [3] had traveled with him from St. Louis to Brazil, Indiana. He corroborated prosecution evidence that both petitioner and her husband gave the same false last name of Gibbs when booked at the police station in Brazil. He also suggested a closeness to petitioner's husband which was scarcely helpful

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[1] "Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Fed. Rule Crim. Proc. 52 (a).

[2] "On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties." 28 U. S. C. § 2111 (1970).

[3] The petitioner and her husband were tried and convicted together on the counterfeiting charges. Both appealed their convictions to the Seventh Circuit, which affirmed both. Petitioner's husband has not sought certiorari to have his conviction reviewed.