

The Burger Court Opinion Writing Database

Cupp v. Naughten

414 U.S. 141 (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

November 15, 1973

Re: 72-1148 - Cupp v. Naughten

Dear Bill:

Please join me.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

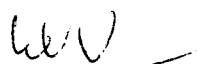
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 21, 1973

Dear Bill,

Kindly join me in your dissent in 72-1148, Cupp v. Naughten.


~~William O. Douglas~~

Mr. Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 6, 1973

MEMORANDUM TO THE CONFERENCE

RE: No. 72-1148 Cupp v. Naughten

In due course I shall circulate a dissent
in the above.

W.J.B.Jr.

unrecorded
11/20/73

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1148

Hoyt C. Cupp, Superintendent, Oregon State Penitentiary, Petitioner, v. Hugh Kyle Naughten,	} On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
---	---

[December —, 1973]

MR. JUSTICE BRENNAN, dissenting.

Respondent was found guilty of armed robbery and assault, after the jury had been charged, in pertinent part, as follows:

"The law provides for certain disputable presumptions which are to be considered as evidence.

"A presumption is a deduction which the law expressly directs to be made from particular facts and is to be considered by you along with the other evidence. However, since these presumptions are disputable presumptions only, they may be out-weighted or equaled by other evidence. Unless out-weighted or equaled, however, they are to be accepted by you as true.

"The law presumes that the defendant is innocent, and this presumption follows the defendant until guilt is proved beyond a reasonable doubt.

"Every witness is presumed to speak the truth. This presumption may be overcome by the manner in which the witness testifies, by the nature of his or her testimony, by evidence affecting his or her character, interest, or motives, by contradictory evidence, or by a presumption.

Received 11/21/73

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1148

Hoyt C. Cupp, Superintendent, Oregon State Penitentiary, Petitioner Hugh Kyle Naughten	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
---	---

[December --, 1973]

MR. JUSTICE BRENNAN, dissenting.

Respondent was found guilty of armed robbery and assault, after the jury had been charged, in pertinent part, as follows

"The law provides for certain disputable presumptions which are to be considered as evidence.

"A presumption is a deduction which the law expressly directs to be made from particular facts and is to be considered by you along with the other evidence. *However, since these presumptions are disputable presumptions only, they may be out-weighted or equaled by other evidence. Unless out-weighted or equaled, however, they are to be accepted by you as true*

"The law presumes that the defendant is innocent, and this presumption follows the defendant until guilt is proved beyond a reasonable doubt.

"*Every witness is presumed to speak the truth. This presumption may be overcome by the manner in which the witness testifies, by the nature of his or her testimony, by evidence affecting his or her character, interest, or motives, by contradictory evidence, or by a presumption.*

Circulated
11-27-73

To: The Chief Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1148

FILED

Hoyt C. Cupp, Superintendent,
Oregon State Penitentiary,
Petitioner,
v.
Hugh Kyle Naughten.

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

Circulated
11-27-73

[December —, 1973]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, dissenting.

Respondent was found guilty of armed robbery and assault, after the jury had been charged, in pertinent part, as follows:

"The law provides for certain disputable presumptions which are to be considered as evidence.

"A presumption is a deduction which the law expressly directs to be made from particular facts and is to be considered by you along with the other evidence. *However, since these presumptions are disputable presumptions only, they may be out-weighted or equaled by other evidence. Unless out-weighted or equaled, however, they are to be accepted by you as true.*

"The law presumes that the defendant is innocent, and this presumption follows the defendant until guilt is proved beyond a reasonable doubt.

"*Every witness is presumed to speak the truth. This presumption may be overcome by the manner in which the witness testifies, by the nature of his or her testimony, by evidence affecting his or her character, interest, or motives, by contradictory evidence, or by a presumption.*

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 8, 1973

Re: No. 72-1148, Cupp v. Naughten

Dear Bill,

I am glad to join your opinion in this case,
upon the understanding that you are willing to delete
the quotation from Howard v. Fleming on pages 8 and
9.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 12, 1973

Re: No. 72-1148 - Cupp v. Naughten

Dear Bill:

I shall very likely join your opinion in this case if you are favorably inclined towards Potter's suggestion.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

NOT REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 13, 1973

Re: No. 72-1148 - Cupp v. Naughten

Dear Bill:

Please join me in your recirculation of
November 12.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 8, 1973

Re: No. 72-1148 -- Cupp v. Naughten

Dear Bill:

I will await Bill Brennan's dissent.

Sincerely,


T. M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 26, 1973

Re: 72-1148 -- Cupp v. Naughten

Dear Bill:

Please join me in your dissent.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference

HAB

November 8, 1973

Dear Bill:

Re: No. 72-1148 - Cupp v. Naughten

I shall join you in due course.

I enclose, however, copies of letters we exchanged last April. I adhere to the suggestions I made at that time. You had incorporated these in the second draft of the per curiam which was not circulated because we had granted certiorari in the meantime.

There are one or two other very minor matters. I'll have my clerk chekk with yours about these.

Sincerely,

HAB

Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 12, 1973

Re: No. 72-1148 - Cupp v. Naughten

Dear Bill:

Please join me in your recirculation of
November 12.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

cc: The Conference

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 14, 1973

No. 72-1148 Cupp v. Naughten

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1148

Hoyt C. Cupp, Superintendent, Oregon State Penitentiary, Petitioner, v. Hugh Kyle Naughten.	} On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
---	---

[November —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Naughten was tried in an Oregon state court for the crime of armed robbery. The State's principal evidence consisted of testimony by the owner of the grocery store that respondent had robbed the store at gunpoint and of corroborative testimony by another eyewitness. In addition, two police officers testified that respondent had been found near the scene of the robbery and that the stolen money was located near his car in a neighboring parking lot. A few items of clothing, identified as belonging to respondent, and the stolen money were also introduced. Respondent neither took the stand himself nor called any witnesses to testify in his behalf.

The trial judge charged the jury that respondent was presumed innocent "until guilt is proved beyond a reasonable doubt," and then continued:

"Every witness is presumed to speak the truth. This presumption may be overcome by the manner in which the witness testifies, by the nature of his or her testimony, by evidence affecting his or her

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1148

Hoyt C. Cupp, Superintendent,
Oregon State Penitentiary,
Petitioner.
v.
Hugh Kyle Naughten.

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

[November —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Naughten was tried in an Oregon state court for the crime of armed robbery. The State's principal evidence consisted of testimony by the owner of the grocery store that respondent had robbed the store at gunpoint and of corroborative testimony by another eyewitness. In addition, two police officers testified that respondent had been found near the scene of the robbery and that the stolen money was located near his car in a neighboring parking lot. A few items of clothing, identified as belonging to respondent, and the stolen money were also introduced. Respondent neither took the stand himself nor called any witnesses to testify in his behalf.

The trial judge charged the jury that respondent was presumed innocent "until guilt is proved beyond a reasonable doubt," and then continued:

"Every witness is presumed to speak the truth. This presumption may be overcome by the manner in which the witness testifies, by the nature of his or her testimony, by evidence affecting his or her

style
only

Mr. Justice Brandeis
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Rehnquist
Mr. Chief Justice Burger

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1148

Hoyt C. Cupp, Superintendent,
Oregon State Penitentiary,
Petitioner,
v.
Hugh Kyle Naughten.

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

[November —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Naughten was tried in an Oregon state court for the crime of armed robbery. The State's principal evidence consisted of testimony by the owner of the grocery store that respondent had robbed the store at gunpoint and of corroborative testimony by another eyewitness. In addition, two police officers testified that respondent had been found near the scene of the robbery and that the stolen money was located near his car in a neighboring parking lot. A few items of clothing, identified as belonging to respondent, and the stolen money were also introduced. Respondent neither took the stand himself nor called any witnesses to testify in his behalf.

The trial judge charged the jury that respondent was presumed innocent "until guilt is proved beyond a reasonable doubt," and then continued:

"Every witness is presumed to speak the truth. This presumption may be overcome by the manner in which the witness testifies, by the nature of his or her testimony, by evidence affecting his or her

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS