The Burger Court Opinion Writing Database

Michigan v. Tucker

417 U.S. 433 (1974)

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 22, 1974

Re: 73-482 - Michigan v. Tucker

Dear Bill:

Please join me.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 73-482

Circulated: 5-22

Recirculated:

State of Michigan, Petitioner, *v.* Thomas W. Tucker. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

In this case the respondent, incarcerated as a result of a conviction in a state court, was granted a writ of habeas corpus by the District Court. The basis for the writ was the introduction at respondent's trial of testimony from a witness whose identity was learned solely as a result of in-custody police interrogation of the respondent preceded by warnings which were deficient under the standards enunciated in *Miranda* v. *Arizona,* 384 U. S. 436 (1966). The District Court concluded that "the introduction by the prosecution in its case in chief of testimony of a third person which is admittedly the fruit of an illegally obtained statement by the [accused violates the accused's] Fifth Amendment rights." 352 F. Supp. 266, 268 (ED Mich. 1972). The Court of Appeals affirmed. 480 F. 2d 927 (CA6 1973).

I

Prior to interrogation, the respondent was told of his right to the presence of counsel but he was not told of his right to have an attorney appointed should he be unable to afford one. Respondent is an indigent who has been represented at all times in both state and federal

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 6, 1974

RE: No. 73-482 Michigan v. Tucker

Dear Bill:

I've come to the conclusion that the principles of Miranda should not be retroactively applied in this case and that the reasoning of Johnson v. New Jersey can be distinguished. Instead of a dissent, I shall therefore in due course circulate an opinion concurring in the judgment of the Court.

Sincerely,

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 6, 1974

RE: No.73-482 Michigan v. Tucker

Dear Bill and Thurgood:

I think a concurrence can better contain some of the implications of Bill Rehnquist's opinion sounding the death knell of Miranda. You may still dissent but might want first to look over what I'll say.

Sincerely,

Bill

Mr. Justice Douglas

Mr. Justice Marshall

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

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated: 5-21-74

Recirculated: _____

No. 73-482

State of Michigan, Petitioner, *v.* Thomas W. Tucker. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1974]

MR. JUSTICE BRENNAN, concurring.

The Court finds it unnecessary to decide "the broad question" of whether the fruits of "statements taken in violation of the *Miranda* rules must be excluded regardless of when the interrogation took place," *ante*, at 13, since respondent's interrogation occurred prior to our decision in *Miranda* v. *Arizona*, 384 U. S. 436 (1966). In my view, however, it is unnecessary, too, for the Court to address the narrower question of whether the principles of *Miranda* require that fruits be excluded when obtained as a result of a pre-*Miranda* interrogation without the requisite prior warnings. The Court, in answering this question, proceeds from the premise that *Johnson* v. *New Jersey*, 384 U. S. 719 (1966), makes *Miranda* applicable to all cases in which a criminal trial was commenced after the date of our decision in *Miranda*, and that, since respondent's trial was post-*Miranda*, the effect of *Miranda* on this case must be resolved. I would not read *Johnson* as making *Miranda* applicable to this case.[1]

[1] Although the petition for certiorari did not urge us to limit the effect of *Johnson* v. *New Jersey*, this issue was raised in petitioner's brief as well as in the *amicus curiae* brief of the State of California, filed in support of petitioner. See *Mapp* v. *Ohio*, 367 U. S. 643, 646 n. 3 (1961); *Stovall* v. *Denno*, 388 U. S. 293, 294 n. 1 (1967).

Circulated
6-5-74

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-482

State of Michigan, Petitioner, *v.* Thomas W. Tucker. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1974]

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

The Court finds it unnecessary to decide "the broad question" of whether the fruits of "statements taken in violation of the *Miranda* rules must be excluded regardless of when the interrogation took place," *ante*, at 13, since respondent's interrogation occurred prior to our decision in *Miranda* v. *Arizona*, 384 U. S. 436 (1966). In my view, however, it is unnecessary, too, for the Court to address the narrower question of whether the principles of *Miranda* require that fruits be excluded when obtained as a result of a pre-*Miranda* interrogation without the requisite prior warnings. The Court, in answering this question, proceeds from the premise that *Johnson* v. *New Jersey*, 384 U. S. 719 (1966), makes *Miranda* applicable to all cases in which a criminal trial was commenced after the date of our decision in *Miranda*, and that, since respondent's trial was post-*Miranda*, the effect of *Miranda* on this case must be resolved. I would not read *Johnson* as making *Miranda* applicable to this case.[1]

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 5, 1974

73-482 - Michigan v. Tucker

Dear Bill,

I am glad to join your opinion for the Court in this case. I have sent to the printer a two-sentence concurrence.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

2nd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: JUN 6 1974

No. 73-482

Recirculated: _____

State of Michigan, Petitioner, *v.* Thomas W. Tucker. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June —, 1974]

MR. JUSTICE STEWART, concurring.

In joining the opinion of the Court, I add only that I could also join MR. JUSTICE BRENNAN's concurrence. For it seems to me that despite differences in phraseology, and despite the disclaimers of their respective authors, the Court opinion and that of MR. JUSTICE BRENNAN proceed along virtually parallel lines, give or take a couple of argumentative footnotes.

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

1st DRAFT

From: White, J.

Circulated: 6-3-74

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 73-482

State of Michigan, Petitioner, v. Thomas W. Tucker. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[June —, 1974]

MR. JUSTICE WHITE, concurring.

For the reasons stated in my dissent in that case, I continue to think that *Miranda* v. *Arizona* was misconceived and without warrant in the Constitution. However that may be, the *Miranda* opinion did not deal with the admissibility of evidence derived from ~~incustody~~ in-custody admissions obtained without the specified warnings, and the matter has not been settled by subsequent cases.

In ~~Orozo~~ Orozco v. *Texas*, 394 U. S. 324 (1969), it appeared that petitioner, who was convicted of murder, had been arrested and interrogated in his home without the benefit of *Miranda* warnings. Among other things, petitioner admitted having a gun and told the police where it was hidden in the house. The gun was recovered and ballistic tests, which were admitted into evidence along with various oral admissions, showed that it was the gun involved in the murder. Petitioner's conviction was affirmed, the applicability of *Miranda* being rejected by the state courts. Petitioner brought the case here, urging in his petition for certiorari, which was granted, that the ballistic evidence was a fruit of an illegal interrogation—"the direct product of interrogation" without indispensable constitutional safe guards. His brief on the merits suggested that it was error under *Miranda* to admit into evidence either his oral admissions or the

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 3, 1974

Re: No. 73-482, State of Michigan v. Thomas W. Tucker

Dear Bill:

Please join me in your concurring opinion.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 27, 1974

Dear Bill:

Re: No. 73-482 - Michigan v. Tucker

Please join me.

Sincerely,

Harry

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 28, 1974

No. 73-482 MICHIGAN v. TAYLOR

Dear Chief:

As a result of further consideration of the above case, I am now inclined not to go as far as I indicated at Conference in terms of the basis of a Court decision at this time.

I will still vote to reverse. This result could be reached, I think, on the ground advanced by Potter, namely, that there was no violation of the Miranda rule, because it had not then been enunciated by this Court. Thus, there was no police misconduct and hence no question of detering improper police conduct. Or putting it differently, there was simply no violation by the police of Miranda or any other law. The testimony therefore was admissible.

If we were to decide the case on this narrow ground, it would be unnecessary to address the much broader question of the use of "fruits" derived from an interrogation which violated the Miranda per se rule.

Sincerely,

The Chief Justice

CC: The Conference

LFP/gg

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 3, 1974

No. 73-482 Michigan v. Tucker

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

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 Powell

1st DRAFT

5/1/74

SUPREME COURT OF THE UNITED STATES

No. 73-482

State of Michigan, Petitioner, *v.* Thomas W. Tucker. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question whether the testimony of a witness in respondent's state court trial for rape must be excluded simply because police had learned the identity of the witness by questioning respondent at a time when he was in custody as a suspect, but had not been advised that counsel would be appointed for him if he was indigent. The questioning took place before this Court's decision in *Miranda* v. *Arizona*, 384 U. S. 436 (1966), but respondent's trial, at which he was convicted, took place afterwards. Under the holding of *Johnson* v. *New Jersey*, 384 U. S. 719 (1966), therefore, the principles of *Miranda* are applicable to this case. The United States District Court for the Eastern District of Michigan reviewed petitioner's claim on a petition for habeas corpus and held that the testimony must be excluded.[1] The Court of Appeals affirmed.[2]

I

On the morning of April 19, 1966, a 43-year-old woman in Pontiac, Michigan, was found in her home by a friend

[1] 352 F. Supp. 266 (1972).
[2] 480 F. 2d 927 (1973).

"compulsory" added before "self-incrimination" throughout
also 1, 7, 11, 12, 13, 14, 17, 18

Chief Justice
Justice Douglas
Justice Brennan
Justice Stewart
Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist, J.

2nd DRAFT

Circulated: _____

Recirculated: 5/8/74

SUPREME COURT OF THE UNITED STATES

No. 73-482

State of Michigan, Petitioner, *v.* Thomas W. Tucker. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1974]

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[1] 352 F. Supp. 266 (1972).
[2] 480 F. 2d 927 (1973).

18, 19

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Ste
Mr. Justice Whi
Mr. Justice Mar
Mr. Justice Bla
Mr. Justice Pow

From: Rehnquist, J.

Circulated: 5/21/74

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-482

State of Michigan, Petitioner, *v.* Thomas W. Tucker. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1974]

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[1] 352 F. Supp. 266 (1972).
[2] 480 F. 2d 927 (1973).

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

From: Rehnquist, J.

Circulated: _____

Recirculated: 6-7-74

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-482

State of Michigan, Petitioner, *v.* Thomas W. Tucker. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question whether the testimony of a witness in respondent's state court trial for rape must be excluded simply because police had learned the identity of the witness by questioning respondent at a time when he was in custody as a suspect, but had not been advised that counsel would be appointed for him if he was indigent. The questioning took place before this Court's decision in *Miranda* v. *Arizona*, 384 U. S. 436 (1966), but respondent's trial, at which he was convicted, took place afterwards. Under the holding of *Johnson* v. *New Jersey*, 384 U. S. 719 (1966), therefore, *Miranda* is applicable to this case. The United States District Court for the Eastern District of Michigan reviewed petitioners' claim on a petition for habeas corpus and held that the testimony must be excluded.[1] The Court of Appeals affirmed.[2]

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