The Burger Court Opinion Writing Database

Eaton v. Tulsa

415 U.S. 697 (1974)

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

March 4, 1974

Re: 73-5925 - Eaton v. City of Tulsa

Dear Bill:

Confirming our conversation, I believe you are taking on a per curiam summary reversal in this case.

If this is in a cryptic form so as to give it no precedential value, simply reversing and citing Little and probably Mayberry, I would be willing to join.

Regards,

WEB

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 21, 1974

Re: 73-5925 - Eaton v. Tulsa

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 WM. J. BRENNAN, JR.

March 8, 1974

MEMORANDUM TO THE CONFERENCE

RE: No. 73-5925 Eaton v. City of Tulsa, Oklahoma

Since there is opposition to the suggestion of the Chief Justice that we dispose of this case with a "one-liner" citing Holt and Little, I've prepared the attached proposed per curiam.

W.J.B. Jr.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

TERRY DEAN EATON *v.* CITY OF TULSA

Circulated:

Recirculated:

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

No. 73-5925. Decided March —, 1974

PER CURIAM.

In answering a question on cross-examination at his trial in the Municipal Court of Tulsa, Oklahoma for violating a municipal ordinance, petitioner referred to an alleged assailant as "chicken shit." In consequence he was prosecuted and convicted under an information that charged him with "direct contempt," in violation of another Tulsa ordinance, "by his insolent behavior during open court and in the presence of [the judge], to wit, by using the language 'chicken-shit' . . . ." The Oklahoma Court of Criminal Appeals, in an unreported order and opinion, affirmed.

This single isolated usage of street vernacular, not directed at the judge or any officer of the court, cannot constitutionally support the conviction of criminal contempt. "The vehemence of language used is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice." *Craig* v. *Harney,* 331 U. S. 367, 376 (1947). In using the expletive in answering the question on cross-examination "[i]t is not charged that petitioner here disobeyed any valid court order, talked loudly, acted boisterously or attempted to prevent the judge or any other officer of the court from carrying on his court duties." *Holt* v. *Virginia,* 381 U. S. 131, 136 (1965); see also *In re Little,* 404 U. S. 553 (1972). In the circumstances, the use of the expletive thus cannot be held to "constitute an imminent . . . threat to the administration of justice,"

Pages 2 & 3

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated:

Recirculated: MAR 13

TERRY DEAN EATON *v.* CITY OF TULSA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

No. 73-5925. Decided March —, 1974

PER CURIAM.

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Page 3.

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated:

TERRY DEAN EATON *v.* CITY OF TULSA

Recirculated: 3-20-74

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

No. 73-5925. Decided March —, 1974

PER CURIAM.

In answering a question on cross-examination at his trial in the Municipal Court of Tulsa, Oklahoma for violating a municipal ordinance, petitioner referred to an alleged assailant as "chicken shit." In consequence he was prosecuted and convicted under an information that charged him with "direct contempt," in violation of another Tulsa ordinance, "by his insolent behavior during open court and in the presence of [the judge], to wit, by using the language 'chicken-shit' . . . ." The Oklahoma Court of Criminal Appeals, in an unreported order and opinion, affirmed.

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 4, 1974

Re: No. 73-5925, Eaton v. City of Tulsa

Dear Bill,

As a matter of principle, I am quite opposed to our disposing of a case, "in a cryptic form so as to give it no precedential value." I would, therefore, hope that your per curiam in this case will at least recite what the case is about, and set out the basis for our reversal.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 8, 1974

Re: No. 73-5925, Eaton v. City of Tulsa

Dear Bill,

I agree with the per curiam you have circulated in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 8, 1974

Re: No. 73-5925 - Eaton v. City of Tulsa

Dear Bill:

Join me, please.

Sincerely,

Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 11, 1974

Re: No. 73-5925 -- Eaton v. City of Tulsa

Dear Bill:

I agree with your Per Curiam.

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

March 11, 1974

Dear Bill:

Re: No. 73-5925 - Eaton v. City of Tulsa

Please join me in your dissent in this case.

Sincerely,

Harry

Mr. Justice Rehnquist

Copies to 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

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

TERRY DEAN EATON *v.* CITY OF TULSA

Circulated: MAR 11 1974

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

Recirculated: _____

No. 73-5925. Decided March —, 1974

MR. JUSTICE POWELL, concurring.

I concur in the Court's *per curiam* opinion. I write briefly only to make clear my understanding of the limited scope of its holding. Whether the language used by petitioner in a courtroom during trial justified exercise of the contempt power depended upon the facts. Under the circumstances here, the imposition of a contempt sanction against petitioner denied him due process of law.

The phrase "chicken shit" was used by petitioner as a characterization of the person whom petitioner believed assaulted him. As noted in the Court's opinion, it was not directed at the trial judge or anyone officially connected with the trial court. But the controlling fact, in my view, and one that should be emphasized, is that petitioner received no prior warning or caution from the trial judge with respect to court etiquette. It may well be, in view of contemporary standards as to the use of vulgar and even profane language, that this particular petitioner had no reason to believe that this expletive would be offensive or in any way disruptive of proper courtroom decorum. Language likely to offend the sensibility of some listeners is now fairly commonplace in many social gatherings as well as in public performances.

I place a high premium on the importance of maintaining civility and good order in the courtroom. But before there is resort to the summary remedy of crim-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 4, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 73-5925 - Eaton v. City of Tulsa

Bill Brennan was good enough to loan me the Record in this case which the Clerk's Office had obtained at his request. While there is a transcript of the colloquoy between the contemnor and the trial court at the time the alleged contempt occurred, there is no transcript in the Record of the proceedings held three days later on the actual trial of the contempt. Thinking there might be some way to obtain such a transcript, I have checked further with the Clerk's Office, but it appears from the information Frank Lorson has obtained from counsel that there is definitely not a transcript of these proceedings in existence, and that there very likely may not have been a court reporter even present.

Sincerely,

WHR

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 8, 1974

Re: No. 73-5925 - Eaton v. City of Tulsa

Dear Chief:

I have pondered rather carefully your thought that when one disagrees with the majority in a case such as this, it may be best to say nothing and not highlight what one considers to be the failings of the majority opinion. I did follow that counsel in Little, 404 U.S. 553 (1972), when I joined your concurring opinion, but now that case is being cited as authority for the result the Court reaches here. Since Bill Brennan's opinion does go into some detail, I think it best to fight the matter out on the merits.

Sincerely,

WHR

I am going to circulate a dissent —

The Chief Justice

Attachment

1st DRAFT

SUPREME COURT OF THE UNITED STATES

3-11-74

TERRY DEAN EATON *v.* CITY OF TULSA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

No. 73-5925. Decided March —, 1974

MR. JUSTICE REHNQUIST, dissenting.

The Court summarily reverses petitioner's conviction for contempt of court on the grounds that the expletive which petitioner used could not by itself constitute a contempt, and that the additional "discourteous responses" petitioner made to the trial judge could not be properly considered by either the Municipal Court of Tulsa or the Oklahoma Court of Criminal Appeals which affirmed petitioner's conviction. I disagree with the Court as to each of these grounds.

I

Even the Court appears to shy away from a flat rule, analogous to the hoary doctrine of the law of torts that every dog is entitled to one bite, to the effect that every witness is entitled to one free contumacious remark. The Court, quoting language from *Holt* v. *Virginia*, 381 U. S. 131, 136 (1965), says that "[i]t is not charged that petitioner here . . . talked loudly, acted boisterously or attempted to prevent the judge or any other officer of the court from carrying on his court duties." But we do not have any transcript of petitioner's trial for contempt, and we simply do not know whether the evidence in that trial may or may not have shown that petitioner "talked loudly" or "acted boisterously" in the course of his rather unusual colloquy with the judge. Respondent in its brief in opposition certainly makes no such concession. If, as appears likely, neither party is in a position to furnish any judicially cognizable account of the

p 6

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

TERRY DEAN EATON *v.* CITY OF TULSA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

No. 73-5925. Decided March —, 1974

3-14-74

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE BLACKMUN joins, dissenting.

The Court summarily reverses petitioner's conviction for contempt of court on the grounds that the expletive which petitioner used could not by itself constitute a contempt, and that the additional "discourteous responses" petitioner made to the trial judge could not be properly considered by either the Municipal Court of Tulsa or the Oklahoma Court of Criminal Appeals which affirmed petitioner's conviction. I disagree with the Court as to each of these grounds.

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

TERRY DEAN EATON *v.* CITY OF TULSA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

No. 73–5925. Decided March —, 1974

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE BLACKMUN joins, dissenting.

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pp. 6-7

To: The Chief Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

4th DRAFT

Mr. Justice Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 3-21-74

TERRY DEAN EATON *v.* CITY OF TULSA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

No. 73-5925. Decided March —, 1974

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE BLACKMUN joins, dissenting.

The Court summarily reverses petitioner's conviction for contempt of court on the grounds that the expletive which petitioner used could not by itself constitute a contempt, and that the additional "discourteous responses" petitioner made to the trial judge could not be properly considered by either the Municipal Court of Tulsa or the Oklahoma Court of Criminal Appeals which affirmed petitioner's conviction. I disagree with the Court as to each of these grounds.

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