The Burger Court Opinion Writing Database

Oregon v. Hass

420 U.S. 714 (1975)

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 14, 1975

Re: No. 73-1452 - Oregon v. Hass

Dear Harry:

I join your proposed opinion dated March 10, 1975.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73–1452

State of Oregon, Petitioner, *v.* William Robert Hass. } On Writ of Certiorari to the Supreme Court of Oregon.

[March —, 1975]

MR. JUSTICE BRENNAN, dissenting.

In *Harris* v. *New York*, 401 U. S. 222 (1971), petitioner was not informed of his right to appointed counsel and thus his subsequent statements to police were inadmissible under *Miranda* v. *Arizona*, 384 U. S. 436 (1966). The Court nonetheless permitted the use of those statements to impeach petitioner's trial testimony. The Court today extends *Harris* to a case where the accused was told of his rights and asked for a lawyer, yet police questioning continued in violation of *Miranda*. The statements that resulted are again held admissible for impeachment purposes.

I adhere to my dissent in *Harris* in which I stated that *Miranda* "completely disposes of any distinction between statements used on direct as opposed to cross-examination. 'An incriminating statement is as incriminating when used to impeach credibility as it is when used as direct proof of guilt and no constitutional distinction can legitimately be drawn.'" *Harris, supra*, at 231 (BRENNAN, J., dissenting). I adhere as well to the view that the judiciary must "avoid even the slightest appearance of sanctioning illegal government conduct." *United States* v. *Calandra*, 414 U. S. 338, 360 (1974) (BRENNAN, J., dissenting). "[I]t is monstrous that courts should aid or abet the law-breaking police officer. It is abiding

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 14, 1975

RE: No. 73-1452 Oregon v. Hass

Dear Thurgood:

Please join me in your dissenting opinion in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 6, 1975

73-1452 - Oregon v. Haas

Dear Harry,

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

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 6, 1975

Re: No. 73-1452 - Oregon v. Hass

Dear Harry:

Please join me.

Sincerely,

Byron

Mr. Justice Blackmun

Copies to Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1452

State of Oregon, Petitioner, v. William Robert Hass. } On Writ of Certiorari to the Supreme Court of Oregon.

[March —, 1975]

MR. JUSTICE MARSHALL, dissenting.

While I agree with my Brother BRENNAN that on the merits the judgment of the Oregon Supreme Court was correct, I think it appropriate to add a word about this Court's increasingly common practice of reviewing of state court decisions upholding constitutional claims in criminal cases. See *Michigan* v. *Mosley*, cert. granted, — U. S. — (1975); *Michigan* v. *Payne*, 412 U. S. 47 (1973); *Wisconsin* v. *Yoder*, 406 U. S. 205 (1972); *California* v. *Byers*, 402 U. S. 424 (1971); *California* v. *Green*, 399 U. S. 149 (1970).

In my view, we have too often rushed to correct state courts in their view of federal constitutional questions without sufficiently considering the risk that we will be drawn into rendering a purely advisory opinion. Plainly, if the Oregon Supreme Court had expressly decided that Hass' statement was inadmissible as a matter of state as well as federal law, this Court could not upset that judgment. See *Jankovich* v. *Indiana Toll Road Comm'n*, 379 U. S. 487 (1965); *Minnesota* v. *National Tea Co.*, 309 U. S. 551 (1940); *Fox Film Corp.* v. *Muller*, 296 U. S. 207 (1937). The sound policy behind this rule was well articulated by Mr. Justice Jackson in *Herb* v. *Pitcairn*, 324 U. S. 117, 125-126 (1945).

"This Court from the time of its foundation has ad-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 17, 1975

Re: No. 72-1452 -- Oregon v. Hass

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

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

From: Blackmun, J.

Circulated: 3/6/75

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73–1452

State of Oregon, Petitioner, *v.* William Robert Hass. } On Writ of Certiorari to the Supreme Court of Oregon.

[March —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents a variation of the fact situation encountered by the Court in *Harris* v. *New York*, 401 U. S. 222 (1971): When a suspect, who is in the custody of a state police officer, has been given full *Miranda* warnings [1] and accepts them, and then later states that he would like to telephone a lawyer but is told that this cannot be done until the officer and the suspect reach the station, and the suspect then provides inculpatory information, is that information admissible in evidence solely for impeachment purposes after the suspect has taken the stand and testified contrarily to the inculpatory information, or is it inadmissible under the Fifth and Fourteenth Amendments?

I

The facts are not in dispute. In August 1972, bicycles were taken from two residential garages in the Moyina Heights area of Klamath Falls, Oregon. Respondent Hass, in due course, was indicted for burglary in the first degree, in violation of Ore. Rev. Stat. § 164.225, with re-

[1] *Miranda* v. *Arizona*, 384 U. S. 436, 467–473 (1966).

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

From: Blackmun, J.

Circulated: _____

Recirculated: 3/10/75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1452

State of Oregon, Petitioner, *v.* William Robert Hass. } On Writ of Certiorari to the Supreme Court of Oregon.

[March —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents a variation of the fact situation encountered by the Court in *Harris* v. *New York*, 401 U. S. 222 (1971): When a suspect, who is in the custody of a state police officer, has been given full *Miranda* warnings [1] and accepts them, and then later states that he would like to telephone a lawyer but is told that this cannot be done until the officer and the suspect reach the station, and the suspect then provides inculpatory information, is that information admissible in evidence solely for impeachment purposes after the suspect has taken the stand and testified contrarily to the inculpatory information, or is it inadmissible under the Fifth and Fourteenth Amendments?

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The facts are not in dispute. In August 1972, bicycles were taken from two residential garages in the Moyina Heights area of Klamath Falls, Oregon. Respondent Hass, in due course, was indicted for burglary in the first degree, in violation of Ore. Rev. Stat. § 164.225, with re-

[1] *Miranda* v. *Arizona*, 384 U. S. 436, 467-473 (1966).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 19, 1975

MEMORANDUM TO THE CONFERENCE:

Re: Holds for No. 73-1452, Oregon v. Hass

No. 74-5472, Nudd v. California, is almost on all fours with Oregon v. Hass. The petitioner was convicted after a jury trial for violation of a California narcotics statute. He was a prisoner when a guard became suspicious of activity in his cell. There was evidence of narcotics on the table. A struggle took place, and the petitioner made a throwing motion toward the toilet and flushed it twice. The officer picked up an eyedropper with a hypodermic needle attached. He took this to another officer. The latter advised petitioner of his Miranda rights and inquired whether petitioner wished to talk. The petitioner asked if he would be charged with a felony and was told that he probably would be. He then said "Well, then, I don't have anything to say." The officer then asked "off the record" why he had struggled with the first officer. Petitioner replied that he wanted to get rid of the "speed."

At trial petitioner testified on direct that the first officer had grabbed him without cause and that he had nothing in his hand and had thrown nothing into the receptacle. The second officer was called in rebuttal and testified about petitioner's reference to "speed."

The California Court of Appeal reversed, feeling that the situation was factually different from Harris v. New York. The Supreme Court of California, by a 4 to 3 vote, reversed the Court of Appeal and upheld the conviction. It observed that the petitioner did not suggest in the trial court that his statements were involuntary and, in fact, denied making them.

The petitioner also raises the issue whether the State has the obligation, prior to trial, to disclose impeachment evidence intended to be introduced under Harris v. New York. This secondary issue, it seems to me, is not certworthy.

On the primary issue, I feel that the case is controlled by our decision in Oregon v. Hass, and I shall vote to deny.

H.A.B.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 6, 1975

No. 73-1452 Oregon v. Haas

Dear Harry:

Please join me.

Sincerely,

Lewis

Mr. Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 6, 1975

Re: No. 73-1452 - Oregon v. Hass

Dear Harry:

I intend to join your opinion, and couldn't disagree more with Bill Brennan's currently circulating dissenting rhetoric about it.

At the risk of developing a reputation as one who "bugs" you about rather minor points, may I suggest one addition.

On page 8, you devote a paragraph to intimating that if Hass had been "induced by cross-examination to make a statement inconsistent with his prior statements to Osterholme" the result might be different. Given Miranda, I have no objection to the thrust of this paragraph, but as now phrased I think it may cut more broadly than you or I would like.

In my sixteen years of examining witnesses in the Arizona courts, I frequently observed that a witness on cross-examination over the same ground that had been covered in direct would not only hold to the testimony he had given on direct, but would sometimes make it even more favorable to himself. In many cases when you set out to cross-examine you feel obligated to cover some of the material covered on direct, and you of course run this risk. But I see no reason why, if the area is one originally opened on direct examination, the fact that the

favorable answer sought to be impeached occurs on cross, rather than direct, should be controlling. I would think that the principle set forth in your paragraph on page 8 would make sense only if the crossexaminer enters into a new area of questioning which was not touched upon in direct. If the crossexaminer engages in such an enterprise, he is not merely trying to test or correct what was said on direct, but is taking off on a new tack. That is the case in which, I would think, the exception intimated in your paragraph might well be applied.

If what I say makes sense, would you give some consideration to inserting in the last sentence of that paragraph, the one immediately preceding the citation to the law review, immediately after the word cross-examination, the phrase "covering matter not touched upon in the direct examination".

Sincerely,

WEB

Mr. Justice Blackmun

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 10, 1975

Re: No. 73-1452 - Oregon v. Hass

Dear Harry:

Please join me.

Sincerely,

WHR

Mr. Justice Blackmun

Copies to the Conference