

The Burger Court Opinion Writing Database

Michigan v. Mosley
423 U.S. 96 (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

November 5, 1975

Re: 74-653 - Michigan v. Mosley

Dear Potter:

I join your proposed opinion of
November 4, 1975.

Regards,

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 6, 1975

RE: No. 74-653 Michigan v. Mosley

Dear Potter:

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

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

From: [unclear], J.

Circulated: 11/18/75

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-653

State of Michigan, Petitioner, } On Writ of Certiorari to
 v. } the Court of Appeals of
 Richard Bert Mosley. } Michigan.

[December —, 1975]

MR. JUSTICE BRENNAN, dissenting.

The Court focuses on the correct passage from *Miranda v. Arizona*, 384 U. S. 436 (1966):

“Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.” *Id.*, at 473-474 (footnote omitted).

But the process of eroding *Miranda* rights, begun with *Harris v. New York*, 401 U. S. 222 (1971), continues with today’s holding that the right of a suspect in custody to cut off questioning secured by the quoted excerpt was “scrupulously honored,” although interrogation resumed while custody continued and before the suspect was arraigned or provided with a lawyer. The Court’s gloss on the term “scrupulously honored” is a patent distortion of the sense in which *Miranda* used the term, at

✓ *Substantially rewritten*
Pages 1-7

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

Mr. Justice Blackmun

Circulated:

Recirculated: 12/1/75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-653

State of Michigan, Petitioner, | On Writ of Certiorari to
 v. | the Court of Appeals of
 Richard Bert Mosley. | Michigan.

[December —, 1975]

MR. JUSTICE BRENNAN, dissenting.

The Court focuses on the correct passage from *Miranda v. Arizona*, 384 U. S. 436 (1966):

“Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.” *Id.*, at 473-474 (footnote omitted).

But the process of eroding *Miranda* rights, begun with *Harris v. New York*, 401 U. S. 222 (1971), continues with today’s holding that questioning a suspect who has once exercised his right to remain silent may be renewed, provided the suspect’s right to cut off questioning has been “scrupulously honored.” Today’s distortion of *Miranda*’s constitutional principles can be viewed only as yet another step toward erosion and, I suppose, ultimate

2-4, 6-9

STYLISTIC CHANGES

Section 10.10

References

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-653

State of Michigan, Petitioner, | On Writ of Certiorari to
v. | the Court of Appeals of
Richard Bert Mosley. | Michigan.

[December —, 1975]

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

The Court focuses on the correct passage from *Miranda v. Arizona*, 384 U. S. 436 (1966):

"Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked." *Id.*, at 473-474 (footnote omitted).

But the process of eroding *Miranda* rights, begun with *Harris v. New York*, 401 U. S. 222 (1971), continues with today's holding that police may renew the questioning of a suspect who has once exercised his right to remain silent, provided the suspect's right to cut off questioning has been "scrupulously honored." Today's distortion of *Miranda*'s constitutional principals can be viewed only as yet another step toward the erosion and, I suppose,

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 4, 1975

MEMORANDUM TO THE CONFERENCE

RE: No. 74-653 Michigan v. Mosley

In the first sentence of the second paragraph
on page 6, "appointment" should be changed to "presence."

W.J.B. Jr.

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

From: Stewart, J.

Circulated: NOV 4 1975

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-653

State of Michigan, Petitioner, } On Writ of Certiorari to
v. } the Court of Appeals of
Richard Bert Mosley. } Michigan.

[November —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent, Richard Bert Mosley, was arrested in Detroit, Mich., on the early afternoon of April 8, 1971, in connection with robberies that had recently occurred at the Blue Goose Bar and the White Towers Restaurant on that city's lower east side. The arresting officer, Detective James Cowie of the Armed Robbery Section of the Detroit Police Department, was acting on a tip implicating Mosley and three other men in the robberies.¹ After effecting the arrest, Detective Cowie brought Mosley to the Robbery, Breaking and Entering Bureau of the Police Department, located on the fourth floor of the departmental headquarters building. The officer advised Mosley of his rights under this Court's decision in *Miranda v. Arizona*, 384 U. S. 436, and had him read and sign the department's constitutional rights notification certificate. After filling out the necessary arrest papers, Cowie began questioning Mosley about the robbery of the White Tower Restaurant. When Mosley said he did not want to answer any questions about the robberies, Cowie promptly ceased the interro-

¹ The officer testified that information supplied by an anonymous caller was the sole basis for his arrest of the respondent.

13573/1

Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: [unclear], D.

Circulated: _____

Recirculated: NOV 7 1975

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-653

State of Michigan, Petitioner, } On Writ of Certiorari to
 v. } the Court of Appeals of
 Richard Bert Mosley. } Michigan.

[November —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent, Richard Bert Mosley, was arrested in Detroit, Mich., on the early afternoon of April 8, 1971, in connection with robberies that had recently occurred at the Blue Goose Bar and the White Tower Restaurant on that city's lower east side. The arresting officer, Detective James Cowie of the Armed Robbery Section of the Detroit Police Department, was acting on a tip implicating Mosley and three other men in the robberies.¹ After effecting the arrest, Detective Cowie brought Mosley to the Robbery, Breaking and Entering Bureau of the Police Department, located on the fourth floor of the departmental headquarters building. The officer advised Mosley of his rights under this Court's decision in *Miranda v. Arizona*, 384 U. S. 436, and had him read and sign the department's constitutional rights notification certificate. After filling out the necessary arrest papers, Cowie began questioning Mosley about the robbery of the White Tower Restaurant. When Mosley said he did not want to answer any questions about the robberies, Cowie promptly ceased the interro-

¹ The officer testified that information supplied by an anonymous caller was the sole basis for his arrest of Mosley.

cc: The Clerk of the Court
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

7.9
From: Stewart, J.

Circulated:

Recirculated: NOV 19 1975

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-653

State of Michigan, Petitioner, } On Writ of Certiorari to
v. } the Court of Appeals of
Richard Bert Mosley. } Michigan.

[November —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent, Richard Bert Mosley, was arrested in Detroit, Michigan, on the early afternoon of April 8, 1971, in connection with robberies that had recently occurred at the Blue Goose Bar and the White Tower Restaurant on that city's lower east side. The arresting officer, Detective James Cowie of the Armed Robbery Section of the Detroit Police Department, was acting on a tip implicating Mosley and three other men in the robberies.¹ After effecting the arrest, Detective Cowie brought Mosley to the Robbery, Breaking and Entering Bureau of the Police Department, located on the fourth floor of the departmental headquarters building. The officer advised Mosley of his rights under this Court's decision in *Miranda v. Arizona*, 384 U. S. 436, and had him read and sign the department's constitutional rights notification certificate. After filling out the necessary arrest papers, Cowie began questioning Mosley about the robbery of the White Tower Restaurant. When Mosley said he did not want to answer any questions about the robberies, Cowie promptly ceased the interro-

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 1, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 74-653, Michigan v. Mosley

This opinion will not be announced this week. I did not see Bill Brennan's substantially revised dissenting opinion until Saturday. I contemplate adding a couple of footnotes to the Court opinion responding to his dissent, and did not want to get the print shop involved in overtime.

P.S.
P.S.

6, 8, 9-10

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

From: Stewart, J.

Circulated: _____

Received by: DEC 01 1975

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-653

State of Michigan, Petitioner, | On Writ of Certiorari to
v. | the Court of Appeals of
Richard Bert Mosley. | Michigan.

[December —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent, Richard Bert Mosley, was arrested in Detroit, Michigan, on the early afternoon of April 8, 1971, in connection with robberies that had recently occurred at the Blue Goose Bar and the White Tower Restaurant on that city's lower east side. The arresting officer, Detective James Cowie of the Armed Robbery Section of the Detroit Police Department, was acting on a tip implicating Mosley and three other men in the robberies.¹ After effecting the arrest, Detective Cowie brought Mosley to the Robbery, Breaking and Entering Bureau of the Police Department, located on the fourth floor of the departmental headquarters building. The officer advised Mosley of his rights under this Court's decision in *Miranda v. Arizona*, 384 U. S. 436, and had him read and sign the department's constitutional rights notification certificate. After filling out the necessary arrest papers, Cowie began questioning Mosley about the robbery of the White Tower Restaurant. When Mosley said he did not want to answer any questions about the robberies, Cowie promptly ceased the interro-

¹ The officer testified that information supplied by an anonymous caller was the sole basis for his arrest of Mosley.

RP 6,8,9-10

✓ Chief Justice
 ✓ Justice Douglas
 ✓ Mr. Justice Brennan
 ✓ Mr. Justice White
 ✓ Mr. Justice Marshall
 ✓ Mr. Justice Blackmun
 ✓ Mr. Justice Powell
 ✓ Mr. Justice Rehnquist

✓ Stewart, J.

✓ dictated:

✓ dictated: DEC 4 1975

5th DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 74-653

State of Michigan, Petitioner, | On Writ of Certiorari to
 v. | the Court of Appeals of
 Richard Bert Mosley. | Michigan.

[December —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent, Richard Bert Mosley, was arrested in Detroit, Michigan, on the early afternoon of April 8, 1971, in connection with robberies that had recently occurred at the Blue Goose Bar and the White Tower Restaurant on that city's lower east side. The arresting officer, Detective James Cowie of the Armed Robbery Section of the Detroit Police Department, was acting on a tip implicating Mosley and three other men in the robberies.¹ After effecting the arrest, Detective Cowie brought Mosley to the Robbery, Breaking and Entering Bureau of the Police Department, located on the fourth floor of the departmental headquarters building. The officer advised Mosley of his rights under this Court's decision in *Miranda v. Arizona*, 384 U. S. 436, and had him read and sign the department's constitutional rights notification certificate. After filling out the necessary arrest papers, Cowie began questioning Mosley about the robbery of the White Tower Restaurant. When Mosley said he did not want to answer any questions about the robberies, Cowie promptly ceased the interro-

¹ The officer testified that information supplied by an anonymous caller was the sole basis for his arrest of Mosley.

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 9, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1263, Brewer v. Williams
(Case held for No. 75-653, Michigan v. Mosley)

The respondent, a former mental patient, was convicted of murder in an Iowa state court in connection with the abduction and killing of a 12-year old girl. The inculpatory statements admitted in evidence against him were made during an automobile trip from Davenport, Iowa, where Williams surrendered to the police on the advice of his attorney, and Des Moines. Before leaving Davenport the police had separately agreed with both Williams' Des Moines counsel and with a second attorney in Davenport not to interrogate Williams until he reached Des Moines. The Davenport attorney asked to ride with the respondent to Des Moines, but the police refused his request. On several occasions during the trip, the respondent informed the police that he would speak with them after he arrived in Des Moines and consulted with his attorney. Miranda warnings were administered upon arrest and before leaving Davenport, but were not repeated during the trip. After extended discussions with the detective during the trip, the respondent offered to show the officers where the girl's body was located.

The state trial court rejected the respondent's motion to suppress the inculpatory statement and the evidence of the crime discovered as a result of the statement. The Iowa Supreme Court affirmed the conviction, 5-4. The respondent then sought habeas corpus relief in federal district court. The federal court, in conformity with an agreement by the parties, acted on the state court record without an evidentiary hearing. It granted the writ, holding

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 6, 1975

Re: No. 74-653 - Michigan v. Mosley

Dear Potter:

I anticipate soon circulating an opinion
concurring in the result.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

From: White, J.

Circulated: 11-18-75

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-653

State of Michigan, Petitioner, | On Writ of Certiorari to
v. | the Court of Appeals of
Richard Bert Mosley. | Michigan.

[December —, 1975]

MR. JUSTICE WHITE, concurring.

I concur in the result and in much of the majority's reasoning. However, it appears to me that, in an effort to make only a limited holding in this case, the majority has implied that some custodial confessions will be suppressed even though they follow an informed and voluntary waiver of the defendant's rights. The majority seems to say that a statement obtained within some unspecified time after an assertion by an individual of his "right to silence" is always inadmissible, even if it was the result of an informed and voluntary decision—following, for example, a disclosure to such an individual of a piece of information bearing on his waiver decision which the police had failed to give him prior to his assertion of the privilege but which they gave him immediately thereafter. Indeed, at p. 6, the majority characterizes as "absurd" any contrary rule. I disagree, I don't think the majority's conclusion is compelled by *Miranda v. Arizona*, 384 U. S. 436, and I suspect that in the final analysis the majority will adopt voluntariness as the standard by which to judge the waiver of the right to silence by a properly informed defendant. I think the Court should say so now.

Miranda holds that custody creates an inherent compulsion on an individual to incriminate himself in response to questions, and that statements obtained under such circumstances are therefore obtained in violation

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

p. 5

From: White, J.

Circulated: _____

Recirculated: 11-21-75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-653

State of Michigan, Petitioner, } On Writ of Certiorari to
v. } the Court of Appeals of
Richard Bert Mosley. } Michigan.

[December --, 1975]

MR. JUSTICE WHITE, concurring.

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Miranda holds that custody creates an inherent compulsion on an individual to incriminate himself in response to questions, and that statements obtained under such circumstances are therefore obtained in violation

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

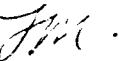
November 18, 1975

Re: No. 74-653 -- State of Michigan v. Richard Bert Mosley

Dear Bill:

Please join me in your dissent.

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

November 6, 1975

Re: No. 74-653 - Michigan v. Mosley

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 4, 1975

No. 74-653 Michigan v. Mosley

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

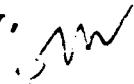
November 5, 1975

Re: No. 74-653 - Michigan v. Mosley

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference