The Burger Court Opinion Writing Database

Ludwig v. Massachusetts

427 U.S. 618 (1976)

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

June 22, 1976

Re: 75-377 - Ludwig v. Massachusetts

Dear Harry:

Please join me in your circulation of June 18.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 22, 1976

RE: No. 75-377 Ludwig v. Massachusetts

Dear John:

Please join me in the dissenting opinion you have prepared in the above.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 22, 1976

75-377, Ludwig v. Massachusetts

Dear John,

Please add my name to your dissenting opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 22, 1976

Re: No. 75-377 - Ludwig v. Massachusetts

Dear Harry:

Please join me.

Sincerely,

Byron

Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 22, 1976

Re: No. 75-377 -- Ludwig v. Massachusetts

Dear John:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 6/18/76

Recirculated: _____

No. 75-377 - Ludwig v. Massachusetts

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The Commonwealth of Massachusetts long ago established a "two-tier" system of trial courts for certain crimes. A person accused of such a crime is tried in the first instance in the lower tier. No trial by jury is available there. If convicted, the defendant may take a timely "appeal" to the second tier and, if he so desires, have a trial de novo by jury. The issues here presented are (1) whether, where the Constitution guarantees an accused a jury trial, it also requires that he be permitted to exercise that right at the first trial in the lower tier, and (2) whether the Massachusetts precedure violates the Double Jeopardy Clause of the Fifth Amendment made applicable to the States by the Fourteenth. Benton v. Maryland, 395 U.S. 784 (1969).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1976

MEMORANDUM TO THE CONFERENCE

Re: Hold for No. 75-377 - Ludwig v. Massachusetts

No. 75-6285, Handfield v. New Hampshire, is the only hold for Ludwig.

Handfield was convicted of driving while intoxicated. He presents four issues, only one of which is related to Ludwig. This is his challenge to the New Hampshire two-tier system of trial courts. That State's system is identical to the one in effect in Massachusetts with one exception. New Hampshire apparently does not make available to the accused the informal procedure of admitting to sufficient findings of fact at the first tier. It, however, does make a trial by jury available in the second tier, just as Massachusetts does. The "difference" is that in New Hampshire the accused must go through a semblance of a trial by a judge before he may go on to the second tier and have his trial by jury. The accused is not required to put on a defense at the first trial, and may sit back and permit the State to put on as much of its evidence as it pleases. For me, this is not significantly different from what happens under the Massachusetts procedure with its admission of sufficient findings of fact. The absolute right to appeal and to secure a trial de novo remains. Thus, it seems to me, that the first trial before the judge amounts to little more than a preliminary hearing that the accused may use as a discovery device. On this issue, for me at least, Ludwig, if it holds, will control.

The first of the other points Handfield raises is directed at the arresting officers' requiring him to undergo a "physical performance test," that is, walking the white line by the side of the road at the time he was stopped. It is claimed that this violates his Fifth Amendment right against self-incrimination.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 25, 1976

Re: No. 75-377 - Ludwig v. Massachusetts

Dear Chief:

On my return to chambers, I am reminded of the fact that the Print Shop does not even have out the first printed draft in No. 75-377, Ludwig v. Massachusetts. I therefore suggest that it not be ticketed to come down on Monday. I would much prefer that the Print Shop's attention be given to the revision in Planned Parenthood than to have a substantial amount of its time preempted for all the writings in Ludwig.

Sincerely,

HAB.

The Chief Justice

cc: The Conference

pp. 2, 4, 5, 6, 8, 9, 10, 11

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 6/28/76

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-377

Richard I. Ludwig, Appellant, *v.* Commonwealth of Massachusetts. } On Appeal from the Supreme Judicial Court of Massachusetts.

[June —, 1976]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The Commonwealth of Massachusetts long ago established a "two-tier" system of trial courts for certain crimes. A person accused of such a crime is tried in the first instance in the lower tier. No trial by jury is available there. If convicted, the defendant may take a timely "appeal" to the second tier and, if he so desires, have a trial *de novo* by jury. The issues here presented are (1) whether, where the Constitution guarantees an accused a jury trial, it also requires that he be permitted to exercise that right at the first trial in the lower tier, and (2) whether the Massachusetts procedure violates the Double Jeopardy Clause of the Fifth Amendment made applicable to the States by the Fourteenth. *Benton* v. *Maryland,* 395 U. S. 784 (1969).

I

Massachusetts is one of several States having a two-tier system of trial courts for criminal cases. See *Colten* v. *Kentucky,* 407 U. S. 104, 112 n. 4 (1972). Some States provide a jury trial in each tier; others provide a jury

LFP/gg 6-22-76

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

From: Mr. Justice Powell

Circulated: JUN 22 1976

Recirculated: _____

No. 75-377 LUDWIG v. MASSACHUSETTS

MR. JUSTICE POWELL, concurring in part and concurring in the judgment.

I join Part III of the Court's opinion, but cannot join Part II thereof. Although I agree with much of what is said, I find it unnecessary to reach the question of what the Sixth Amendment requires in circumstances like these. Rather, I would reject petitioner's jury-trial contention on the grounds stated in my concurring opinion in Apodaca v. Oregon, reported in 406 U.S., at 369-380 (1972). *

I do not agree that the Fourteenth Amendment incorporates all of the elements of jury trial guaranteed

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* The Court's opinion in Apodaca v. Oregon is reported at 406 U.S. 404. My concurring opinion is appended to the Court's opinion in Johnson v. Louisiana, 403 U.S. 356, commencing at 366.

lfp/ss 6/25/76

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

From: Mr. Justice Powell

Circulated JUN 25 1976

2nd Draft Recirculated: _____

No. 75-377 LUDWIG v. MASSACHUSETTS

MR. JUSTICE POWELL, concurring.

I join the opinion of the Court, as I understand it to be consistent with my view that the right to a jury trial afforded by the Fourteenth Amendment is not identical to that guaranteed by the Sixth Amendment. See my opinion in Apodaca v. Oregon, reported at 406 U.S., at 369-380 (1972).* I add only that Callan v. Wilson, 127 U.S. 540 (1888), is distinguished most simply by the applicability to that case of the Sixth Amendment.

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*The plurality opinion in Apodaca v. Oregon is reported at 406 U.S. 404. My opinion is appended to the Court's opinion in Johnson v. Louisiana, 406 U.S. 356, commencing at 366.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 22, 1976

Re: No. 75-377 - Ludwig v. Massachusetts

Dear Harry:

Please join me.

Sincerely,

Mr. Justice Blackmun

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

From: Mr. Justice Stevens

Circulated: JUN 21 1976

Recirculated: _____

No. 75-377 - Ludwig v. Massachusetts

MR. JUSTICE STEVENS, dissenting.

The question in this case is whether Massachusetts may convict a defendant of a crime and sentence him to prison for a period of five years without a jury trial. The Court answers the question in the affirmative for two reasons. First, the conviction is almost meaningless since the defendant may have it vacated by an immediate appeal; and second, the defendant may minimize the burden of the trial by, in effect, stipulating that the proof need not establish his guilt beyond a reasonable doubt. To put it mildly, I find these reasons unsatisfactory.

Almost a century ago the Court decided that a comparable procedure was unconstitutional. Referring to a federal criminal proceeding, a unanimous Court stated:

> "But the argument, made in behalf of the government, implies that if Congress should provide the Police Court with a grand jury, and authorize that court to try, without a petit jury, all persons indicted — even for crimes punishable by confinement in the penitentiary — such legislation would not be an invasion of the constitutional right of trial by jury, provided the accused, after being tried and sentenced in the Police Court, is given an unobstructed right of appeal to, and trial by jury in, another court to which the case may be taken. We cannot assent to that interpretation of the Constitution.