The Burger Court Opinion Writing Database

Doyle v. Ohio

426 U.S. 610 (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

April 16, 1976

PERSONAL

Re: (75-5014 - Doyle v. Ohio
(75-5015 - Wood v. Ohio

Dear Lewis:

Re your memo of April 15, I pose these questions:

1. If we had no Miranda, how would we decide? (I think I would reach your result on Due Process without reference to any holding.)

2. Do we want to cast Miranda in bronze? (I pass that by saying I have no urge to overrule it at this stage when police, et al, have adjusted to it. I have no desire to unsettle something that is tolerable. Neither do I want to "cast it in bronze" and here I see no need whatever to do so. I would reach the result independent of Miranda which, for federal courts, could have been on supervisory power.)

In short, I think I could not join the opinion as written but could if it is cast on straight Due Process grounds. As written, it may also risk losing Byron.

Regards,

WEB

Mr. Justice Powell

(I really don't understand what C J has in mind. I must talk to him)

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

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1976

Re: (75-5014 - Doyle v. Ohio
(75-5015 - Wood v. Doyle

Dear Lewis:

I join your proposed June 9 opinion.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 10, 1976

RE: Nos. 75-5014 and 75-5015 Doyle & Wood v. Ohio

Dear Lewis:

I agree.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 23, 1976

Re: Nos. 75-5014 and 75-5015, Doyle v. Ohio

Dear Lewis,

I am glad to join your opinion for the Court in these cases.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 4, 1976

Re: No. 75-5014 and 75-5015, Doyle and Wood

Dear Lewis,

The proposed new footnote enclosed with your note of June 3 is satisfactory to me.

Sincerely yours,

P.S.

Mr. Justice Powell

Copy to Mr. Justice White

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 2, 1976

Re: Nos. 75-5014 & 75-5015 - Doyle v. Wood

Dear Lewis:

Please join me.

Sincerely,

Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 8, 1976

Re: Nos. 75-5014 & 75-5015 - Doyle and Wood

Dear Lewis:

I have your June 7 note about Doyle and Wood. The changes you suggest are all right with me.

Sincerely,

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 11, 1976

Re: No. 75-5014 -- Doyle v. State of Ohio
No. 75-5015 -- Wood v. State of Ohio

Dear Lewis:

Please join me.

Sincerely,

T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 7, 1976

Re: No. 75-5014 - Doyle v. Ohio
No. 75-5015 - Wood v. Ohio

Dear John:

Please join me in your dissent.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 7, 1976

Re: No. 75-5014 - Doyle v. Ohio
No. 75-5015 - Wood v. Ohio

Dear John:

Please join me in your dissent.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

[note to Justice Stevens only]

Dear John:

This joinder is directed, of course, to the opinion as revised by the changes you propose in your personal letter to Bill Rehnquist of June 3.

H. A. B.

April 15, 1976

No. 75-5014 Doyle v. Ohio
No. 75-5015 Wood v. Ohio

Dear Chief:

When we last talked about these cases you expressed the hope that the opinion could be written without establishing an absolute rule that would preclude impeachment cross examination as to a defendant's silence upon receiving Miranda warnings at the time of arrest.

After carefully considering possible alternatives, I have concluded that Miranda controls this case, as several of our colleagues indicated at Conference. Accordingly, the enclosed opinion has been written on this basis.

You will find the entire Miranda discussion, commencing at page 10 of my opinion. I think the conclusion is inescapable that it would be unfair to advise an arrestee that he has a right to remain silent, and then attempt to impeach him for the exercise of that right. You will note that Byron (no devotee of Miranda) wrote in Hale that it would not "comport with due process to permit the prosecution during trial to call attention to [defendant's] silence at the time of arrest". I have relied on Byron's opinion (p. 11).

The vote at the Conference was 6 to 3 to reverse. Bill Brennan preferred to reverse on Sixth Amendment grounds, although he said that possibly he also could reverse on due process grounds. Potter and Byron both expressly said that Miranda controls, requiring reversal on Fourteenth Amendment due process. Thurgood did not state his reasons for voting to reverse, although I assume he would be inclined to follow Bill Brennan. Harry, Bill Rehnquist and John voted to affirm.

In sum, there were only four firm votes to reverse on due process grounds (including yours and mine), although I would guess that Bill Brennan and Thurgood will go along - possibly saying that they also would reverse on the Sixth Amendment.

I have written the opinion as narrowly as possible, limited solely to due process fundamental fairness in light of Miranda. Also, in footnote 6, I have reserved the other two questions presented in these cases: whether a defendant could be cross examined about his silence at the preliminary hearing, and whether a defense witness can be so cross examined. In my view, a witness - even though a defendant in another case - clearly may be cross examined when he testifies as a witness. I am inclined also to think that a defendant may be cross examined as to silence at a preliminary hearing, where he has the benefit of advice of counsel. But these questions are reserved for another day.

I "worry" you now only because of our prior conversation. I am ready today to circulate the enclosed draft, but will defer doing so until I hear from you.

Sincerely,

The Chief Justice

lfp/ss

April 22, 1976

No. 75-5014 Doyle v. Ohio
No. 75-5015 Wood v. Ohio

Dear Chief:

As you will see from the enclosed circulation, I have substantially revised my initial, uncirculated draft of an opinion in the above case.

I think it now accommodates your views. The decision is stripped to a straightforward holding that, given the state-imposed requirements of Miranda, there would be a denial of due process if a defendant were impeached by reference to his exercise of the right to remain silent.

Sincerely,

LFP

The Chief Justice

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: APR 22 1976

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–5014 AND 75–5015

Jefferson Doyle, Petitioner,
75–5014 *v.*
State of Ohio.

Richard Wood, Petitioner,
75–5015 *v.*
State of Ohio.

On Writs of Certiorari to the Court of Appeals of Ohio, Tuscarawas County, Fifth Judicial District.

[April —, 1976]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question in these consolidated cases is whether a state prosecutor may seek to impeach a defendant's exculpatory story, told for the first time at trial, by cross-examining the defendant about his failure to have told the story after receiving *Miranda* warnings [1] at the time of his arrest. We conclude that use of the defendant's post-arrest silence in this manner violates due process, and therefore reverse the convictions of both petitioners.

I

Petitioners Doyle and Wood were arrested together and charged with selling 10 pounds of marihuana to a local narcotics bureau informant. They were convicted in the Common Pleas Court of Tuscarawas County, Ohio, in separate trials held about one week apart. The evidence at their trials was identical in all material respects.

The State's witnesses sketched a picture of a routine

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

June 3, 1976

No. 75-5014 and 75-5015 Doyle and Wood

Dear Potter and Byron:

As you are my only constituents in the above case, I write to ask whether you have any objection to the enclosed response to John's dissent?

I would probably substitute this for present note 8 on page 10.

Sincerely,

Mr. Justice Stewart
Mr. Justice White

lfp/ss
Enc.

The dissent by Mr. Justice Stevens expresses the view that the giving of Miranda warnings does not lessen the "probative value of [a defendant's] silence. . . ." Infra at p. 2. But in United States v. Hale, 422 U.S., at 177, we noted that silence at the time of arrest may be inherently ambiguous even apart from the effect of Miranda warnings, for in a given case there may be several explanations for the silence that are consistent with the existence of an exculpatory explanation. In Hale we exercised our supervisory powers over federal courts. The instant cases, unlike Hale, come to us from a state court and thus provide no occasion for the exercise of our supervisory powers. Nor is it necessary, in view of our holding above, to express an opinion on the probative value for impeachment purposes of petitioners' silence. We note only that the Hale court considered silence at the time of arrest likely to be ambiguous and thus of dubious probative value.

The dissenting opinion also relies on the fact that respondents in this case, when cross examined about their silence, did not offer reliance on Miranda warnings as a justification. But the error we perceive lies in undertaking cross-examination on this question, thereby implying an inconsistency that the jury might construe as evidence of guilt. After an arrested person is formally advised

by an officer of the law that he has a right to remain silent, the unfairness occurs when the prosecution, in the presence of the jury, is allowed to undertake impeachment on the basis of what may be the exercise of that right.

June 7, 1976

No. 75-5014 and 75-5015 Doyle and Wood

Dear Potter and Byron,

Bill Brennan, who voted with us at Conference, will not join my circulation unless I revise Part II to make it strictly "neutral". Bill does not agree with Harris or Oregon v. Hass.

Here is an attempt to meet Bill's views. I prefer my original version, but I don't think it is at all necessary to the opinion. In any event, I need Bill and Thurgood for a "Court".

Bill has not seen this revision, as I wanted your reaction first. A telephone call at your convenience would be appreciated.

Sincerely,

Mr. Justice Stewart
Mr. Justice White

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 8, 1976

No. 75-5014 and 75-5015 Doyle and Wood

Dear Bill:

As you will see from the enclosed, I've done major surgery on Part II to meet your views. I believe it is quite neutral in this form.

Since Potter and Byron had joined my earlier circulations, I have submitted this revision to them. They are agreeable to this change in the interest of a "Court".

I also propose to revise note 8 as indicated to meet John's dissent. I have not heard from Byron on this revision.

Sincerely,

L Lewis

Mr. Justice Brennan

lfp/ss

WB

6-7, 8, 9

OK to join

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: _____

Recirculated: JUN 9 1976

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–5014 AND 75–5015

Jefferson Doyle, Petitioner,
75–5014 *v.*
State of Ohio.

Richard Wood, Petitioner,
75–5015 *v.*
State of Ohio.

On Writs of Certiorari to the Court of Appeals of Ohio, Tuscarawas County, Fifth Judicial District.

[April —, 1976]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question in these consolidated cases is whether a state prosecutor may seek to impeach a defendant's exculpatory story, told for the first time at trial, by cross-examining the defendant about his failure to have told the story after receiving *Miranda* warnings[1] at the time of his arrest. We conclude that use of the defendant's post-arrest silence in this manner violates due process, and therefore reverse the convictions of both petitioners.

I

Petitioners Doyle and Wood were arrested together and charged with selling 10 pounds of marihuana to a local narcotics bureau informant. They were convicted in the Common Pleas Court of Tuscarawas County, Ohio, in separate trials held about one week apart. The evidence at their trials was identical in all material respects.

The State's witnesses sketched a picture of a routine

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

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 23, 1976

Holds for Nos. 75-5014 and 75-5015 Doyle and Wood v. Ohio

MEMORANDUM TO THE CONFERENCE:

No. 75-1051 Black v. Minot

In this case no Miranda warnings were given, but respondent was silent during police questioning on counsel's advice. At his trial he presented an alibi defense. When the prosecutor asked if he had told his story to the police, the trial judge "overruled" defense counsel's offer to stipulate that he had advised silence. Respondent then explained his silence as having rested on counsel's advice; and in closing argument the prosecutor commented extensively on that silence. Defense counsel did not object.

CA 6 granted habeas, holding that failure to object did not preclude habeas in the absence of some suggestion that it was a deliberate bypass of state court procedure.

There are two differences between this case and Doyle: (1) respondent was silent on counsel's advice rather than after receiving Miranda warnings; (2) his counsel objected to neither the cross-examination nor the closing argument. In the specific context of immediate post-arrest questioning, I do not believe it matters whether silence follows counsel's advice or Miranda warnings. Since the State's petition did not even mention counsel's failure to object, I shall vote to deny.

No. 75-5958 Rickman v. United States.

FBI agents gave petitioner Miranda warnings and seized some $760 from him. At trial - without objection from defense counsel - an agent testified that petitioner had refused to sign a receipt for the money and that, although

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 7, 1976

Re: No. 75-5014 & No. 75-5015 - Doyle v. Ohio

Dear John:

Please join me in your dissenting opinion.

Sincerely,

WHR

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 26, 1976

Re: 75-5014 and 75-5015 - Doyle v. Ohio

Dear Lewis:

In a few days I will circulate a short dissent.

Respectfully,

JPS

Mr. Justice Powell

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: 6/1/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–5014 AND 75–5015

Jefferson Doyle, Petitioner,
75–5014 *v.*
State of Ohio.

Richard Wood, Petitioner,
75–5015 *v.*
State of Ohio.

On Writs of Certiorari to the Court of Appeals of Ohio, Tuscarawas County, Fifth Judicial District.

[June —, 1976]

MR. JUSTICE STEVENS, dissenting.

Petitioners assert that the prosecutor's cross-examination about their failure to mention the purported "frame" until they testified at trial violated their constitutional right to due process and also their constitutional privilege against self-incrimination. I am not persuaded by the first argument; though there is merit in a portion of the second, I do not believe it warrants reversal of these state convictions.

I

The Court's due process rationale has some of the characteristics of an estoppel theory. If (a) the defendant is advised that he may remain silent, and (b) he does remain silent, then we (c) presume that his decision was made in reliance on the advice, and (d) conclude that it is unfair in certain cases, though not others,[1] to use his silence to impeach his trial testimony. The key to the Court's analysis is apparently a concern that the

[1] As the Court acknowledges, the "fact of post-arrest silence could be used by the prosecution to contradict a defendant who testifies to an exculpatory version of events and claims to have told the police the same version upon arrest." *Ante*, at 12 n. 10.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

PERSONAL

June 3, 1976

Re: 75-5014 & 75-5015 - Doyle v. Ohio

Dear Bill:

In view of the repeated use of language such as "if you are innocent," plus the fact that the state appellate court did not really give any attention to this problem, I cannot totally accept your suggestion. However, I wonder if the attached revision would make it possible for you to join Part II B?

Sincerely,

Mr. Justice Rehnquist

Pg. 1, 5-8, 12-15

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: _____

2nd DRAFT Recirculated: 6/18/76

SUPREME COURT OF THE UNITED STATES

Nos. 75–5014 AND 75–5015

Jefferson Doyle, Petitioner,
75–5014 *v.*
State of Ohio.

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State of Ohio.

On Writs of Certiorari to the Court of Appeals of Ohio, Tuscarawas County, Fifth Judicial District.

[June —, 1976]

MR. JUSTCE STEVENS, with whom MR. JUSTICE BLACKMUN and MR. JUSTICE REHNQUIST join, dissenting.

Petitioners assert that the prosecutor's cross-examination about their failure to mention the purported "frame" until they testified at trial violated their constitutional right to due process and also their constitutional privilege against self-incrimination. I am not persuaded by the first argument; though there is merit in a portion of the second, I do not believe it warrants reversal of these state convictions.

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R 79-11

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: _____

Recirculated: JUN 10 1976

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-5014 AND 75-5015

Jefferson Doyle, Petitioner,
75-5014 *v.*
State of Ohio.

Richard Wood, Petitioner,
75-5015 *v.*
State of Ohio.

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[June —, 1976]

MR. JUSTCE STEVENS, with whom MR. JUSTICE BLACKMUN and MR. JUSTICE REHNQUIST join, dissenting.

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