

The Burger Court Opinion Writing Database

Scarborough v. United States
431 U.S. 563 (1977)

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

(b)

CHAMBERS OF
THE CHIEF JUSTICE

May 25, 1977

Re: 75-1344 - Scarborough v. United States

Dear Thurgood:

I join.

Regards,

WB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

July 27, 1977

Re: 75-1344 - Scarborough v. United States

Dear Thurgood:

I have your memorandum of July 21 in the
above case. I leave the matter in your good
hands.

WB
Regards,
WB

Mr. Justice Marshall

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Supreme Court of the United States

Washington, D. C. 20543

(B)

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

May 16, 1977

RE: No. 75-1344 Scarborough v. United States

Dear Thurgood:

I agree.

Sincerely,

Brennan

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 17, 1977

No. 75-1344, Scarborough v. United States

Dear Thurgood,

I shall probably file a short dissent in this case. If, however, I do not succeed in getting a dissent completed by the end of next week, I shall, to avoid delaying you, acquiesce in your opinion.

Sincerely yours,

P. S.

Mr. Justice Marshall

Copies to the Conference

P2
Please sign my note about it

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

From: Mr. Justice Stewart

Circulated: MAY 20 1977

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 75-1344

Richard A. Scarborough,
Petitioner,
v.
United States. } On Writ of Certiorari to the United
States Court of Appeals for the
Fourth Circuit.

[May —, 1977]

MR. JUSTICE STEWART, dissenting.

So far as the record reflects, the petitioner in this case acquired the four weapons in question before he was convicted of a felony in August of 1972. Until that time, his possession of the guns was entirely legal under federal law. Under the Court's construction of 18 U. S. C. App. § 1202 (a)(1), however, the petitioner was automatically guilty of a serious federal criminal offense at the moment he was convicted in the state felony case. This result is in my view inconsistent with the time-honored rule of lenity in construing federal criminal statutes. See, e. g., *Rewis v. United States*, 401 U. S. 808, 812; *Ladner v. United States*, 358 U. S. 169, 177-178; *Bell v. United States*, 349 U. S. 81, 83; *United States v. Universal C. I. T. Credit Corp.*, 344 U. S. 218, 221-222. I would hold that § 1202 (a)(1) does not come into play unless and until a person first comes into possession of a fireman after he is convicted of a felony.

The language of § 1202(a)(1) does not compel the construction that the Court adopts. The statute covers “[a]ny person who . . . has been convicted . . . of a felony . . . and who receives, possesses, or transports . . . any firearm” Plainly the acts of receiving and transporting are prohibited only if they occur after the defendant’s conviction. The language does not indicate, however, whether the illegal possession must also first begin after conviction, or whether a prior possession becomes illegal at the moment the

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 8, 1977

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 75-1344 -- Scarborough v. United States

(1) No. 75-1772, Jones v. United States

Petr was convicted of possession of a firearm in violation of 18 U.S.C. App § 1202(a). The Government proved that he had been convicted of a felony in 1953, that the possessed revolver had been manufactured in Germany in 1968, and that he had purchased the revolver in 1970. The Court of Appeals held that this proof provided a sufficient nexus between the possession and commerce and this accords with our holding in Scarborough. Thus, as far as this issue ✓ is concerned, the petition can be denied.

Petr also raises Fourth Amendment objections to the Government obtaining the information for this prosecution, claiming in particular that the manufacturer's name and the serial number of the gun were obtained as the result of illegal seizures. The first occasion police found petr with the gun was when he was stopped during a routine traffic check for drivers' licenses as he passed by the checkpoint. The trooper saw the revolver lying on the seat next to petr. Knowing petr and believing him to be a convicted felon, the trooper requested that petr hand the gun to him and he recorded the serial number thereon. A check of the local police records showed no conviction and petr was given his gun and allowed to drive away. The second occasion on which police encountered petr with this gun was when federal agents were, pursuant to a search warrant, searching petr's store for liquor being sold without a federal tax stamp. Knowing that petr had previously carried a gun, they frisked him and asked him if he had a gun. He said the nearest one was on the shelf and gave it to the agent who noted the serial number. Petr's objection to the first encounter is his assertion that the trooper had only a naked belief that petr was a convicted felon. At most this is a fact dispute not warranting certiorari. ✓

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

July 21, 1977

MEMORANDUM TO THE CONFERENCE

After reviewing Scarborough v. United States, I realized that a minor change is desirable. At the bottom of page 11, the opinion says:

It was after this colloquy that Senator McClellan suggested that the amendment be taken to conference for "further thought". While that appeared to be its destination, unexpectedly there was a call for a vote and Title VII passed without modification.

It will be more accurate and less ambiguous if we substitute the following for the last sentence on page 11:

While that appeared to be its destination, the House, after Senate passage of the bill, defeated a motion to go to conference and adopted the entire Senate bill, including Title VII, without alteration. 114 Cong. Rec. 16077-78, 16299-300. Title VII thus became law without modification.

I have attached a copy of the relevant page with the proposed modification. Absent contrary word by August 10, I will have Mr. Putzel proceed with the change.


T. M.

75-1344—OPINION

SCARBOROUGH *v.* UNITED STATES

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heretofore offered would get at the Oswalds or the Galts, They are the types of people at which Title VII is aimed," 114 Cong. Rec. 14773-14774.

He proposed this amendment to remedy what he thought was an erroneous conception of the drafters of Title IV that there was "a constitutional doubt that the Federal Government could outlaw the mere possession of weapons." 114 Cong. Rec., at 13868.

The intent to outlaw possession without regard to movement and to apply it to a case such as petitioner's could not have been more clearly revealed than in a colloquy between Senators Long and McClellan:

"Mr. McClellan. I have not had an opportunity to study the amendment. . . . The thought that occurred to me, as the Senator explained it, is that if a man had been in the penitentiary, had been a felon, and had been pardoned, without any condition in his pardon to which the able Senator referred, granting him the right to bear arms, could that man own a shotgun for purposes of hunting.

"Mr. Long of Louisiana. No, he could not. He could own it, but he could not possess it.

"Mr. McClellan. I beg the Senator's pardon?

"Mr. Long of Louisiana. This amendment does not seek to do anything about who owns a firearm. He could not carry it around; he could not have it.

"Mr. McClellan. *Could he have it in his home?*

"Mr. Long of Louisiana. *No, he could not.*" 114 Cong. Rec. 14774 (1968) (emphasis added).

It was after this colloquy that Senator McClellan suggested that the amendment be taken to conference for "further thought." ~~While that appeared to be its destination, unexpectedly there was a call for a vote and Title VII passed without modification.~~ 114 Cong. Rec., at 14775.

Ibid. While that appeared to be its destination, the House, after Senate passage of the bill, defeated a motion to go to conference and adopted the entire Senate bill, including Title VII, without alteration. 114 Cong. Rec., at 16077-78, 16299-300. Title VII thus became law without modification.

August 11, 1977

MEMORANDUM TO MR. PUTZEL

Re: No. 75-1344, Scarborough v. United States

In addition to your suggested editorial changes, all of which are fine with me, please make the modification indicated in the attached memorandum.

It will be more accurate and less ambiguous if we amend line 10 of the following for the last sentence on page 1:

T. M. While that appears to be its destination, the House, after Senate passage of the bill, voted to send a motion to go to conference and adopt the entire Senate bill, including Title VII, without alteration. 114 Cong. Rec. 37077-78. Thus, Title VII thus became Title VII without modification.

Enclosure

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

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CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 16, 1977

Re: No. 75-1344 - Scarborough v. United States

Dear Thurgood:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 18, 1977

No. 75-1344 Scarborough v. U. S.

Dear Thurgood:

I will await Potter's dissent, as I
voted with him at the Conference.

Sincerely,

Lewis

Mr. Justice Marshall

LFP/lab

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

(5)

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 23, 1977

No. 75-1344 Scarborough v. United States

Dear Thurgood:

Although I voted tentatively the other way, I am now persuaded by your opinion and am happy to join you.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

1

May 13, 1977

RE: 75-1344 Scarborough v. United States

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall
Copies to the Conference