The Burger Court Opinion Writing Database

Taylor v. Kentucky

436 U.S. 478 (1978)

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

May 23, 1978

Re: 77-5549 - Taylor v. Kentucky

Dear Lewis:

I join.

Regards,

Mr. Justice Powell

Copies to the Conference

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

From: Mr. Justice Brennan

Circulated: 5/10

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SUPREME COURT OF THE UNITED STATES

No. 77-5549

Michael Taylor, Petitioner	)	On Writ of Certiorari
	)	to the Court of
v.	)	of Appeals of
	)	Kentucky
Commonwealth of Kentucky	)	

MR. JUSTICE BRENNAN, concurring.

I join the Court's opinion because in reversing petitioner's conviction it reaffirms that "'the presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice,'" ante, at 1, quoting Estelle v. Williams, 425 U.S. 501, 503 (1976). It follows from this proposition, as is clear from the Court's opinion, that trial judges should instruct the jury on a criminal defendant's entitlement to a presumption of innocence in all cases where such an instruction is requested.

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

From: Mr. Justice Brennan

Circulated: _____

Recirculated: 11 MAY 1978

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-5549

Michael Taylor, Petitioner, v. Commonwealth of Kentucky. | On Writ of Certiorari to the Court of Appeals of Kentucky.

[May —, 1978]

MR. JUSTICE BRENNAN, concurring.

I join the Court's opinion because in reversing petitioner's conviction it reaffirms that " 'the presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice,' " *ante*, at 1, quoting *Estelle* v. *Williams*, 425 U. S. 501, 503 (1976). It follows from this proposition, as is clear from the Court's opinion, that trial judges should instruct the jury on a criminal defendant's entitlement to a presumption of innocence in all cases where such an instruction is requested.

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 9, 1978

No. 77-5549 -- Taylor v. Kentucky

Dear Lewis,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 9, 1978

Re: 77-5549 - Taylor v. Kentucky

Dear Lewis,

Please join me.

Sincerely yours,

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 18, 1978

Re: No. 77-5549 - Taylor v. Kentucky

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

May 10, 1978

Re: No. 77-5549 - Taylor v. Kentucky

Dear Lewis:

I am probably with you in this case, but I must confess that I am somewhat disturbed by the material at the bottom of page 8. It seems to me that the most obvious reading of the quoted remarks of the prosecutor is merely that every defendant who has been convicted started out with a presumption of innocence. I doubt if it is "most obvious" that the prosecutor was inferring "that all defendants turn out to be guilty." This, I think, stands in some contrast to what follows at the top of page 9.

Sincerely,

Harry

Mr. Justice Powell

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

CHAMBERS OF
JSTICE HARRY A. BLACKMUN

May 16, 1978

Re: No. 77-5549 - Taylor v. Kentucky

Dear Lewis:

Please join me in your recirculation of May 15.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

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: 8 MAY 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-5549

Michael Taylor, Petitioner, *v.* Commonwealth of Kentucky. | On Writ of Certiorari to the Court of Appeals of Kentucky.

[May —, 1978]

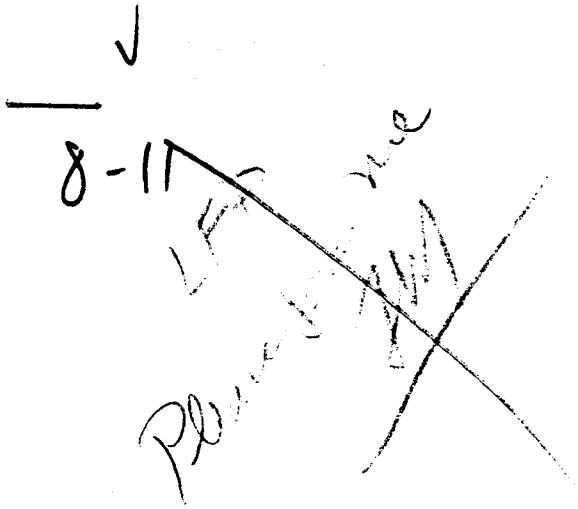
MR. JUSTICE POWELL delivered the opinion of the Court.

Only two Terms ago, this Court observed that the "presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice." *Estelle* v. *Williams*, 425 U. S. 501, 503 (1976). In this felony case, the trial court instructed the jury as to the prosecution's burden of proof beyond a reasonable doubt, but refused petitioner's timely request for instructions on the presumption of innocence and the indictment's lack of evidentiary value. We are asked to decide whether the Due Process Clause of the Fourteenth Amendment requires that either or both instructions be given upon timely defense motions.

I

Petitioner was tried for robbery in 1976, allegedly having forced his way into the home of James Maddox and stolen a house key and a billfold containing ten to fifteen dollars. During *voir dire* of the jury, defense counsel questioned the panel about their understanding of the presumption of innocence,[1] the burden of proof beyond a reasonable doubt,[2] and

[1] App. 19, 21.
[2] App. 19–21.



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: 15 MAY 1978

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-5549

Michael Taylor, Petitioner, v. Commonwealth of Kentucky. | On Writ of Certiorari to the Court of Appeals of Kentucky.

[May —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

Only two Terms ago, this Court observed that the "presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice." *Estelle* v. *Williams*, 425 U. S. 501, 503 (1976). In this felony case, the trial court instructed the jury as to the prosecution's burden of proof beyond a reasonable doubt, but refused petitioner's timely request for instructions on the presumption of innocence and the indictment's lack of evidentiary value. We are asked to decide whether the Due Process Clause of the Fourteenth Amendment requires that either or both instructions be given upon timely defense motions.

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Petitioner was tried for robbery in 1976, allegedly having forced his way into the home of James Maddox and stolen a house key and a billfold containing ten to fifteen dollars. During *voir dire* of the jury, defense counsel questioned the panel about their understanding of the presumption of innocence,[1] the burden of proof beyond a reasonable doubt,[2] and

[1] App. 19, 21.
[2] App. 19–21.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 13, 1978

77-5549

Re: Case Previously Held for Taylor v. Kentucky:
No. 77-5985 Cane v. Kentucky

MEMORANDUM TO THE CONFERENCE

I've rechecked the papers in this case. I think it arguably is a close call, but I could deny the petition rather than remand for reconsideration.

Petitioner is a female impersonator, and this fact came out at trial, since he had committed the robbery while dressed as a woman. He claims that the prosecutor deliberately elicited testimony giving rise to an inference that he and one of the witnesses were homosexual lovers. These extraneous circumstances, petitioner says, were allowed to percolate in the jury's mind, since no presumption of innocence instruction was given.

On the other hand, the prosecution's case here was far more than the swearing contest presented in Taylor. Petitioner was apprehended while driving a car containing property stolen in the robbery. Also, an eyewitness to the robbery identified petitioner in court as one of the robbers. While two other eyewitnesses were unable to identify petitioner as one of the criminals, and while the identifying witness had not made a positive identification at a pretrial hearing, there is considerably more to the case than in Taylor. Petitioner here was caught with the goods. Moreover, there was none of the intentional emphasis upon petitioner's status as a defendant that was present in Taylor. The prosecutor emphasized matters that were extraneous to petitioner's guilt or innocence in due process terms, but the degree of prosecutorial overreaching was less evident than in Taylor.

It is arguable that petr has shown enough of a possibility of "extra-evidentiary" impact to come within our Taylor holding to justify a remand. I think, however, that it most unlikely that petitioner was denied a fair trial. I therefore am content to Deny.

Sincerely,

L.F.P. Jr.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 22, 1978

Re: No. 77-5549 - Taylor v. Kentucky

Dear John:

Please join me in your dissent in this case.

Sincerely,

WHR

Mr. Justice Stevens

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

77-5549 - Taylor v. Kentucky

From: Mr. Justice Stevens

Circulated: MAY 17 '78

Recirculated: _____

MR. JUSTICE STEVENS, dissenting.

In a federal court it is reversible error to refuse a request for a proper instruction on the presumption of innocence. Coffin v. United States, 156 U.S. 432, 460-461.[1/] That is not, however, a sufficient reason for holding that such an instruction is constitutionally required in every criminal trial.[2/]

The function of the instruction is to make it clear that the burden of persuasion rests entirely on the prosecutor. The same function is performed by the instruction requiring proof beyond a reasonable doubt.[3/] One standard instruction adds

1/ Although that decision rested on the erroneous notion that "the presumption of innocence is evidence in favor of the accused," id., at 460, cf. Thayer, A Preliminary Treatise on Evidence at the Common Law, 566-575 (1898), the rule in Coffin is surely sound.

2/ "Before a federal court may overturn a conviction resulting from a state trial [on the basis of an error in the instructions to the jury], it must be established not merely that the instruction is undesirable, erroneous, or even 'universally condemned' but that it violated some right which was guaranteed to the defendant by the Fourteenth Amendment." Cupp v. Naughton, 414 U.S. 141, 146.

3/ The instruction may also give the jury a "hint," Wigmore on Evidence § 2511 (1940), that arrest, indictment, and arraignment should not count against the accused. But when an

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: MAY 23 '78

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-5549

Michael Taylor, Petitioner, v. Commonwealth of Kentucky. | On Writ of Certiorari to the Court of Appeals of Kentucky.

[May —, 1978]

MR. JUSTICE STEVENS, with whom MR. JUSTICE REHNQUIST joins, dissenting.

In a federal court it is reversible error to refuse a request for a proper instruction on the presumption of innocence. *Coffin* v. *United States*, 156 U. S. 432, 460–461.[1] That is not, however, a sufficient reason for holding that such an instruction is constitutionally required in every criminal trial.[2]

The function of the instruction is to make it clear that the burden of persuasion rests entirely on the prosecutor. The same function is performed by the instruction requiring proof beyond a reasonable doubt.[3] One standard instruction adds emphasis to the other. Neither should be omitted, but an

[1] Although that decision rested on the erroneous notion that "the presumption of innocence is evidence in favor of the accused," *id.*, at 460, cf. Thayer, A Preliminary Treatise on Evidence at the Common Law, 566–575 (1898), the rule in *Coffin* is surely sound.

[2] "Before a federal court may overturn a conviction resulting from a state trial [on the basis of an error in the instructions to the jury], it must be established not merely that the instruction is undesirable, erroneous, or even 'universally condemned' but that it violated some right which was guaranteed to the defendant by the Fourteenth Amendment." *Cupp* v. *Naughten*, 414 U. S. 141, 146.

[3] The instruction may also give the jury a "hint," Wigmore on Evidence § 2511 (1940), that arrest, indictment, and arrangement should not count against the accused. But when an instruction on this point is necessary, it should be explicit. An instruction on the presumption of innocence is not an adequate substitute for stating expressly that the indictment is not evidence.