The Burger Court Opinion Writing Database

Parker v. Randolph

442 U.S. 62 (1979)

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 14, 1979

Dear Bill:

Re: 78-99 Parker v. Randolph

I join.

Regards,

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 2, 1979

RE: No. 78-99 Parker v. Randolph
No. 78-160 and 161 Wilson v. Omaha Indian Tribe

Dear John:

There are eight dissents to divide up in the last argument session where the choices are down to either Thurgood, you and me, or just Thurgood and me, or just me. That gives me four or five. Would you mind taking two. No. 78-99 Parker v. Randolph. You and I were to Affirm and Thurgood to D.I.G. In No. 78-160 and 161 Wilson v. Omaha Indian Tribe, you, Thurgood and I were to Affirm.

Sincerely,

Bill

Mr. Justice Stevens

78-425 - P.C. Pfeiffer Co. ... Transamerica Mort. Advisors, Inc. (TAMA) v. Lewis (Conf. vote 4/4)

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 14, 1979

RE: No. 78-99 Parker v. Randolph

Dear John:

Please join me in your dissenting opinion 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

April 23, 1979

Re: No. 78-99, Parker v. Randolph

Dear Bill,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 26, 1979

Re: No. 78-99 - Parker v. Randolph

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 16, 1979

Re: No. 78-99 - Parker v. Randolph

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: 3 MAY 1979

Recirculated: _____

No. 78-99 - Parker v. Randolph

MR. JUSTICE BLACKMUN, concurring in part.

I join Parts I and III of the Court's opinion and concur in its judgment affirming in part and reversing in part the judgment of the Court of Appeals.

For me, any error that existed in the admission of the confessions of the codefendants, in violation of Bruton v. United States, 391 U.S. 123 (1968), was, on the facts of this case, clearly harmless beyond a reasonable doubt. I refrain

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 4 MAY 1979

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-99

Harry Parker, Petitioner, v. James Randolph et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1979]

MR. JUSTICE BLACKMUN, concurring in part.

I join Parts I and III of the Court's opinion and concur in its judgment affirming in part and reversing in part the judgment of the Court of Appeals.

For me, any error that existed in the admission of the confessions of the codefendants, in violation of *Bruton* v. *United States*, 391 U. S. 123 (1968), was, on the facts of this case, clearly harmless beyond a reasonable doubt. I refrain from joining Part II of the Court's opinion because, as I read it, the Court abandons the harmless error analysis it previously has applied in similar circumstances and now adopts a *per se* rule to the effect that *Bruton* is inapplicable in an interlocking confession situation.

In *Bruton*, of course, the Court decided that the admission in a joint trial of the confession of a codefendant who did not take the stand violated the Sixth Amendment confrontation right of the remaining defendant. Because in most cases the impact of admitting a codefendant's confession is severe, and because the credibility of any such confession "is inevitably suspect," *id.*, at 136, the Court went on to hold that a limiting jury instruction could not alleviate the resultant substantial threat to a fair trial the Confrontation Clause was designed to protect. *Id.*, at 136–137.

In *Harrington* v. *California*, 395 U. S. 250 (1969), however, the Court recognized that evidence of guilt could be sufficiently overwhelming so as to render any *Bruton* error "harm-

STYLISTIC CHANGES

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: _____

2nd DRAFT

Recirculated: 8 MAY 19 _____

SUPREME COURT OF THE UNITED STATES

No. 78–99

Harry Parker, Petitioner, v. James Randolph et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1979]

MR. JUSTICE BLACKMUN, concurring in part.

I join Parts I and III of the Court's opinion and concur in its judgment affirming in part and reversing in part the judgment of the Court of Appeals.

For me, any error that existed in the admission of the confessions of the codefendants, in violation of *Bruton* v. *United States*, 391 U. S. 123 (1968), was, on the facts of this case, clearly harmless beyond a reasonable doubt. I refrain from joining Part II of the Court's opinion because, as I read it, the Court abandons the harmless error analysis it previously has applied in similar circumstances and now adopts a *per se* rule to the effect that *Bruton* is inapplicable in an interlocking confession situation.

In *Bruton*, of course, the Court held that the admission in a joint trial of the confession of a codefendant who did not take the stand violated the Sixth Amendment confrontation right of the other defendant. Because in most cases the impact of admitting a codefendant's confession is severe, and because the credibility of any such confession "is inevitably suspect," *id.*, at 136, the Court went on to hold that a limiting jury instruction could not alleviate the resultant substantial threat to a fair trial the Confrontation Clause was designed to protect. *Id.*, at 136–137.

In *Harrington* v. *California*, 395 U. S. 250 (1969), however, the Court recognized that evidence of guilt could be sufficiently overwhelming so as to render any *Bruton* error "harm-

May 17, 1979

Re: No. 78-99 - Parker v. Randolph

Dear Bill:

I noticed the heading in your recirculation of May 17. Actually, I do join parts I and III of your opinion, and thus, to that extent, your opinion is an opinion for the Court. This is not an uncommon situation. I mention it here only because you may wish to indicate this in some manner, perhaps even by footnote.

Sincerely,

HAB

Mr. Justice Rehnquist

May 24, 1979

Re: No. 78-99 - Parker v. Randolph

Dear Bill:

In view of the closeness of the vote, my reference to the "Court's" opinion throughout my concurrence is not always correct. I am therefore changing certain of those references to speak of "the principal opinion," and the like. No structural change is being made. Perhaps this will be back from the Print Shop in time to be circulated.

Sincerely,

HAB

Mr. Justice Rehnquist

pp. 1-4

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: 25 MAY 1979

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–99

Harry Parker, Petitioner, v. James Randolph et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1979]

MR. JUSTICE BLACKMUN, concurring in part.

I join Parts I and III of the principal opinion and concur in the Court's judgment affirming in part and reversing in part the judgment of the Court of Appeals.

For me, any error that existed in the admission of the confessions of the codefendants, in violation of *Bruton* v. *United States*, 391 U. S. 123 (1968), was, on the facts of this case, clearly harmless beyond a reasonable doubt. I refrain from joining Part II of the principal opinion because, as I read it, it abandons the harmless error analysis the Court previously has applied in similar circumstances and now adopts a *per se* rule to the effect that *Bruton* is inapplicable in an interlocking confession situation.

In *Bruton*, of course, the Court held that the admission in a joint trial of the confession of a codefendant who did not take the stand violated the Sixth Amendment confrontation right of the other defendant. Because in most cases the impact of admitting a codefendant's confession is severe, and because the credibility of any such confession "is inevitably suspect," *id.*, at 136, the Court went on to hold that a limiting jury instruction could not alleviate the resultant substantial threat to a fair trial the Confrontation Clause was designed to protect. *Id.*, at 136–137.

In *Harrington* v. *California*, 395 U. S. 250 (1969), however, the Court recognized that evidence of guilt could be sufficiently overwhelming so as to render any *Bruton* error "harm-

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 25, 1979

No. 78-99 Parker v. Randolph

Dear Bill:

Please add at the end that I took no part in the consideration or decision of this case.

Sincerely,

Lewis

Mr. Justice Rehnquist

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 1, 1979

78-99 Parker v. Randolph

Dear Bill:

Please show on the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: 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 Stevens

From: Mr. Justice Rehnquist

Circulated: 23 APR 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–99

Harry Parker, Petitioner, v. James Randolph et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

In *Bruton* v. *United States*, 391 U. S. 123 (1968), this Court reversed the robbery conviction of a defendant who had been implicated in the crime by his codefendant's extrajudicial confession. Because the codefendant had not taken the stand at the joint trial and thus could not be cross-examined, the Court held that admission of the codefendant's confession had deprived the defendant of his rights under the Confrontation Clause of the Sixth Amendment. The issue before us in this case is whether *Bruton* requires reversal of a defendant's conviction when the defendant himself has confessed and his confession "interlocks" with and supports the confession of his codefendant. We hold that it does not.

I

Respondents were convicted of murder committed during the commission of a robbery and were sentenced to life imprisonment. The cast of characters playing out the scenes that led up to the fatal shooting could have come from the pen of Bret Harte.[1] The story began in June 1970, when

[1] As the Court of Appeals aptly commented, "This appeal involved a sequence of events which have the flavor of the old West before the law ever crossed the Pecos. The difference is that here there are no heroes and here there was a trial." 575 F. 2d 1178, 1179 (CA6 1978).

pp. 9, 12

The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: 30 APR 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–99

Harry Parker, Petitioner, v. James Randolph et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

In *Bruton* v. *United States*, 391 U. S. 123 (1968), this Court reversed the robbery conviction of a defendant who had been implicated in the crime by his codefendant's extrajudicial confession. Because the codefendant had not taken the stand at the joint trial and thus could not be cross-examined, the Court held that admission of the codefendant's confession had deprived the defendant of his rights under the Confrontation Clause of the Sixth Amendment. The issue before us in this case is whether *Bruton* requires reversal of a defendant's conviction when the defendant himself has confessed and his confession "interlocks" with and supports the confession of his codefendant. We hold that it does not.

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

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: 17 MAY 1979

Rp 8, 11-13

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–99

Harry Parker, Petitioner, v. James Randolph et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1979]

MR. JUSTICE REHNQUIST announced the judgment of the Court and an opinion in which THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE WHITE joined.

In *Bruton* v. *United States,* 391 U. S. 123 (1968), this Court reversed the robbery conviction of a defendant who had been implicated in the crime by his codefendant's extrajudicial confession. Because the codefendant had not taken the stand at the joint trial and thus could not be cross-examined, the Court held that admission of the codefendant's confession had deprived the defendant of his rights under the Confrontation Clause of the Sixth Amendment. The issue before us in this case is whether *Bruton* requires reversal of a defendant's conviction when the defendant himself has confessed and his confession "interlocks" with and supports the confession of his codefendant. We hold that it does not.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 18, 1979

Re: No. 78-99 Parker v. Randolph

Dear Harry:

I happily adopt the suggestion contained in your letter of May 17th in connection with the form of the opinion, and I am recirculating in accordance with what I believe to be the substance of your suggestion.

Sincerely,

Mr. Justice Blackmun

P.1

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

From: Mr. Justice Rehnquist

Circulated: 18 MAY 1979

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-99

Harry Parker, Petitioner, *v.* James Randolph et al.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1979]

MR. JUSTICE REHNQUIST announced the judgment of the Court and an opinion in which THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE WHITE joined and in which MR. JUSTICE BLACKMUN joined Parts I and III.

In *Bruton* v. *United States*, 391 U. S. 123 (1968), this Court reversed the robbery conviction of a defendant who had been implicated in the crime by his codefendant's extrajudicial confession. Because the codefendant had not taken the stand at the joint trial and thus could not be cross-examined, the Court held that admission of the codefendant's confession had deprived the defendant of his rights under the Confrontation Clause of the Sixth Amendment. The issue before us in this case is whether *Bruton* requires reversal of a defendant's conviction when the defendant himself has confessed and his confession "interlocks" with and supports the confession of his codefendant. We hold that it does not.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 13, 1979

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 78-99 - Parker v. Randolph

Two cases were held for Parker v. Randolph, both of them coming from New York state courts. Both cases involved interlocking confessions, and the courts applied the New York rule that Bruton does not apply where the confession of a defendant "interlocks with and supports" that of other defendants. Since this position was adopted in the plurality opinion in Parker, I will vote to deny both cases.

1. Miner v. New York, No. 78-6150 (cert to NYCA)

Petitioner was hired by his codefendant to kill the codefendant's wife. Both men were convicted of murder. At their joint trial, the confession of each defendant was admitted with repeate and explicit instructions by the trial justice that each defendant's confession was to be considered against the confessing defendant only, and not against the codefendant. The NYCA affirmed the convictions of both men, rejecting their contentions that introduction of their confessions at the joint trial violate their respective rights under Bruton v. United States, 391 U.S. 123 (1968). Noting that "each defendant's confession contained the same material facts," the NYCA followed the established New York rule that "'where each of the defendants has himself made a full and voluntary confession which is almost identical to the confessions of his codefendants', the Bruton rule does not requir reversal of a conviction." Petn at A6. The NYCA also noted that "there is no dispute . . . that [petitioner] suffered no significant prejudice from admission of his codefendant's confession." Id., at 2.

The rule applied by the NYCA was expressly adopted by a plurality of this Court in Parker v. Randolph, No. 78-99 (May 29,

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 2, 1979

Re: 78-99 - Parker v. Randolph
78-160 and 161 - Wilson v. Omaha Indian Tribe

Dear Bill:

I shall be happy to undertake the dissents in these two cases.

Respectfully,

J.P.S.

Mr. Justice Brennan

78-5420;5421 - Payton;Riddick v. N.Y. (Conf. vote 4/4)

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 24, 1979

RE: 78-99 - Parker v. Randolph

Dear Bill:

Because I do not understand why a confession by the defendant has any connection with the question whether a jury can follow the trial court's instruction concerning other evidence, I will circulate a dissent as soon as I can get to it.

Respectfully,

JPS

Mr. Justice Rehnquist

Copies to the Conference

5/15
I would join this.

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

78-99 - Parker v. Randolph

Circulated: MAY 11 '79

Recirculated: _____

MR. JUSTICE STEVENS, dissenting.

As MR. JUSTICE BLACKMUN makes clear, ante, at 1-2, proper analysis of this case requires that we differentiate between (1) a conclusion that there was no error under the rule of Bruton v. United States, 391 U.S. 123, and (2) a conclusion that even if constitutional error was committed, the possibility that inadmissible evidence contributed to the conviction is so remote that we may characterize the error as harmless. Because MR. JUSTICE BLACKMUN properly rejects the first conclusion, my area of disagreement with him is narrow. In my view, but not in his, the concurrent findings of the District Court and the Court of Appeals that the error here

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: MAY 15 1979

Recirculated: _____

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–99

Harry Parker, Petitioner, v. James Randolph et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1979]

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

As MR. JUSTICE BLACKMUN makes clear, *ante,* at 1–2, proper analysis of this case requires that we differentiate between (1) a conclusion that there was no error under the rule of *Bruton* v. *United States,* 391 U. S. 123, and (2) a conclusion that even if constitutional error was committed, the possibility that inadmissible evidence contributed to the conviction is so remote that we may characterize the error as harmless. Because MR. JUSTICE BLACKMUN properly rejects the first conclusion, my area of disagreement with him is narrow. In my view, but not in his, the concurrent findings of the District Court and the Court of Appeals that the error here was not harmless [1] preclude this Court from reaching a

[1] As Judge Edwards noted, writing for the Court of Appeals:

"In evaluating the question of harmless error in this case, it is important to point out the factors which might affect a jury's verdict in relation to these three defendants in separate trials where in *Bruton* rule was observed.

"1) Randolph, Pickens and Hamilton were not involved in the gambling game between Douglas, the Las Vagas gambler, and Robert Wood, the hometown gambler who got cheated.

"2) They were not involved in originating the plan for recouping Robert Wood's losses.

"3) They were not in the room (and had not been) when Robert Wood killed Douglas.

"4) Indeed, the jury could conclude from the admissible evidence in this case that when Joe Wood pulled out his pistol, the original plan for three 'unknown' blacks to rob the all-white poker game was aborted and that

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

P. 1, 2, 3, 6, 7

From: Mr. Justice Stevens

Circulated: _____

2nd DRAFT

Recirculated: MAY 21 79

SUPREME COURT OF THE UNITED STATES

No. 78–99

Harry Parker, Petitioner, v. James Randolph et al. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1979]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

AS MR. JUSTICE BLACKMUN makes clear, *ante,* at 1–2, proper analysis of this case requires that we differentiate between (1) a conclusion that there was no error under the rule of *Bruton* v. *United States,* 391 U. S. 123, and (2) a conclusion that even if constitutional error was committed, the possibility that inadmissible evidence contributed to the conviction is so remote that we may characterize the error as harmless. Because MR. JUSTICE BLACKMUN properly rejects the first conclusion, my area of disagreement with him is narrow. In my view, but not in his, the concurrent findings of the District Court and the Court of Appeals that the error here was not harmless [1] preclude this Court from reaching a

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"4) Indeed, the jury could conclude from the admissible evidence in this case that when Joe Wood pulled out his pistol, the original plan for three 'unknown' blacks to rob the all-white poker game was aborted and that